



AVOIDING PAYING FOR CARE

2021/22



Avoiding Paying for Care- Later Life Care (England)

Most of us don't make plans for long term care and are faced with choosing care at a time of crisis. With little time and no previous experience of the care and benefit system it can be over whelming and it may not seem fair that some people are financially supported and other aren't.

Care from the NHS is free, but if you need Social Care this is usually means tested and roughly 50% will be pay for their own care – 'self-funders'.

Cost of Care - Residential care costs, on average, more than £30,000 a year. Nursing home fees are higher and can cost £40,000 or in some areas £10,000 a year or more higher. Privately arranged care and 'self-funders' are also likely to pay more for a place in the same home as someone who is supported by a Local Authority or funded by NHS Continuing Healthcare.

Is anything FREE? Yes! NHS services are FREE and there are services that a Local Authority must provide FREE of charge and some care, in certain circumstances can be paid for by either the NHS and/or the Local Authority.

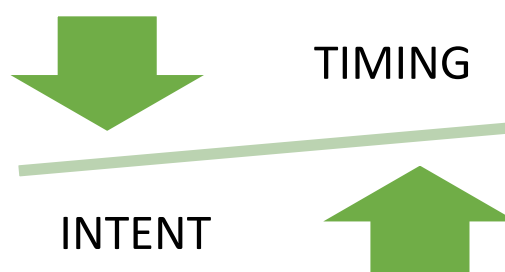
There are also non-means tested Welfare Benefits for someone living with an illness or disability with care and supervision needs.

What is a 'Self -Funder'? Should you be paying for your care? You will be considered able to pay for the cost of care if you have assets (that are not disregarded) of over £23'250 (England 2021/22). Often a property is not included during the Social Care financial assessment and there are some income and capital disregards that people also assume will be included. Expert advice can save you time and money.

Can I avoid paying for care? Frequently Asked Questions

1. Can I give my house or money away?
2. What can I spend my money on?
3. Can I put my house in Trust to avoid paying for care?
4. Do I have to sell my house to pay for care?
5. What is 'Deliberate Deprivation' or Deprivation of Assets?
6. What if I don't agree with a NHS/Local Authority decision?

Most of the questions have the same answer - If avoiding paying for care is a substantial motive for putting assets into a trust or gifting money or a property, then a local authority may assess this as "deliberate deprivation".



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The timing is important. The Local Authority will consider when you reduced your assets and see if, at the time, you could reasonably expect that you would need care and support. If you were fit and healthy and could not have imagined needing care and support at the time, then it may not count as deprivation of assets.

Having ‘Mental Capacity’ to make a gift, create a Trust or arrange to pay for care must be considered. Please see the Making Decisions guide as it explains ‘Mental Capacity’ and ‘Making Decisions’ for someone else, Lasting Power of Attorney, Enduring Power of Attorney and Court of Protection Deputy.

Avoiding paying for care may not be the reason for reducing your assets or making a gift.

Deprivation of Assets – The Law



[Care Act 2014](#)

[The Care and Support \(Charging and Assessment of Resources\) Regulations 2014](#)

[Care and Support Statutory Guidance](#)

[Charging – Chapter 8](#)

[Annex B – Treatment of Capital](#)

[Annex C – Treatment of Income](#)

[Annex E - Deprivation of Assets](#)

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DEPRIVATION OF ASSETS?

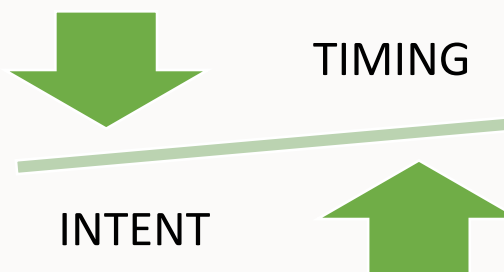
Deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. [\(Annex E\)](#)



A person can deprive themselves of capital in many ways. However, this will not be deliberate in all cases.

There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:

- (a) whether avoiding the care and support charge was a **significant motivation** in **the timing** of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?
- (b) did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?



Notional Capital/Income - In some circumstances a person may be treated as having a capital asset or income even where they do not actually have it. This might include for example available income that has not been applied for, or a capital asset that a person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care. [Annex E \(34\)](#)

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“Mary gifted her property to her two daughters several years ago following the death of her Husband. She was fit and well at the time but now needs care and has been asked to complete a Local Authority financial assessment form. Will the Local Authority consider her to have deliberately deprived herself of the asset”?

- 1) While she is living at home the property is disregarded from the Local Authority financial assessment. [See Annex B Capital Disregards](#)
- 2) If not otherwise disregarded consider whether there was significant motivation in the timing of the disposal of the asset. [See Annex E – Deprivation of Asset](#)

Challenging a Local Authority decision

CHALLENGING A DECISION



Challenging a decision that was ‘so unreasonable or irrational that no reasonable person acting reasonably could have made it’ (known as ‘Wednesbury unreasonable’ – Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB233).

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Each Local Authority must have a complaints procedure and if unable to get a satisfactory resolve the [Local Government Ombudsman](#) may investigate.

The **Local Government Ombudsman** is the final stage for complaints about councils, all adult social care providers (including care homes and home care agencies) and some other organisations providing local public services. A free service, they investigate complaints in a fair and independent way and make recommendations for a resolution.

T: 0300 061 0614

W: www.lgo.org.uk/adult-social-care

LGO – Charging/Deliberate Deprivation Decisions

[West Berkshire Council \(18 008 120\)](#)

Summary: Mr X gifted his property to his Two Daughters having moved into moved an Extra Care flat. The family maintained that the intention was to transfer ownership of the property earlier but no evidence was provided.

The LGO found no fault with the Council deciding a Father had transferred his home to his Daughters with a deliberate intent to avoid paying for care.

[East Sussex County Council \(18 000 465\)](#)

Summary: Mrs X received care and support for 9 years, she moved into Sheltered accommodation, paid off an Equity Release and gifted the remainder to Mr P.

The LGO found no evidence that the Council was at fault in the way it considered Mrs X could fund her own care through the capital left from the sale of her home.

[Dorset County Council \(17 016 802\)](#)

Summary: Mr X and his adult son complained that the Council has wrongly decided that Mr X gave away £226'000 savings to avoid paying care fees.

The LGO found no fault in how the Council made its decision: it took all the relevant factors into account and followed the law, government guidance and its own policy.

[South Gloucestershire Council \(17 013 122\)](#)

An important decision as The Council said it considered that, because Mr C had been awarded the higher rate of Attendance Allowance, he was aware he would require a package of care

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[Northamptonshire County Council \(17 015 742\)](#)

Summary: Mrs A complains that the Council charged the late Mrs X too much for her care home fees as it would not accept the renovation costs incurred in selling Mrs X's house.

The LGO found no evidence of fault in the way the Council considered the financial assessment for the late Mrs X. The complaint is not upheld.

[Leeds City Council \(17 015 035\)](#)

Summary: Mr C complains the Council wrongly decided she had deprived herself of capital by transferring property to a trust and was therefore liable for her care home fees.

The Ombudsman found no fault with the Council's decision-making in this case.

Avoiding paying for care may not be the reason for reducing your assets or making a gift.

If you would like advice or support the [Care Adviser Network](#) may be able to help, please [find an adviser](#) or contact us. There will be a charge for these advice services.