



Care home fees and protecting your estate

Introduction

One of the most common questions we're asked by clients is *how can we protect our house if we ever need to go into a care home?*

This is usually followed by comments like *someone told us you can transfer your house to your kids or put it in a trust, and as long as you don't go into a home before seven years pass by, the council won't be able to force you to sell the house, and then that we've worked all our days and don't want the house basically taken from our kids.*

Does this sound familiar? Is it something you've been thinking or worrying about?

We've written this to help you make an informed decision about your house and your care home planning. There's a lot of misinformation being shared around this complex subject, and we would recommend that you pour over this and come back to us with any questions before making any final decisions.

Will I be entitled to help from the council if I need to go into a care home?

If you ever need to go into a care home, the local council will usually carry out a financial assessment to see what's in your estate. They will do this to see whether you are entitled to any help for the cost of going into the care home.

As part of this assessment, the council will look at how much capital you have. 'Capital' means things like the value of your house, how much you have in the bank, and so on.

At the moment, from 2023 the capital limits are **£20,250** for what's called *the lower limit*, and **£32,750** for *the upper limit*. If you're assessed as having capital above the upper limit, you won't get help from your local council with paying for care home fees over and above any assessed entitlement you might have to free personal and nursing care. This is called being 'self-funded'.

If you have capital below the lower limit, you'll get help with care home fees.

How will my house come into play?

When the council is assessing your capital, your share of the house will be counted as part of your capital. Each owner of the house will be treated as having an equal share, unless otherwise shown. Your share is valued on its own, and the council must assess you as owning only of the value of your share. The only realistic market for a share in a jointly-owned house would be amongst the other owner or owners. If the other owner or owners are unwilling to buy your share, or unwilling to sell the whole property, your share could be worth little or nothing.

The value of your house will be disregarded for the first 12 weeks of your admission to a care home as a permanent resident, but even more importantly, the house should be disregarded *indefinitely* if, amongst other things, it's occupied by your spouse, partner, or civil partner, or by a lone parent who's your estranged or divorced partner, or by a relative or member of your family who's aged 60 or over or incapacitated or under 16.

So basically, if you need to go into a home but your partner is still living there, the house is completely taken out of account.

That said, beyond this the local council also has powers of discretion to disregard the value of your house if they consider it reasonable to do so. For example, if the house is occupied by someone who is not your relative or child, and who gave up their own home to be your carer prior to your permanent admission to the care home, the council may choose to disregard the house.

Will I need to sell my house?

If you have money to pay for your care home fees other than from selling your house, you can use that. How you arrange to pay your care home fees is dependent on your circumstances. Some people arrange payments to the care home themselves, often by direct debit from the capital they have from the sale of their home. If someone's going into a care home who lacks capacity, the payments to the care home can be handled by a financial guardian or someone with continuing power of attorney.

If you don't want to sell your house straight away, your local council can offer you the opportunity to enter into a Deferred Payment Agreement (DPA). A DPA means the council will pay for your care until your house is sold, at which point the council will recover the amount you owe. A DPA is a legal contract between the council and the home owner, and you may be able to rent out your house during the period of the DPA and use the rental income to help you to pay your care home fees.

That said, some local councils use charging orders instead of DPAs. This means they will put an order on your title deeds so they can recover the cost of the care they've paid when your house is sold.

Should I transfer my house to my kids or to someone else?

Deprivation of capital

If you transfer your house or place it into a trust, the council may consider that you've *deprived* yourself of a capital asset in order to reduce your liability to pay for your residential accommodation.

There may be more than one reason for disposing of an asset, but if the council considers that avoiding care home fees was a significant one, they can conclude that you have deprived yourself of capital. This means that the council will then assess the amount you have to pay for your care home *as if you still own that asset*.

Deprivation of capital may take a number of forms, and could include making a lump-sum payment to a relative or friend, incurring substantial expenditure like an expensive holiday, transferring title deeds to a property to someone else, placing money in a trust which can't be revoked, or following an extravagant lifestyle that you would not normally be able to afford.

As we say, if the council decides that you've deprived yourself of capital, it can add the value of that back into the pot when assessing your finances. The end result of this might mean, therefore, that they assess that your estate as being larger than it actually is, taking you above the upper limit of £32,750 we talked about before, and arguably leave you at the mercy of the local council's ability to find appropriate and available accommodation for you that will meet your needs. Some clients tell us that this is less important to them than having their kids' inheritance chipped away bit by bit to pay for their care, but often when we speak to those kids, they will have a different view and will want to see you get the best care available.

How far back can they look?

Despite popular understanding that the council can't look back beyond seven years since a house was transferred, in fact there is no time limit that applies here. The seven year rule relates more to your inheritance tax allowances, and we can chat about this with you if you like. So if you transfer your house and don't need to go into a home for say, another 30 years, the council can look back at the transfer and still deem that its value falls within your financial assessment. Further, if you transfer the house to someone else and need to go into care within six months of that transfer, the person to whom you have transferred it may end up becoming liable to some of the care home fees to the council.

Other things to think about

Beyond this, you'll need to think about this from the point of view of those to whom you wish to transfer the house. If you transfer the house to a child, for example, and that child owns another property, your child may need to consider their own financial and tax situation, as there may be capital gains tax issues that could end up applying to them. If your child ends up in financial difficulty, the house they now own, and in which you live, might end up becoming relevant in any assessment of their finances, so for example, if they declare bankruptcy, the house may be included in their estate by the accountant in bankruptcy. Finally, if your child

gets into marital difficulty, again the house in which you are living might become part of the division of matrimonial assets.

So what can I do then?

We're sure that all this doesn't give you much hope for safeguarding your house and assets for the purposes of care home planning, but that's not the end of the story.

What we wanted to do here was to help you understand the *general* law and so on that applies at the moment in relation to planning for going into a care home. As you can probably tell, the payment of care home fees is a really complex subject, and depends on many things which are unique to you. You may have clear reasons for transferring your property, for example, that relate less to care home planning and more to minimising your inheritance tax liability, or getting your children on the housing ladder, or arranging for your child who is your carer to live with you and own a share in the house. So if there's a good independent reason for disposing of your assets, then this might leave you with a good argument down the line should the council suggest that you have deprived yourself of your capital.

There is one option you might want to think about, and again this will depend entirely on your own circumstances. Usually, most couples own their house jointly. Sometimes in the title deeds to the house there will be something called a 'special destination', sometimes known as 'survivorship'. If there is something like this in your title, it means that when the first of you passes away, the title to the house will transfer automatically to the surviving spouse.

What we can do for you, however, is to take this survivorship clause out of your title, leaving both of you owning an equal share in the house. This means that when one of you passes away, their share will be dealt with in terms of their Will, and if their Will leaves their share of the house to, for example, the children, then ultimately if the surviving spouse goes into a care home then only half of the house can be taken into account when the council assesses your estate. If you didn't do this and the survivorship clause kicked in when your partner passed away, the full value of the house would have been taken into account. The argument would be that this isn't deprivation, as the transfer would be in implementation of your Will.

Again, this isn't the end of the story of course, as we would need to consider your specific circumstances.

What next then?

Each case is dealt with on its own merits, of course, but the bottom line is that, before talking with us we would certainly not recommend transferring your property to someone else or putting it into a trust, because doing so would not only cost you legal fees but would give you no guarantee of that cost being worthwhile.

For more information, please feel free to arrange an appointment with us on **01436 672212** (Helensburgh) or **01389 762266** (Dumbarton).