

Take Care  
Paying for Residential Care Homes

## 1. Background

The United Kingdom has an ageing population and statistically more of us are living for longer than ever before. Most older clients are concerned about the prospect of having to live in a care home in the future.

Care funding in the UK is a topic which causes a great deal of concern. Even after a relative has passed away, it is important to ensure that an estate has received all of the funding and benefits to which it is entitled. It is often the case that the executors of an estate can pursue or continue a claim to benefits or funding after the deceased's death.

In addition, it is very common for the remaining spouse or their family to ask for advice on funding their immediate or future care.

This article is intended to give some background about care homes and their funding as well as to issues that commonly arise in this area.

## 2. Types of Care home

There are 3 different categories of care home.

**Residential Care Homes** are for individuals who cannot manage living in their own home and do not have any special medical or nursing requirements. Nursing assistance will usually be provided by visiting nurses to residents who need occasional help.

**Nursing Care Homes** have a registered nurse at the home at all times. Residents will need nursing assistance regularly and have greater medical needs than those in residential care homes.

**Elderly Mentally Infirm (commonly referred to as "EMI") Homes** care for elderly people with more severe problems such as advanced dementia.

## 3. "Free" Care

It is often assumed that all care must be paid for either by a self-funding individual or by a local authority after a means test. However, care is available at no cost to a resident regardless of their wealth in certain limited circumstances. An individual will be entitled to this if they fall into the following categories:

- (a) free aftercare under the Mental Health Act 1983
- (b) NHS continuing care

### 3.1 The Mental Health Act 1983

If a patient is sectioned under this act, care is provided at no cost to the individual by the local Primary Care trust and the local authority. This continues until the patient no longer requires the services. The funding is reviewed regularly and if a resident's condition has improved, funding may be withdrawn.

### 3.2 NHS Continuing Care

If a person's needs are primarily a health need (regardless of where their care may occur) everything which they need including accommodation, food and medical needs, should be paid for by the NHS. This funding is not means-tested so regardless of the wealth of the individual concerned, they may be entitled to NHS funded care.

This type of assistance is often not volunteered to individuals and it is therefore important to ensure that a care home resident has had an assessment for NHS Continuing Care. The criteria for assessment differs between areas of the UK as each Primary Care Trust has developed its own criteria based on the National guidelines produced by the government.

The availability of free care under this heading has been the subject of some high profile cases. In 1999, the Court of Appeal decided in favour of Pamela Coughlan who argued that the NHS had wrongly tried to transfer responsibility for health services onto social services. She had therefore been unlawfully charged for services which should have been paid for by the NHS. The Court decided that the local authority are only responsible for nursing care which is incidental to the provision of accommodation. Those who primarily need nursing care are the responsibility of the NHS and therefore do not have to pay for their care.

In 2006 the High Court heard the Grogan case. The Court ruled in favour of Mrs Grogan who challenged the decision of the NHS not to fund her care fully. The Court re-iterated the position that individuals whose primary need is medical, should receive full NHS funding.

If a decision has been made which the resident does not feel is correct, it is possible to ask the local Primary Care Trust for a review of the decision. Check what information has been used to reach the decision and that the Primary Care Trust has all of the relevant medical records, including those kept by the nursing home.

#### **4. Partial Funding and Benefits**

##### **4.1 Registered Nursing Care Contribution**

This benefit is for people with some nursing needs but who do not qualify for NHS Continuing Care. Again, an assessment is made to determine entitlement. It was previously paid in three bands depending on the extent of nursing care required but there is now a single band at a rate of £101 per week.

If someone is in a care home, this sum is paid directly to the home. It is therefore important to check invoices carefully to ensure that this benefit has or is being deducted from fees if there is or was an entitlement to it.

##### **4.2 Local Authority Contribution to Fees**

In certain circumstances, the local authority will contribute to the cost of providing care. This contribution will depend on a resident's assessable capital (often called the "savings limit"). These limits increase each April.

If a resident has less than the upper savings limit of £21,500, they will be subject to an income related means test. Personal expenses of £20.45 per week are disregarded for the purposes of the means test, as is the income of a spouse or partner. Many other sources of income are also partially or wholly disregarded. In addition, the first £13,000 of capital is not included but thereafter a resident is deemed to have £1 of income for each £250 of capital.

