RETHINK CARE

LATER LIFE CARE ADVICE

A GUIDE FOR YOU TO HELP YOUR CLIENTS WHEN THEY'RE CONSIDERING AND CHOOSING TO PAY FOR LATER LIFE CARE IN THE UK

JUST.

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LATER LIFE SOCIAL CARE, UNLOCKING THE OPPORTUNITY

INTRODUCTION

The funding of adult social care in the UK has been the cause for concern for many years. In 2011, Andrew Dilnot's Commission on Funding of Care and Support stated that "the adult social care funding system conceived in 1948 is not fit for purpose in the 21st century and is in urgent need of reform".

Although the Care Act 2014 came into force in 2015, many of the necessary reforms have been postponed until 2020. Plus the forthcoming 'green paper' promised at the last budget throws further uncertainty over whether the rest of the Care Act will ever come into effect. In the meantime, funding of a person's adult social care is subject to means-testing and therefore may remain with the individual. This is likely to be the case for the foreseeable future.

Unfortunately, many people remain largely unaware that they may need care in their later years, and of what it will cost if they do need it.

As a result, few people make any provision for care costs. With the average cost of a residential care home with nursing care approaching £40,000 per annum, this can leave many people with a nasty shock if and when it happens.

Given the increasing demand for adult social care, and the lack of awareness of options for funding it, there's an opportunity for financial advisers to help people plan for this scenario. The size of the total UK care market was £10.7 billion in 2014.

By investing a little time, you could unlock a potentially commercially beneficial and rewarding opportunity.

This guide introduces the key issues that advisers must consider when providing advice in this market.

It isn't a comprehensive technical manual on providing advice on long term care needs, but it highlights the areas that you should discuss with clients, and signposts you to where you or they can find more information.

There's also a wealth of support if you're looking to give advice in this area. This comes from the providers operating in this market, as well as independent bodies, such as the Society of Later Life Advisers.

We hope that when you read this guide you'll be reassured that giving advice to clients on their long-term care options can be both manageable and rewarding.

At Just, we'd like to see advisers assisting more people in later life and will provide you with as much support as we can.

Hugh McKee
Managing Director,
UK Retail Business

KEY FIGURES FOR 2017/18

Local authority care funding capital limit – 2017/18		
	Lower threshold	**Upper threshold**
England	£14,250	£23,250
Scotland	£16,250	£26,250
Wales	Does not apply	**Residential** £30,000 **Non-residential** £24,000
N Ireland	£14,250	£23,250

Funded nursing care payments – 2017/18 (per week)	
England	£155.05
Scotland*	£249.00
Wales	£140.90
N Ireland	£100.00

Benefit rates				
Means-Tested – 2017/18 (per week)			**Non Means-Tested – 2017/18 (per week)**	
Pension Credit			**Attendance Allowance**	
Guarantee Credit	Single	£159.35	Higher Rate	£83.10
	Couple	£243.25	Lower Rate	£55.65
Additional Amount for Severe Disability		£62.45	**Personal Independence Payment and Disability Living Allowance**	
Additional Amount for Carers		£34.95	**Daily Living Component**	
Savings Credit Threshold	Single	£137.35	Enhanced / Higher	£83.10
	Couple	£218.42	Standard / Middle	£55.65
Savings Credit Maximum	Single	£13.20	DLA Only – Lower	£22.00
	Couple	£14.90	**Mobility Component**	
Carer's Allowance			Enhanced / Higher	£58.00
Amount		£62.70	Standard / Lower	£22.00
Maximum Net Earnings		£116.00		

*Note: The amount also includes the Personal Care Contribution of £171 (in Scotland you can receive £171 per week if personal care is required, and an additional £78 if nursing care is required).

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LEGAL AND MENTAL CAPACITY

WE TAKE A CAREGIVING AND NURTURING APPROACH TO THE ISSUE OF MENTAL CAPACITY

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LEGAL AND MENTAL CAPACITY

Before you can enter into any form of legal relationship with a client, you must first be confident they have full mental capacity. The starting point is always a presumption of capacity unless it is established otherwise.

If your client is considered not to have mental capacity to make decisions, any legal contract they enter into may be judged to be invalid.

In this case, and in many other cases, you may be asked to receive instructions from an attorney acting on behalf of your client.

Establishing your client's correct legal position, and ensuring that any attorney has completed the appropriate documentation at the outset, will prevent significant delays later in the advice process.

You must always act in the interests of your client, even where they are being represented by an attorney.

For further information and useful tips on how to identify and work with vulnerable clients, go to justadviser.com and download our vulnerable clients technical bulletin.

MENTAL CAPACITY ACT 2005 – PRINCIPLES

The Mental Capacity Act 2005 (MCA) applies to all individuals in England and Wales. It aims to protect and support those who can't make some or all decisions for themselves.

The MCA applies to situations where someone is unable to make a particular decision at a particular time because of the way their mind or brain is affected. The assessments of whether someone has mental capacity should therefore be time and decision specific. You can't decide that someone lacks capacity based upon age, appearance, condition or behaviour alone.

The MCA states that a person is unable to make a particular decision if they cannot do one or more of the following four things:

- understand information given to them;
- retain that information long enough to be able to make the decision;
- weigh up the information available to make the decision; and
- communicate their decision.

If someone lacks the mental capacity to make a decision, then a third party will normally be given the legal capacity to make decisions on their behalf. However, the MCA requires that wherever possible, the individual should still be involved in any decisions, and all decisions should be made in their best interests.

Principle 1: A presumption of capacity
Every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless proved otherwise.

Principle 2: Individuals being supported to make their own decisions
A person must be given all practicable help before anyone treats them as not being able to make their own decisions.

Principle 3: Unwise decisions
People have the right to make what others might regard as an unwise decision.

Principle 4: Best interests
If a person has been assessed as lacking capacity, then any action taken or decision made for or on behalf of that person, must be made in his or her best interests.

Principle 5: Less restrictive option
Someone making a decision or acting on behalf of a person who lacks capacity must consider whether:

- it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action; and
- whether there is a need to decide or act at all.

LEGAL ASPECTS

If you're accepting instructions from a third party on behalf of a person needing care, you must ensure they have the correct legal capacity to do this.

This will normally consist of a Lasting Power of Attorney (LPA), an Enduring Power of Attorney (EPA), or a deputy appointed by the Court of Protection.

