



counsel + care 
for older people, their families and carers

factsheet

Counsel and Care factsheet: 4

Transfer of capital: with or without a Will

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



www.counselandcare.org.uk
ADVICE LINE: 0845 300 7585 (local call rate)

Your donations, legacies and payroll giving enable Counsel and Care to get the best care and support for older people, their families and carers

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 in accordance with the **Charging for Residential Accommodation Guide (CRAG** – available at www.dh.gov.uk) (Please also 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.

Transfer of property where there is a Will

As far as we understand it, a Will and the provisions therein only take effect once the person who made the Will passes away. If you move to a care home the council may take the property and any other assets that are 'transferred' (or subject to the Will) into account in the financial assessment for your care home placement. CRAG states that the subject of Wills (and Trusts) and how they

relate to financial assessments and paying for care is complicated. Therefore you may want to seek advice from organisations listed at the end of this factsheet.

Transfer of property where there is not a Will

If you transferred the property into someone else's name before moving to a care home the council may decide that this is 'deprivation of capital', depending on the circumstances and timing. There is case law relevant to such a transfer relating to a situation in Scotland – **Yule v South Lanarkshire Council** – where a grandmother transferred the property to her granddaughter one year before moving to a care home. The judge ruled that '**deprivation of capital**' had occurred and that Mrs Yule had 'notional capital' which meant she was able to self fund her care.

The judge effectively agreed with the council that the same end result (leaving the property to her granddaughter as inheritance) could have been achieved had Mrs Yule left the property to her granddaughter in her Will. In his summing up it seems that timing was not the paramount issue. The issue was whether any '**reasonable**' council would have reached a decision that it was 'deprivation of capital' once they were in receipt of all the facts regarding the transfer of the property. The judge agreed that it was a 'reasonable' decision to find for 'deprivation of capital' based on the evidence the council was in receipt of **and** in the absence of a 'reasonable' explanation from the family, in relation to avoiding care fees or otherwise, as to why the property was transferred at that time (although the 'reasonableness' of the

council's decision to find in favour of deprivation of capital may still not be legally determined). The decision can be viewed at: www.scotcourts.gov.uk/opinions/P32_149_97.html.

Financial and legal advice

We are not legal or financial advisers and the information set out above is the result of research. Therefore, you may want to seek more expert and in-depth legal and/or financial advice. The **Financial Services Authority (FSA)** can be contacted on **0845 606 1234** or through their website: www.fsa.gov.uk. They may be able to direct you to a financial adviser. You may also want to talk to the **Community Legal Services (CLS)** on **0845 345 4 345** and ask them to direct you to a solicitor who understands CRAG and who specialises in Will making and the transfer of property as it relates to financial assessments for care homes.

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.

Counsel and Care
Twyman House
16 Bonny Street
London NW1 9PG

Tel.: **0845 300 7585** (local call rate)
Email: **advice@counselandcare.org.uk**
Website: **www.counselandcare.org.uk**

Registered Charity No. 203429 Counsel and Care for the Elderly

We are a member of the Federation of Information and Advice Centres (FIAC)

As a charity we rely on donations

© Counsel and Care April 2009