



Assets: disadvantages of giving your capital away

Deprivation of capital

The guidance around 'deprivation of capital' states that '**intention**' is a key factor in the transfer of property or capital. Where a local council Social Services believes that capital or ownership of a property was transferred with the intention of avoiding paying care home fees, the local council Social Services may decide that this amounts to 'deprivation of capital'.

If the local council Social Services makes this decision, it sees you as still having that capital or property and will include the full value in your financial assessment. If the value is over £23,000 (England), £22,500 (Scotland) and £22,000 (Wales) you would be expected to fund your own care until your capital drops to that

level. There is no time limit on the transfer of assets. However, the local council Social Services would need to look at different factors including the reasons for transfer and whether or not it could be foreseen, at the time of the transfer, that it was likely that you would need care.

Financial assessment

The decision on whether or not someone has deprived themselves of capital to avoid paying care fees will be made at the time of the **financial assessment** carried out by the local council Social Services. (Please see guides **16: Care Home Fees: paying them in England, 52 (Scotland)** or **72 (Wales)** for more information.) This can also be a retrospective decision if the council finds out at a later date that, for example, someone bought a lot of expensive jewellery or gave a lot of money away to relatives just before the financial assessment.

Possible disadvantages to you

As well as the restrictions to choice, independence and disposable income mentioned in factsheet **2: Assets: advantages of keeping your capital**, you may be liable for the debt owed to the council for care fees that the council has paid on your behalf (when you should have been a self-funded resident). If the asset (i.e. a property) is still in your name, a '**legal charge**' can be applied on the property by the council. This charge enables them to recover the cost of the fees they have paid for your care when the property is eventually sold. The debt may be recovered as described further

on in this factsheet if it is not paid back through the eventual sale of the property (i.e. under a deferred payment agreement – please see guides **16: Care Home Fees: paying them in England, 52 (Scotland)** or **72 (Wales)** for more information).

Possible disadvantages to others

The local authority is **not** allowed to put a ‘legal charge’ or a ‘caution’ on a property if the property is jointly owned or the property’s title deeds are now in someone else’s name. They can however put a ‘restriction’ or ‘notice’ on it in order to be notified when the property is sold. If the local council considers that deprivation has occurred, whatever the nature of the capital asset (property, savings etc), they will include the full value of the asset in the financial assessment and may consider that you have ‘notional capital’ (still have the value of that asset). The following extract is from the **Charging for Residential Accommodation Guide (CRAG)** which is used by councils to financially assess someone:

Deprivation decided

6.067 If the LA decides that the resident has disposed of capital in order to avoid a charge or to reduce the charge payable, the LA will need to decide whether to treat the resident as having the capital (notional capital) and assess the charge payable accordingly; and then whether:

- a. to recover the assessed charge from the resident; or**
- b. if the resident is unable to pay the assessed charge, to use the provisions of the Health and Social Services and Social**

Security Adjudication Act 1983 to transfer the liability for the part of the charges assessed as a result of the notional capital (see Annex D in CRAG).

The local council Social Services should reduce the amount of that notional capital each week by the difference between the rate which you are paying for the accommodation and the rate you would have paid if you were not treated as possessing the notional capital (**CRAG 6.068**).

If you are not able to pay for your care in full, the local council may pursue any money they have paid towards the care home fees, which may be recovered as a civil debt from a joint owner or the person the property/capital was transferred to. Under the **Health and Social Services and Social Security Adjudications (HASSASSA) Act 1983** Social Services may be able to transfer the debt to a third party and under the **Insolvency Act 1986** (in certain circumstances), the council may apply to have the 'gift' or transfer set aside once the former owner is bankrupt, which effectively transfers the debt to the third party to whom the 'gift' was transferred. This area is quite complex and you may wish to contact a solicitor specialising in community care and/or debt recovery through the **Community Legal Services (CLS)** on **0845 345 4 345**. Your local **Citizens Advice Bureau (CAB)** may also be able to advise you about debt recovery legislation and processes.

Further information

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each region cares for and supports older people. The information in this factsheet applies essentially to England although there may be similarities with Scotland, Wales and Northern Ireland.

If you need further information or advice about deprivation of capital or capital as it relates to financial assessments please see the other factsheets in this series or our guides at www.counselandcare.org.uk/helping-you/guides. All our factsheets and guides can also be ordered by telephoning our guide order line on **0207 241 8522**.

Alternatively, if you have a query in relation to deprivation of capital or funding, you may want to contact our advice line on **0845 300 7585** or send your enquiry by email to advice@counselandcare.org.uk.

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.

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