Lasting Power of Attorney

A Lasting Power of Attorney (LPA) enables a person who has capacity and is over 18 (donor) to choose another person or people (attorney(s)) to make decisions on their behalf.

There are two different types of LPA; 'property and financial affairs' and 'health and welfare'.

A financial LPA is now sufficient to obtain medical details in respect of financial decisions.

An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA will not give the attorney any legal powers to make a decision for the donor.

A registration fee is charged for each Lasting Power of Attorney application, registered with and administered by The Office of the Public Guardian – 0300 456 0300. Exemptions or reductions are available for this, for example if the donor is in receipt of means-tested benefits.

Note: this information only applies to England and Wales – there are different rules for Northern Ireland and Scotland.

LEGAL ASPECTS

Enduring Power of Attorney

An Enduring Power of Attorney (EPA) signed by both the donor and attorney before October 2007, when LPAs came into force with the Mental Capacity Act 2005, can still be used and registered as a legal document. The client's attorney should make the application to register the EPA as soon as you have reason to believe the donor is losing the mental capacity to manage their affairs.

An EPA is a legal document in which a person (the donor) gives someone else (the attorney) the power to make decisions about their financial affairs and property.

An attorney can use the EPA straight away if that is the donor's wish or the donor can make it clear that the EPA is only to be used if they become mentally unable to manage their affairs in the future.

Court of Protection – Deputy

When no Enduring or Lasting Power of Attorney exists and someone lacks the capacity to make their own decision, the Court of Protection – 0300 456 4600 – can appoint deputies to make decisions in the best interests of those who lack capacity.

IF YOU'RE ACCEPTING INSTRUCTIONS FROM A THIRD PARTY ON BEHALF OF A PERSON NEEDING CARE, YOU MUST ENSURE THEY HAVE THE CORRECT LEGAL CAPACITY TO DO THIS

Note: this information only applies to England and Wales – there are different rules for Northern Ireland and Scotland.

THINGS TO CONSIDER

1. Who has the legal capacity to make decisions on behalf of your client?

2. Make sure that all decisions are taken in the best interests of your client.

3. Make sure that you have all the relevant legal documentation in place to allow any Attorney to act on your client's behalf.

USEFUL TIPS

Ensure your client has all the relevant legal documentation in place at the outset to prevent potentially significant delays later in the advice process.

Useful sources of information include:

Just's technical bulletin on Vulnerable Clients

The FCA Occasional Paper No. 8 on Consumer Vulnerability

Mental Capacity Act 2005

MCA Code of Practice

Solicitors for the Elderly – 0844 567 6173

Office of Public Guardian – 0300 456 0300

Court of Protection – 0300 456 4600

Action on Elder Abuse – 0808 808 8141

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TYPES OF CARE

AN OVERVIEW OF THE TYPES OF CARE THAT MAY BE SUITABLE FOR YOUR CLIENT

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TYPES OF CARE

Care takes many forms, from informal care carried out by a spouse, other relative or friend, to more formal care provided by a professional carer at home or in a care home.

The type of care a person requires normally depends on the reason why they need care.

For example, a client with a degenerative neurological condition may require specialist assistance in a residential setting. Alternatively, physical help needed as a result of reduced mobility or frailty may be provided in the client's own home, probably after it has been adapted.

When providing advice on care funding, it's important to understand exactly what care/support is required, how much it is likely to cost, and whether this cost is likely to increase in the future.

In the following section, we outline the key types of care that your client may need, and the impact this might have on your advice.

A move into a permanent residential care home is not always the only or most appropriate way to meet a person's need for care or support. Services that enable people to stay in their own home include domiciliary care, meal provision, and aids and adaptations to the home.

Innovations such as stair lifts, sensors, community alarms, assistive technology and other specialist aids are also available.

Provision of better information and advice, advocacy and community support can all help a client stay in their home and enjoy a better quality of life.

The local authority's adult social care/social services may be able to arrange appropriate care and support services including prevention services such as reablement. Some of these are free, others may be subsidised or means-tested, such as grants for adaptations to a home.

WHEN PROVIDING ADVICE ON CARE FUNDING, IT IS IMPORTANT TO UNDERSTAND EXACTLY WHAT CARE / SUPPORT IS REQUIRED

CARE AT HOME OPTIONS

If a client wants to stay in their own home, some changes may be necessary to allow this. They may include:

- Adapting a home
- Moving to a more suitable property.

If staying in their own home isn't possible other options are:

- Living with family or moving nearer to supportive relatives
- Moving to sheltered, retirement, extra care or assisted living housing
- Moving to a care or nursing home.

In addition to arranging care and support services, the local authority may also be able to help with minor adaptations to a property, provide aids, or organise an occupational therapy assessment or a means-tested grant.

Home Improvement Agencies (HIAs), also known as care and repair or staying put agencies, are local not-for-profit organisations. They're set up to help older or disabled home owners and private tenants arrange and pay for repairs, improvements and adaptations to their homes.

Many HIAs also offer additional services such as a handyperson, help with gardening, checking home security or preparing for coming home from hospital.

FOR SPECIALIST HOUSING ADVICE AND HELP FINDING AN HIA, CALL FIRST STOP ON 0800 377 7070

ALTERNATIVES TO CARE AT HOME

Extra care/assisted care/supported living/care villages

These supportive or sheltered homes promote independent living. They can provide varying care and support services and may be privately rented, shared ownership, owned properties or have a social landlord. They can be in a variety of settings including a family home, such as in the case of a shared lives scheme.

Care homes

If your client needs more help with day-to-day care, these homes have care assistants but don't provide health/nursing care.

The average cost of a residential care home was £31,200 per annum in 2016. However, the cost varies hugely across the country, between care homes, and depends on the level of care required.

Care homes with nursing

If someone has needs that include a medical element, then a home with registered nursing staff may be required. A nursing home often has a higher staff/resident ratio and may be a more suitable option for those with greater needs.

The average cost of a care home with nursing care was £37,752 per annum in 2016. Again, this cost varies hugely across the country, between care homes, and depends on the level of care required.

Specialist homes

Many care homes provide specialist support for specific conditions.

EMI is the abbreviation for Elderly Mentally Infirm. Homes with this status provide a more specialist care provision in a secure environment which may be necessary for some residents with dementia type behaviours/needs.

Other care homes specialise in rehabilitation or supporting particular illnesses or disability, including neurological conditions such as acquired brain injury (ABI) and multiple sclerosis (MS).