If a resident has over £21,500 of assessable capital, they will have to meet the full cost of their care.

Although the limits mentioned above seem very low, certain assets are disregarded for the purposes of determining a person's capital and therefore liability to pay care fees. The disregards are found in Schedule 4 to the National Assistance (Assessment of Resources) Regulations 1992. Guidance to local authorities in applying the regulations is found in the Charging for Residential Accommodation Guide ("CRAG").

The main disregards are as follows:

*(a) Resident's dwelling*

The value of this is ignored for the first 12 weeks after a permanent resident enters a home.

The value is ignored completely for temporary residents if a resident has any genuine chance of returning to their home. Even if their dwelling needs to be sold so that more suitable accommodation can be purchased, it should still be discounted.

If the dwelling is counted in the assessable capital of the resident, but the resident does not want to sell the property, the local authority can, at their discretion, allow payment to be deferred by effectively giving an interest-free loan which is then repaid when the house is eventually sold. In these circumstances, the council should also be contacted to obtain a discount for Council Tax.

*(b) Homes that remain occupied by another person*

If the property in question is the home of a partner, a relative aged over 60, or a child under 16, whom the resident maintains, or a person who is incapacitated, the value of the property is disregarded. If any other person occupies the property, the local authority has discretion over whether to include it or not.

*(c) Business interests*

Business assets of a self employed person are disregarded indefinitely. However, in practice it will be difficult for a resident of a care home to remain self-employed. When this ceases, the assets will be disregarded for as long as is reasonable to allow them to be disposed of.

*(d) Joint business assets other than land and buildings*

Where the resident owns assets jointly with another person (except land) they will be treated as owning their share i.e. for a partnership owned equally with one other person, the resident will be deemed to own one half of the partnership assets.

*(e) Joint business interests of land and buildings*

The value included in the resident's assessable capital is the value of the resident's share in the land or buildings less 10% joint ownership discount.

*(f) Personal possessions*

The value of personal possessions including antiques, valuable jewellery and any other personal possessions is disregarded. The local authority may seek to include anything which is an investment as opposed to a personal item although this may be difficult to determine.

### **4.3 Attendance Allowance**

Attendance Allowance is a tax-free benefit for people aged 65 and over who require help with personal care because they are physically or mentally disabled. It is paid at 2 rates (currently £43.15 and £64.50) depending on the help required. A claim form (available from the Department for Work and Pensions) must be completed by, or on behalf, of the person needing the care. If a resident is self-funding a stay in a care home, they can claim the benefit as can people requiring help in their own home.

A similar benefit called Disability Living Allowance is available for people aged under 65.

## **5. Deprivation of Assets**

It is common for a surviving spouse to require admission to a care home. Often, the death of a spouse has a dramatic impact on the survivor's physical and mental condition. It could also be that the deceased was providing an element of care for the survivor whilst they were alive which results in additional outside care being required afterwards. In these circumstances, the

children or the spouse often wish to move assets away from the surviving spouse in the hope that these will be excluded from the means test if they need to enter a care home.

Obviously, although it may not seem attractive for someone to have to pay care home fees, money brings choice. If the level of a prospective resident's assets mean that they are funded by the local authority, they will need to go into a local authority home and will have less say about the home where they have to live. Although it is theoretically possible for relatives to "top up" the local authority's contribution to afford a better standard of care home, the prospective resident is then at the mercy of their family. It may be the case that there is not sufficient money available for relatives to top up or that they decide they do not wish to do so.

When assessing a resident's eligibility for assistance with care fees, the local authority will look for evidence of deliberate deprivation of capital. They have discretion to look back at transfers made for an indefinite amount of time before the resident requires care. CRAG states that avoiding accommodation charges doesn't have to be the only motive behind a transfer of capital but it must be a significant one. Obviously someone who gives away capital when they are in good health and who could not have foreseen a need to go into residential accommodation at the time of the transfer, is unlikely to be judged as having deliberately deprived themselves of capital.

If a local authority decides that a resident has deliberately deprived themselves of capital, they will treat the resident as still having that capital even though they have given it away. It is therefore very important to seek advice if a resident or someone who has a reasonable prospect of having to enter a care home wants to transfer assets to someone else.

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