FirstStop Care Advice for older people

FACTSHEET NO.8

www.firststopcareadvice.org.uk
Advice Line 0800 377 7070
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Finance: Deprivation of Assets

A commonly asked question of the FirstStop Advice help line is “Can my parents give away their home to avoid it being caught in the means test for care?” This is not surprising since for many older people their home is the only really valuable asset they have, one which they have proudly acquired through working a lifetime and would dearly wish their family to inherit.

This factsheet aims to clarify exactly how local authorities regard the gifting of assets in the financial assessment for care home fees.

Deprivation of Assets

A big issue for many families is why should people who have been financially careful all their lives and accumulated wealth have to pay for their care while those less prudent, who have no accumulated wealth, whether for reasons of their own or not, have most of the cost of their care paid for by the state.

It is a misconception that paying for care is new. The state funding for care home places has been means tested since 1948. What is different today is that it affects more people, people are living longer and a greater number own their properties.

Legally, there is no lawful way in which anybody can deliberately gift an asset to avoid paying for care and we will look at this in more detail further on. But if it were legal, what could be gained from gifting your assets? The state may pay the bill if you needed to move into a care home and your asset would be protected and in the ownership of happy children, friends or relatives who have benefited from the gift.

Conversely, what could go wrong if you gifted your home? Consider the position if you gave it to your children and any of the following happened:

- They mortgaged the property and didn't keep up the payments or after the mortgage was paid off there would be insufficient capital left to buy more suitable accommodation should you wish to move.
- They were to become bankrupt
- They were to divorce and it got caught up in a divorce settlement
- You had no right to occupy it and were asked to leave.
- You wanted to sell it and move to another property but your children didn't want you to.
- Your partner died and you met someone else you wanted to move in with you but the family didn't like them.
- You did need to move into a care home but the choice of care home the local authority would fund for you is not the one you would choose yourself if you were paying for it.
- You wanted to improve your lifestyle through releasing some of the capital tied up in your home.

The above are just some of the situations that could arise and could very much restrict the way you live your life in retirement and the freedom of choice that owning your own property brings with it.

Having considered the above alone it would not be recommended to give away your home. Couple this with the way deprivation of assets is viewed by the state and it could also make the whole exercise pointless if the reason for making the gift was to avoid paying for care.

If care home funding is being sought from the local authority and they identify that an asset has been deliberately given away to avoid paying for care then it is almost certain that the value of that property will still be counted in the means test.

When carrying out the financial assessment for care home funding the council will ask the question “Do you or have you ever owned a property?” If the answer is “Yes” and you have given it away they would then make enquiries as to the reasons why you gifted the asset. If it was considered that a significant reason for gifting the asset was to avoid paying for care home accommodation they would treat you as if you still owned it. The value of the property would be called ‘notional capital’ and no funding from the council would be forthcoming until such time as that notional capital would have depleted itself to the means test limit through paying the care home fees.

If the transfer took place within six months of you needing care then the council can turn to the recipients of the gift and reclaim the cost of your care from them. Otherwise, there is no time limit as to how far back the council can go when considering whether deprivation has occurred.

The information below is extracted from the guidance given by government for local authorities to adhere to when considering deprivation of assets. These rules are generally followed by most local authorities.

The local authority should only consider questions of deprivation of capital when the person in the care home ceases to possess capital which would otherwise have been taken into account. Examples of where a person has deprived themselves of capital could be:

- A lump-sum payment has been made to someone else (e.g. as a gift or to repay a debt)

- Substantial expenditure has been incurred (e.g. on an expensive holiday)
- The title deeds of a property have been transferred to someone else
- Money has been put into a trust which cannot be revoked
- Money has been converted into another form which would fall to be disregarded (e.g. personal possessions)
- Capital has been reduced by living extravagantly
- Capital has been used to purchase an investment bond with life insurance so that it would be disregarded for the purpose of the Assessment of Resources Regulations.

There may be more than one purpose for disposing of a capital asset only one of which might be to avoid a charge for accommodation. Avoiding the charge need not be the person's main motive but it must be a significant one for it to be considered as deprivation of assets. Both the timing of and the intention behind the disposal of the assets must be considered by social services when deciding whether deprivation has taken place.