It may also be possible to find a home for a specific group of people. For example, there are Royal British Legion care homes for serving and ex-service people and their dependants.

Temporary/respite care

A temporary stay in a care home for a short period may give a carer a break, and/or help a person recover after an illness or following a hospital discharge. If you think someone, or a carer, would benefit from having some respite care, ask your local authority for a care needs/carer's assessment.

THINGS TO CONSIDER

1 Understand your client's needs

- what level of care is needed?
- what are your client's objectives?

2 Is your client receiving the right level of care?

- is your client paying for unnecessary nursing care that might not be supported by the local authority?

3 Consider how your client's care needs are likely to change

- how long is care likely to be needed?
- is your client suffering from a degenerative condition, where more specialist care will be required later?

USEFUL TIPS

Local authorities can complete a care needs assessment free of charge and regardless of means.

To avoid long delays, make sure your client has full mental capacity or the correct Legal Power of Attorney in place.

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SOURCES OF CARE FUNDING

A DETAILED OVERVIEW OF THE COSTS AND OPTIONS FOR FUNDING CARE. OUR KNOWLEDGE IS YOUR KNOWLEDGE

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SOURCES OF CARE FUNDING

Once you have an idea of the amount of care needed and its cost, you should then consider how this could be funded.

The first step is to understand what support your client may be entitled to from their local authority, the NHS or from welfare benefits.

The following section outlines the support that your client may be eligible for.

The 'Sources of Care Funding – Privately Funding Care' section then looks at how any shortfall in funding can be made up from private sources.

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SOURCES OF CARE FUNDING

LOCAL AUTHORITY SUPPORT

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LOCAL AUTHORITY SUPPORT

The Care Act 2014 is the main legislation that governs the support that local authorities must provide to those who need care in England.

Similar arrangements apply for Wales, Scotland and Northern Ireland. Throughout this guide, we've highlighted the key differences that apply to each region.

Local authority responsibility

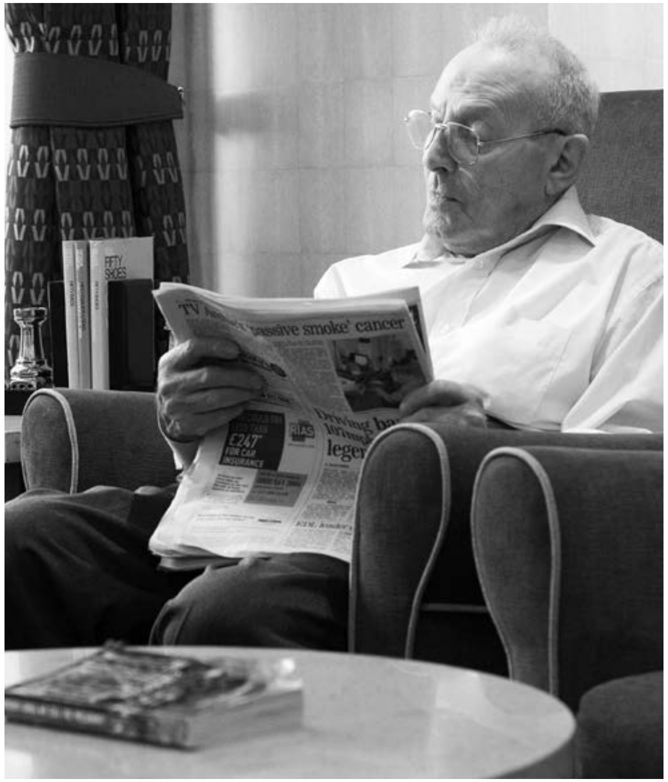
Under the Care Act, local authorities have a legal duty to meet an adult's eligible care needs, subject to their financial circumstances.

In order to do this, they must:

- conduct a needs assessment to establish their eligible needs;
- complete a financial assessment to find out what level of support the local authority will provide; and
- provide information and advice on how these care needs can be met.

We've discussed these duties in more detail on the following pages.

In Northern Ireland, the local health and social care trust will carry out a social care needs assessment for your client.



SUMMARY OF LOCAL AUTHORITY RESPONSIBILITIES

Assessment and eligibility for support

National criteria for assessing care and support needs was introduced from 1 April 2015 under the Care Act 2014. As part of this assessment, local authorities must promote the client's wellbeing when carrying out any of their care and support functions.

Prevention

To meet the challenges of the future, it will be vital that the care and support system intervenes early to support individuals and help them retain or regain their skills and confidence. Local authorities must therefore ensure that people who live in their areas receive services that prevent their care needs from becoming more serious.

Carers may also be eligible for support whether or not the adult for whom they care has eligible needs. The eligibility decision must be made based on the carer's needs and how these impact on their wellbeing.

Integration

For people to receive quality health care and support, local organisations must work in a person-centred, joined-up way.

Information and advice

Information and advice is fundamental to enabling people to make well-informed choices about their care and support and how they fund it. Not only does information and advice help to promote people's wellbeing by increasing choice and control, it's vital for preventing or delaying the care and support a person needs.

Local authorities must: "establish and maintain a service for providing people in its area with information and advice relating to care and support for adults and support for carers" which includes unregulated and regulated financial information and advice.

Independent advocacy

It's important that everyone is able to take part in the assessment of their care and support needs. For those who require support to do this, the local authority must provide an independent advocate.

Safeguarding

A new statutory framework protecting adults from neglect and abuse requires all local authorities to set up a Safeguarding Adults Board.

The safeguarding duties apply to an adult who:

- has needs for care and support (whether or not the local authority is meeting any of those needs);
- is experiencing, or at risk of, abuse or neglect; and
- is (as a result of those care and support needs) unable to protect themselves from either the risk of, or the experience of abuse or neglect.

Universal deferred payment agreements

A deferred payment agreement can allow a person to delay paying the costs of their care and support until a later date.

ELIGIBILITY FOR LOCAL AUTHORITY SUPPORT

When assessing an individual's eligibility for support, the local authority will consider how a person's needs affect their ability to achieve certain outcomes, and how this impacts on their wellbeing.

Criteria

An adult will meet the eligibility criteria if:

- their needs are caused by physical or mental impairment or illness;
- they are unable to achieve two or more specified outcomes;
- there is or is likely to be a significant impact on their well-being as a consequence.

An adult is to be regarded as being unable to achieve an outcome if they:

- are unable to achieve it without assistance;
- are able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;
- are able to achieve it without assistance but doing so endangers or is likely to endanger their health or safety, or of others; and
- are able to achieve it without assistance but it takes significantly longer than would normally be expected.

Specified outcomes

The specified outcomes are:

- managing and maintaining nutrition;
- maintaining personal hygiene;
- managing toilet needs;
- being appropriately clothed;
- being able to make use of the home safely;
- maintaining a habitable home environment;
- developing and maintaining family or other personal relationships;
- accessing and engaging in work, training, education or volunteering;
- making use of necessary facilities, or services in the local community including public transport and recreational facilities and services; and
- carrying out any caring responsibilities the adult has for a child.

WELLBEING

Significant impact

Local authorities must determine how the adult's inability to achieve the outcomes above impact on their wellbeing. Does the inability to achieve the specified outcomes impact on:

- at least one of the areas of wellbeing in a significant way; or
- a number of the areas of wellbeing with a significant impact on the overall wellbeing?

Support for carers

Carers may also be eligible for support in their own right.

In this case, the threshold for receiving support is assessed on the impact that a carer's needs for support has on the following aspects of their wellbeing:

- Personal dignity (including treatment of the individual with respect)
- Physical and mental health and emotional wellbeing
- Protection from abuse and neglect
- Control by the individual over day-to-day life (including over care and support provided and the way it is provided)
- Participation in work, education, training or recreation
- Social and economic wellbeing
- Domestic, family and personal relationships
- Suitability of living accommodation
- The individual's contribution to society.

Financial support

The Care Act sets out a legal duty for an adult's eligible needs to be met by the local authority, subject to their financial circumstances.

Local authorities must therefore complete a financial assessment to establish how much they will contribute towards the cost of their care.

It is important to note that the financial assessment is used solely to determine the financial contribution that a local authority will be required to make.

Local authorities must still help people make decisions about how they want their needs to be met, and prepare a care and support plan, irrespective of whether financial support is being provided.

FINANCIAL ASSESSMENT

As it's an individual's care need that is being assessed, it's the individual's ability to contribute towards the cost that will be financially assessed. This means that any joint savings will generally be halved for the financial assessment and the value of a property may be disregarded if they, or a spouse continue to live there.

Individuals will generally be expected to use all of their income to contribute towards the cost of their care. However, local authorities must ensure that individuals retain an amount to cover personal expenses, as indicated here.

Personal expense allowances – 2017/18 (per week)	
England	£24.90
Scotland	£25.80
Wales	£26.50
N Ireland	£24.90

Where a person is receiving care in their own home, they will continue to incur their normal daily living costs. Therefore, the charging regulations confirm that they must be left with a minimum income guarantee to meet these expenses, plus a 25% buffer.

The local authority will also consider the individual's assets and investments. If they are above an upper threshold, the local authority will expect the individual to fund the full cost of their care themselves.

If their assets are below the lower threshold, the local authority will meet the full cost of eligible care.

If the individual has assets between the upper and lower thresholds, the local authority will provide some financial support. However, the individual will be required to contribute a tariff towards the cost of the care. This will equate to £1.00 per week for every £250.00 of capital above the lower threshold, or part thereof.

In Scotland, the personal care an individual receives in a care home will be free if they are over 65.

Local authority means-tested threshold – 2017/18

	Lower threshold	Upper threshold
England	£14,250	£23,250
Scotland	£16,250	£26,250
Wales	Does not apply	**Residential** £30,000 **Non-residential** £24,000
N Ireland	£14,250	£23,250

FINANCIAL ASSESSMENT

Treatment of property in the financial assessment

The local authority will normally take into account the value of an individual's property when assessing eligibility for support in the financial assessment.

This will normally take most individuals out of the eligibility criteria for financial support. However, the value of their property may be disregarded:

- if the individual is continuing to live in the property and is receiving care at home;
- if the individual's spouse, or certain other relatives continue to live in the property;
- if the care is being provided on a temporary basis; or
- for the first 12 weeks when an individual first moves into a care home as a permanent resident.

Impact of pensions on local authority support

Pensions/annuities are generally treated as income under the financial assessment.

For clients below the qualifying age for pensions credit, only funds withdrawn from a pensions wrapper will be assessed under the means test.

However, after the qualifying age for pensions credit, all pensions are assessed, whether vested or unvested.

Where pensions are left unvested, a notional income is taken into account based on the level of annuity that could be purchased.

Where a pension is in drawdown, a notional income will also be taken into account. This will be based on the higher of the income actually withdrawn and the level of annuity that could be purchased.

Deliberate deprivation

A local authority may judge that an individual has deliberately deprived themselves of assets in order to increase the support that they are entitled to from the local authority. In response, it may adjust the financial assessment to reflect the basis had the deliberate deprivation not taken place.

For example, if a client gifts a large amount of money to a relative, which pushes their assets below the upper threshold, the local authority may assume that this gift had not occurred.

In this case, the client would not receive any further support from the local authority, and the person receiving the gift would be required to make up any funding shortfall.

Top-ups

Even where an individual is eligible for financial support, the local authority is likely to contribute only in respect of eligible needs, up to the assessed amount. If a more extensive care package has been arranged, the additional cost will need to be met by a third party.

DEFERRAL OF CARE FEES

If an individual is required to fund some or all their care fees themselves, they may be able to defer the cost of this under a deferred payment agreement (DPA).

This is intended to prevent people from having to sell their home in their lifetime to meet the cost of their care.

Under a DPA, local authorities will fund the cost of care, with the cost repaid when the individual chooses to sell their house, or when they die.

A local authority must offer a DPA to an individual:

- if they have been assessed by the local authority as having eligible needs that need to be met in a care/nursing home;
- if they have less than (or equal to) £23,250* in assets excluding the value of their home;
- if their home is not disregarded for the purposes of the charging assessment.

Local authorities may also offer a DPA to other people.

Local authorities are also encouraged to offer the scheme more widely to anyone they feel would benefit who does not fully meet the criteria. For example, someone who has assets over the upper funding levels of £23,250* and those whose care and support is provided in supported living accommodation.

In principle, a person should be able to defer their full care costs including any top-ups, but to ensure sustainability of the deferral, local authorities have discretion over the amount people are permitted to top-up. Local authorities should accept any top-up deemed to be reasonable, given considerations of affordability, sustainability and available equity.