Examples given in the guidance which may or may not be considered as deprivation of assets include:

- A person moves into residential accommodation and has a 50% interest in property which continues to be occupied by his spouse, or civil partner. The local authority ignore the value of their share in the property while their spouse lives there but the spouse decides to move to smaller accommodation and so sells the former home. At the time the property is sold, the 50% share of the proceeds could be taken into account in the charging assessment but, in order to enable the spouse, or civil partner, to purchase the smaller property, the partner in the care home makes part of their share of the proceeds from the sale available to their spouse, or civil partner. In these circumstances it is considered that it would not be reasonable to treat the person as having deprived himself of capital in order to reduce their residential accommodation charge.
- A person has £24,000 in the bank. He is about to move permanently to a residential care home, and before doing so, pays off £3,500 outstanding on a loan for home improvements. It would be reasonable in these circumstances **not** to treat him as having deprived himself of the £3,500 deliberately in order to reduce his residential accommodation charge.

- A person has £18,000 in a building society. Two weeks before entering the home, they bought a car for £10,500, which they gave to their son on entering the care home. If the person knew they were to be admitted permanently to a care home at the time they bought the car, it would be reasonable to treat this as deliberate deprivation. However, all the circumstances must be taken into account. If he was admitted as an emergency and had no reason to think he would not be in a position to drive the car at the time he bought it, it would not be reasonable to treat it as deliberate deprivation.

In short, there is no foolproof way of gifting assets to avoid paying for care, through trust vehicles or otherwise, as mentioned above, there are numerous possible pitfalls and, if you did need to move into a care home having your own money to pay for it will very much open up the choice of care homes you might wish for.

The chances of needing to move into a care home are quite small particularly as it is government policy to enable people where possible to receive the care they need in their own homes. However, if a care home was needed and you did have to pay for it there are ways of doing so without it necessarily using up all of your capital. Combining advice to maximise the support you are entitled to from the state with appropriate financial advice could go a long way in mitigating care costs. There are especially designed financial products for meeting care costs, for example, Immediate Need Care Fee Payment Plans may make it possible to meet care costs for as long as care is needed whilst using up only part of the available capital. FirstStop Advice has a panel of specialist care fees advisers that can help in arranging finances to meet care costs or at very least assure you that you have considered the best options to provide for the financial security you would wish for.

FirstStop Advice is provided jointly by some of the most trusted and respected advice organisations in the UK, with a particular focus on the needs of older people's affairs. FirstStop Advice will receive a portion of any revenue generated as a result of business conducted through the Financial Advice Service.

Visit us online at: www.firststopadvice.org.uk
Call the advice line: 0800 377 7070
Open Mon – Fri, 9am – 5pmCalls may be monitored or recorded
Or Email: info@firststopadvice.org.uk

Please send this form when completed to:
FirstStop Advice, c/o EAC, 3rd Floor, 89 Albert Embankment, London, SE1 7TP

FirstStop
Finance Advice
for older people

Care Fees Advice Application

(Private and Confidential)

1. Applicant's details (the person needing care)

Full Name (including title)			
Address			
Email		Postcode	
Telephone	Day	Evening	
Marital Status			
	Self	**Partner**	
Date of birth (dd/mm/yy)			
Health (good/average/poor)			

Name and address to whom correspondence should be sent if different

Relationship to applicant			
Full Name (including title)			
Address			
Email		Postcode	
Telephone	Day	Evening	

2. Financial information

Does the applicant own a property? Yes ☐ No ☐

Total capital and savings (excluding primary residence) £

3. Care details

Type of Care (please tick) Home Care ☐ Care Home ☐ Care Home with Nursing ☐

Is an Enduring/Lasting Power of Attorney or Deputyship Order held? Yes ☐ No ☐

Important information to be read and signed by applicant(s) or their legal representative only
Personal data I/we declare and agree with the statements below:

To enable FirstStop Advice and its panel of Care Fees Advisers to conform with the Data Protection Act 1998 I/we agree that the Care Fees Adviser may use the information I/we have supplied to make recommendations and administer my/our application (should I/we decide to apply for investment products). Any personal information I/we provide will be treated as private and confidential, and held and processed, on computer or otherwise, by the Care Fees Advisers as a result of my/our application (whether or not it proceeds) or any subsequent agreement.

I/we declare that the statements and particulars given in this questionnaire are, to the best of my/our knowledge and belief, true and complete.

I/we hereby authorise you to disclose and discuss with the following person, any information or correspondence that may arise from my/our enquiry..

And/or I have legal authority to discuss affairs relating to the person(s) needing care.

Signature	Date
Signature	Date

FirstStop Advice will receive a portion of any revenue generated as a result of business conducted through the Financial Advice Service.