IF AN INDIVIDUAL IS REQUIRED TO FUND SOME OR ALL THEIR CARE FEES THEMSELVES, THEY MAY BE ABLE TO DEFER THE COST OF THIS UNDER A DEFERRED PAYMENT AGREEMENT (DPA)

* Note: in England, please see page 4 for Scotland, Wales and Northern Ireland.

DEFERRAL OF CARE FEES

Right to refuse

A local authority may refuse to enter into a deferred payment agreement despite someone meeting the eligibility criteria:

- where a local authority is unable to secure a first charge on the person's property;
- where a person is seeking to pay a top up;
- where a person does not agree to the terms and conditions of the agreement. For example, a requirement to insure and maintain the property;
- where a person does not have the mental capacity to agree to a deferred payment agreement or have a legally appointed attorney or deputy willing to agree.

Interest

Since 1 April 2015, local authorities have the ability to charge interest from the start of the agreement and must not exceed the maximum amount specified in regulations.

The maximum interest charged is based on the gilt rate plus 0.15%*. This is reviewed twice a year and applies from 1 January to 30 June and from 1 July to 31 December each year.

Interest will be added on a compound basis and continue to accrue on the amount deferred, even if the equity limit is reached. It will also apply during breaks in care and after death, until the deferred amount is repaid.

Equity limit

The amount that can be deferred will depend on the value of a property. This determines an equity limit which is worked out as follows: The property's current market value (CMV), less 10% of CMV, minus £14,250 and the amount of any encumbrance secured on it.

Property's current market value

- 10% of CMV
- £14,250
- any encumbrances
= Equity limit

* Note: please see the market gilts rate published by the Office of Budget Responsibility (OBR).

DEFERRAL OF CARE FEES

Paid termination

A deferred payment can be repaid at any time. Partial repayments may also be made. The executor of an estate should arrange repayment of the money owed to the local authority. This should usually be done within 90 days. Interest continues to accrue until the deferred amount is repaid.

Regulated financial advice

Before entering into a deferred payment agreement, a local authority should point out the existence of regulated financial advice. They should also be able to direct someone to a choice of independent financial advisers who are qualified and accredited.

They may also want to consider whether a more conventional equity release plan would be more appropriate.

DPA and equity release compared

Although a DPA is similar in many ways to traditional equity release plans, there are some important differences, as shown in the table below.

	DPA	Equity release
Availability	Only if meets strict criteria, or at local authority's discretion	Subject to provider's lending criteria
Maximum loan	90% of property value less £14,250	Maximum loan-to-value for an 85-year-old is likely to be around 50% of property value
Interest	Interest will be charged on a variable basis, based on gilt yields	Normally a fixed rate of interest is charged for the duration of the loan
Charges	Charges can be levied but must be broadly cost-neutral for the local authority	Charges for a valuation, administration, advice and legal fees may apply
No negative equity guarantee	None provided	Included within the majority of products
Occupancy requirement	Property can be rented out if the client requires residential care	Property must normally be sold/ loan repaid if residential care is needed
Early repayment	Does not apply	A significant early repayment charge may apply if a lifetime mortgage is repaid early

Future changes to local authority support

Further changes to the support provided by local authorities are expected to be introduced in April 2020, including:

- more generous thresholds for determining the level of financial support provided by local authorities;
- an independent appeals system to allow individuals to appeal the decisions made by a local authority;
- a cap on the amount that an individual spends on the eligible care needs over the course of their lifetime.

Further information on these expected changes can be found in our technical bulletin on the Care Act 2014 on our website

Go to Justadviser.com > Support > Additional support > Articles and technical bulletins

THINGS TO CONSIDER

1. Ensure your client is receiving all the support from their local authority that they are entitled to.

2. In particular, it is important they receive a full needs and financial assessment, as this will determine what level of support they may receive in the future.

3. Establish whether your client is receiving more care than the local authority would be prepared to support.

   - If your client qualifies for local authority support, they will only meet the cost of the assessed eligible need.
   - If your client is receiving a higher level of care than the local authority assessed need, the extra cost will need to be met from a third party, or your client may be required to change care provider.

4. Carefully consider how you structure your client's investments, as income is treated differently from capital for means-tested assessments.

5. Be aware that under deliberate deprivation rules, local authorities may disregard any actions that have been taken to deliberately increase the state support that your client may be entitled to.

6. When considering whether your client is likely to qualify for local authority support in the future, bear in mind that the level of support provided by the local authority is likely to change in 2020. This could increase the likelihood of your client qualifying for local authority support.

USEFUL TIPS

For more information on the changes proposed to local authority support see our Care Act technical bulletin at justadviser.com

Our cost of care calculator can help forecast when your client might qualify for local authority support, and models how the implementation of the proposed care cap may affect your client.

Other useful sources of information are:

Each local authority provides details on their charges for the care services. You'll find the relevant local council at www.gov.uk/find-your-local-council

In Northern Ireland, you'll find the local health and social care trust at www.nidirect.gov.uk/contacts/health-and-social-care-trusts

Age UK provides a range of factsheets, available at www.ageuk.org.uk/publications/age-uk-information-guides-and-factsheets

RETHINK CARE

SOURCES OF CARE FUNDING

NHS CONTINUING HEALTHCARE

JUST.

NHS CONTINUING HEALTHCARE

Individuals needing care in England, Wales and Northern Ireland may qualify for free NHS continuing healthcare (CHC) if they have a disability or complex medical problem.

Under CHC, the NHS should meet the full cost of an individual's care including any care provided at home, in a nursing home or in a hospice.

However, assessment for CHC is quite strict, with simply being frail, for example, not being sufficient to qualify. For this reason, most people with long-term care needs are unlikely to qualify for CHC, but the benefit for those that do qualify is very high.

Eligibility for CHC is not subject to a financial means test, and no personal contribution is needed.

In Scotland, there are different care arrangements called hospital based complex clinical care.

Eligibility for CHC

Individuals must be aged 18 or over and have a 'primary health need' that has arisen because of disability, accident or illness.

Although there is no formal legal definition for primary health care, the term comes from an important Court of Appeal case, the 'Coughlan case', when the court decided a local authority is limited to nursing care which is:

- merely incidental or ancillary to the provision of the accommodation which a local authority is under a duty to provide; and
- of a nature that a social services authority can be expected to provide.

The Coughlan case highlighted that if a person has healthcare needs that are over and above that which the local authority can be expected to provide and are therefore primarily health needs, the NHS has a responsibility to provide for those needs, and to fund the necessary care.

“

INDIVIDUALS NEEDING CARE IN ENGLAND, WALES AND NORTHERN IRELAND MAY QUALIFY FOR FREE NHS CONTINUING HEALTHCARE (CHC)

NHS CONTINUING HEALTHCARE

Establishing eligibility

Although there is no clear-cut list of health conditions or illnesses that qualify for funding, national guidance on eligibility was issued in 2007 to ensure a consistent approach.

An NHS continuing healthcare checklist is likely to be completed first to determine who should have a full assessment to determine their eligibility.

The initial checklist covers 11 of the 12 areas of care (domains) that are considered, and any care needs will be assessed on.

Following completion of the checklist by a trained health/social care professional, a full assessment may be carried out by a multi-disciplinary team (MDT), using a decision support tool (DST) to establish eligibility to CHC.

The decision support tool is not an assessment in itself but a way of bringing together and applying evidence in a single practical format to provide an overview of the levels chosen. This also provides a summary of the person's needs that will be used by the multi-disciplinary team to make a recommendation to the Clinical Commissioning Group (CCG) about eligibility or ineligibility.

CARE DOMAINS

Any care needs will be assessed on the following care domains to see if a person is eligible for NHS continuing healthcare.

Behaviour	Cognition	Psychological/ Emotional needs	Communication	Mobility	Nutrition – Food and Drink	Continence	Skin (including tissue viability)	Breathing	Drug Therapies and Medication	Altered State of Consciousness	Other significant care needs
P								P	P	P	
S	S			S	S		S	S	S		S
H	H	H	H	H	H	H	H	H	H	H	H
M	M	M	M	M	M	M	M	M	M	M	M
L	L	L	L	L	L	L	L	L	L	L	L
N	N	N	N	N	N	N	N	N	N	N	N

Key

Domains are judged on a six point scale of need:

N no need
L low need
M medium need
H high need
S severe need
P priority need

Note: other significant care needs are not taken into account in the initial checklist.

CARE DOMAINS

The fast track tool

The fast track pathway tool is used when a person has a rapidly deteriorating condition and may be entering a terminal phase.
It can only be completed by an 'appropriate clinician' and is sufficient evidence to establish eligibility. Where it is appropriate to use the fast track pathway tool, this replaces the need for a checklist and Decision Support Tool (DST) to be completed.

Challenging a decision not to proceed to full assessment

If a person has been screened out from full consideration following use of the checklist, they may ask the CCG to reconsider its decision and agree to a full assessment of eligibility.

Challenging an assessment decision

Where a full assessment has been undertaken of potential eligibility using the decision support tool (or by use of the fast track pathway tool), and a decision has been reached, challenging that decision should be addressed through the local resolution procedure, initially.

Funded nursing care payment

Even if someone doesn't qualify for NHS continuing healthcare, they may be entitled to a funded nursing care payment, sometimes referred to as the Registered Nursing Contribution (RNCC). This is a fixed payment provided directly by the NHS to care homes to support the provision of nursing care by a registered nurse.
This payment is tax-free and not means-tested, and is available for all (including self-funders).

To be eligible, individuals must need nursing care, and be staying in a care home registered to provide nursing care.

The payment is intended to cover:

- Direct nursing tasks
- Planning and supervising
- Monitoring of nursing and healthcare tasks

Funded nursing care payments – 2017/18 (per week)	
England	£155.05
Scotland*	£249.00
Wales	£148.01
N Ireland	£100.00

* Note: The amount also includes the Personal Care Contribution of £171 (in Scotland you can receive £171 per week if personal care is required, and an additional £78 if nursing care is required).

THINGS TO CONSIDER

1 Free healthcare from the NHS could be worth thousands of pounds each year, so it is always worth establishing eligibility for CHC.

2 The only sure way your client can know if they are eligible for CHC is for them to ask their GP or social worker to arrange an assessment.

3 CHC is reviewable and if your client's health improves, they may have full funding withdrawn and become responsible for the funding of their care themselves (subject to means testing).

4 Funded nursing care payments are made directly to care homes. Therefore, it is worth confirming whether the care home fees the client is being charged are net or gross of this.

USEFUL TIPS

To find out more about what costs are covered by CHC, contact:	Other useful sources of information are:
In England, contact the local Clinical Commissioning Group	In England, practical support is available on the NHS Choices website
In Scotland, contact the local Health Board	In Scotland, care information for older people is available on the Care Information Scotland website
In Wales, contact the local Health Board	In Wales, more information about continuing NHS Healthcare on the Health in Wales website
In Northern Ireland, contact the local Health and Social Care Trust	In Northern Ireland, the local Health and Social Care trust websites have more information

RETHINK CARE

SOURCES OF CARE FUNDING

DEPARTMENT OF WORK AND PENSIONS (DWP) WELFARE BENEFITS

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DWP WELFARE BENEFITS

DWP welfare benefits are split into two main categories, those that are means-tested, and those that are not. However, even some of the non-means-tested benefits are national insurance contribution based.

Health

- Attendance allowance
- Disability living allowance
- Personal independence payment
- Carer's allowance
- Industrial injuries disablement benefit
- Winter fuel payments

Work

- Job seeker's allowance
- Employment and support allowance
- Working tax credit
- Universal credit
- Incapacity benefit (no new claims since 2008)
- Disability employment adviser
- Access to work grant (disability)
- State pension
- Statutory sick pay

Families

- Child benefit
- Child tax credit
- Guardian's allowance
- Maternity grant
- Maternity allowance
- Statutory paternity/maternity/adoption pay
- Free school meals/milk
- Universal infant free school meals
- Healthy start scheme
- Bereavement support allowance

Low Income

- Pension Credit
- Universal credit
- Income support
- Local emergency support
- Budgeting advance/loans
- Housing benefit/costs
- Council tax support/reduction/exemption
- Cold weather payments
- Funeral payments
- Health costs – prescription, dental costs, eye tests/glasses, travel to hospital, wigs
- Boiler grant
- Loft and cavity wall insulation grants

Key

- Means-tested
- Non-means-tested – non-contribution based
- Non-means-tested – contribution based

Note: the above relate to potential benefits for all age groups but the following pages relate more specifically to the benefits that may apply to later life clients.

DWP WELFARE BENEFITS

This page relates more specifically to the Department for Work and Pensions (DWP) benefits that may apply to later life clients.

Attendance Allowance (AA)
0345 605 6055

Attendance Allowance is a tax-free, non-means-tested benefit for someone who suffers from an illness/disability and has care and/or supervision needs. To qualify you must be 65-years-old or over when applying and have had a need for at least six months. There are special rules for people with a short life expectancy, when the qualifying period does not apply.

Disability Living Allowance (DLA)
0345 712 3456

This is a tax-free benefit for disabled people who need help with mobility or care costs. Disability Living Allowance has been replaced by Personal Independence Payment for people aged between 16 and 64-years-old. No new claims can be made for DLA, however someone who was born before 8 April 1948 and in receipt of DLA will continue to receive it (for the length of the award and providing they still meet the qualifying criteria) and it can be upgraded providing the qualifying criteria are met.

Personal Independence Payment (PIP) – Claim line
0800 917 2222

This is a benefit that helps with the extra costs of a long-term health condition or disability for people aged 16 to 64.

The Welfare Reform Act 2012 introduces Personal Independence Payment (PIP) as part of wider welfare reform. It is non-means-tested and non-taxable and replaced DLA for eligible claimants aged 16 to 64-years-old from 8 April 2013.

Carer's Allowance
0345 608 4321

A taxable means-tested benefit payable for those who look after someone receiving a qualifying disability benefit such as attendance allowance/DLA care component at the middle or high rate, or PIP daily living at either rate.

You do not have to be related to, or live with, the person that you care for but will be aged 16 or over, spend at least 35 hours a week caring and not earn over £116.00 per week after deductions. Carer's Allowance may affect any means-tested benefit that the disabled cared for person receives.

Pension Credit – Claim line
0800 99 1234

Introduced in 2003, it is a means-tested, non-taxable benefit for people over the qualifying age which is in line with the women's state pension age. Entitlement varies depending on the circumstances. It has no capital savings/capital upper limit, although capital over £10,000 will be given an assumed income of £1 for every £500 or part thereof.

Pension Credit is made up of Guarantee Credit and Savings Credit. **Guarantee Credit** is a low-income top-up, which ensures a guaranteed level of income. **Savings Credit** is an extra payment for those over 65-years-old who've made some provision above the state pension.

DWP WELFARE BENEFITS

There may be entitlement to one or both parts:

Funeral Payments	Help with the necessary costs of a funeral for an applicant on a relevant means-tested benefit if they are responsible for arranging a funeral.
Council Tax Reduction Scheme	For the main residence of someone who suffers from a physical/mental health disability who needs wheelchair space indoors or a separate bathroom/kitchen or a separate room for their own use.
Council Tax Exemption	An unoccupied dwelling can be exempt if it is left empty by a person resident in hospital or in a care home.
Employment and Support Allowance	Introduced in October 2008 for people unable to work through illness/disability. There are income-based and contribution based versions.
Health-Related Costs	Help for those on relevant means-tested benefits may qualify for free NHS dental treatment, wigs and fabric supports. Vouchers towards the cost of glasses/contact lenses and refunds of necessary travel costs to hospital.
Industrial Injuries Disablement Benefit	For people who are disabled because of an accident at work, or who have certain diseases caused by their work.

THINGS TO CONSIDER

Ensure your client is receiving all of the support that is available.

USEFUL TIPS

Useful benefit calculators are available at www.gov.uk

RETHINK CARE

SOURCES OF CARE FUNDING

PRIVATELY FUNDING CARE

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PRIVATELY FUNDING CARE

Once you have confirmed the total cost of care, and the support that your client may be entitled to, there may be a shortfall that needs to be met from private sources.

One-off costs, such as property alterations may be funded from savings/investments. Alternatively, any income (such as pensions) may be used to fund the ongoing cost of care. However, with the average cost of a residential care home being around £30,000 per annum (increasing to £40,000 per annum if nursing care is needed), and the average income of a single pensioner being less than £15,000 per annum, it is clear that many people are unlikely to be able to fund the full cost of their care from their income alone. Therefore, any shortfall in the funding of ongoing care may need to be funded from savings/investments.

Careful consideration should be given to how long these assets are likely to last, and how they should be invested.

At some point, your client's property may also have to be used in order to help fund care costs. Alternatively, an immediate needs annuity (INA) may be purchased. These options are discussed in more detail on the following pages.

Immediate needs annuities

Immediate needs annuities (INAs) provide clients with a secure income for the rest of their life to help fund the costs of long term care.

They are purchased at point of need and can be paid tax-free, if paid to a registered care provider.

They can also include features, such as escalation and a return on death, and can be established on a deferred basis.

PRIVATELY FUNDING CARE

INA key benefits and risks

Benefits	Risk
An INA can provide greater reassurance for clients that they should be able to stay in their chosen care home for the rest of their life (assuming escalation is chosen as part of their INA which will allow for increases in care home fees).	Care fees may increase quicker than the income payable from the INA. If there is a shortfall between the cost of care and the income payable from the INA for any reason, the client must make up this themselves, from other resources.
Income can be re-directed if a person's care needs change. However, any income paid directly to the client themselves or a non-registered carer, may be subject to a tax charge.	A person's care needs may increase significantly, increasing the cost of care. As mentioned, this extra cost will not be covered by an INA.
An INA can help protect a client's estate from the impact of ongoing care costs, allowing the client to leave a legacy for loved ones.	The client's circumstances change, resulting in tax charges.
An INA can give the client's family more confidence that they won't be asked to make up any shortfall in care costs.	The impact that the income may have on eligibility for means-tested benefits. INA benefits are treated as income in means-tested eligibility assessments. This means that they are treated differently from other capital/investments and may alter the eligibility for means-tested benefits.
An INA provides a regular and reliable income stream for the care home. This can be a useful bargaining point when negotiating costs with a care home.	The client dies earlier than expected without purchasing capital protection. This may mean that they don't receive all of their money back.
Clients can choose to include a return on death if they die without receiving a certain amount of benefit from their plan.	Any lump sum death benefit will be paid to the client's estate, and may be subject to inheritance tax.

PROPERTY OPTIONS

Care can be expensive, and if needed for several years, costs will soon mount up. This can quickly exhaust the amount of savings/investments a client has, and can often result in clients relying on the equity they have in their home.

There are several ways that clients can release the value of the equity held in their home to help fund care.

Property Disposal/Downsizing

If a client needs residential care, then, by definition they will not be staying in their own home. If they are single, then the value of their property may prevent them from receiving local authority support towards their care costs.

Selling a client's property can be a sensitive issue – this could have been the family home for a number of years. However, this can also raise a significant amount of capital that can either be invested and used to meet care costs on a pay-as-you-go basis, or used to purchase an INA.

Even if a client does not need residential care, they may consider downsizing or moving into a more care-friendly property. This could raise significant sums, and also make provision of care much easier.

Borrowing against property

If a client does not want to sell their property because, for example, either they or their loved one will continue to live there, there are still a number of options that allow funds to be raised against the value of their property.

Equity release is one way of raising funds. This allows clients to stay in their property, whilst also raising significant amounts of capital that can be used to fund care (or property alterations). Many equity release plans also provide a no negative equity guarantee, although many also require the mortgage to be repaid in the event of residential care being needed.

Universal DPAs may also be available, even where the client chooses to rent out their property. This is discussed in more detail in the 'Types of Care' section of this guide.

Renting

If a client needs residential care, then renting out a property may be an alternative to selling it. The costs and risks of this option must be carefully considered, but this can often provide clients with a short-term option to contribute to the ongoing cost of care.

THINGS TO CONSIDER

1 Always consider the needs of your client, even where these are represented by an attorney:

- How important is it that your client's care fees can be afforded for the rest of their life?
- Does your client want to ensure a specific amount will be left for their beneficiaries?
- What are your client's preferences for their estate? Is there a will, and who are the beneficiaries?

2 Consider how long care is likely to be needed, and how long funds will last:

- Although you will not know exactly how long your client is likely to need care, how much this will cost or what return you are likely to achieve on investments, it would be useful to identify how much of a cushion your clients will have.

3 Consider the impact if your client runs out of money, and the level of support they are likely to receive from the local authority:

- Is there someone else who will make up the shortfall, or will the client need to rely on the local authority?
- Will the local authority meet the full cost of care, or will your client need to change care providers, or accept a reduced level of care?

4 Consider how any shortfall in care fees can be funded, particularly:

- how any property can be utilised;
- how any savings should be invested; and
- whether an INA should be purchased.

USEFUL TIPS

Our care calculator may help demonstrate how long a client's assets are likely to last, and when they may qualify for means-tested support.

Our INA comparison may help explain to clients the impact of different INA options on them and their estate.

We also provide market leading equity release and INA solutions for clients.

RETHINK CARE

CARE FUNDING ADVICE TOOLKIT

IN ORDER TO HELP YOU GIVE ADVICE TO YOUR CLIENTS, WE'VE PUT TOGETHER A SERIES OF GUIDES AND TOOLS

CARE FUNDING ADVICE TOOLKIT

Technical guides
This guide, and a technical bulletin on the Care Act 2014 are available at www.justadviser.com

Tools and calculators
Our cost of care calculator shows how the costs can mount up, and how care can be afforded, including:

- how total care costs can be broken down;
- how care costs can be funded from savings/investments, and when these might run out;
- when clients might qualify for local authority support, including under the care cap, and whether a top-up from a third party may be required; and
- how the net costs of care may affect the value of your client's estate.

Our care funding plan quote comparison tool allows different options to be compared, including:

- the initial cost of purchasing a plan;
- the income that will be paid from the plan throughout your client's life;
- any payment that will be made following the death of your client;
- where there is likely to be a shortfall in the costs of funding your client's care that will need to be met from elsewhere; and
- the potential impact that each option will have on your client's estate, depending on when they die.

Both our cost of care calculator and care funding plan quote comparison tool can be obtained from our sales team.

Online resources
We have a dedicated section of our website at www.justadviser.com/products/care-funding. This contains a range of additional support, including:

- additional information on our care funding plan;
- a broad estimate of the average cost as well as how to get indicative and underwritten quotes.

Plus go to www.justadviser.com/support/product-literature/care-funding-literature for all our care literature.

Sales and technical support
To receive an online demonstration of our tools, discuss how these can be used to help your clients, or to find out how we can help you grow your business please:

Phone: 01737 233 065
Email: ltc@wearejust.co.uk

We have a dedicated team of care funding plan experts that can support you if you're looking to give advice in this area.

USEFUL CONTACT INFORMATION

Action on Elder Abuse	0808 808 8141 www.elderabuse.org.uk
Age UK	0800 678 1174 www.ageuk.org.uk
Benefits	www.gov.uk/browse/benefits/entitlement
Beacon CHC Specialists	0345 548 0300 www.beaconchc.co.uk
Care Adviser Network	0800 999 2527 www.careadvisernetwork.co.uk
Care Act 2014	http://services.parliament.uk/bills/2013-14/care.html
Carers UK	0808 808 7777 www.carersuk.org
Care Quality Commission	0300 061 6161 www.cqc.org.uk
Court of Protection	0300 456 4600 www.gov.uk/courts-tribunals/court-of-protection
Department of Health	www.dh.gov.uk/en/index.htm
Elderly Accommodation Counsel and FirstStop	0800 377 7070 www.eac.org.uk
Independent Age	0800 319 6789 www.independentage.org
Local Authority Finder	www.gov.uk/find-your-local-council
Mental Capacity Act Code of Practice	www.gov.uk/government/publications/mental-capacity-act-code-of-practice
Office of the Public Guardian	0300 456 0300 www.justice.gov.uk/about/opg
Society of Later Life Advisers	0333 202 0454 www.societyoflaterlifeadvisers.co.uk
Solicitors for the Elderly	0844 567 6173 www.solicitorsfortheelderly.com

USEFUL CONTACT INFORMATION

Care Adviser Network

The 'Care Adviser Network' is a social enterprise that supports those who give advice on later life care and care funding in England by providing:

- Technical care advice to professionals and their clients by referral;
- Online resources;
- Independent Consultancy for care and benefit advice project development and delivery; and
- 'Complete Care Adviser' annual publication.

Phone: 0800 999 2527
Web: www.careadvisernetwork.co.uk
Email: admin@careadvisernetwork.co.uk

Society of Later Life Advisers (SOLLA)

SOLLA was founded in 2008 as a not for profit organisation, to meet the need of consumers, advisers and those who provide financial products and services to the later life market. Their aim is to ensure that consumers are better informed about the financial issues of later life and can find a fully accredited adviser quickly and easily.

Phone: 0333 202 0454
Web: www.societyoflaterlifeadvisers.co.uk

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