

## Deprivation of Assets: Local Authority Care and Support

Fees for residential care and support can be expensive. If you are thinking about arranging care through your local authority, you may be aware that a means-test is applied to determine what proportion of the fees the person going into care will have to pay. The greater the value of their assets, the more they will have to pay towards their own care.

Naturally, someone can give away assets to reduce the overall value of the assets that they have. However, doing so must be approached with caution. If someone is found to have given away assets deliberately to reduce the future care contributions they may have to make, the rules on 'deprivation of assets' will take effect.

This help guide explains the concept of deprivation of assets and how this could affect your care and financial planning.

### What is a deliberate deprivation of assets?

If you decrease the overall value of your assets, with the intention of reducing the amount you will have to pay towards your care, you may be deemed to have carried out a deliberate deprivation of assets.

There are strict rules surrounding deliberate deprivations to prevent people from artificially obtaining a more favourable calculation in the means test for care fees.

### The means test

When you apply for residential care through a local authority, the local authority will look at your assets (your income and capital) to decide how much you should pay towards your care fees. This may also consider the value of your home.

Based on current figures, your assets will be assessed as follows:

- If you own less than £14,250 you will not have to pay towards your care.
- If you own between £14,250 and £23,250 you will have to pay a contribution.
- If you own over £23,250 you will have to fund your care yourself.

### What is included in the term 'assets'?

For the deprivation provisions, assets include:

- Capital assets – such as lump sums of cash, your savings, shares, land or property. Personal possessions (cars, jewellery etc.) are not taken into account unless they

were bought to deliberately reduce your capital. For example, buying a car with your savings before being assessed for care fees could be considered a deliberate deprivation.

- Income assets – such as wages or pension income.

## What will count as 'deliberate'?

When you give or transfer an asset away, it will only be a deprivation of assets if you did it deliberately to avoid care and support charges. Therefore, the local authority must show that this was your only reason for doing so, or that it was a significant factor in your reasoning. This last point is important, as it means a disposal can still count as a deliberate deprivation even if there were other reasons for depriving yourself of the asset.

The local authority will take the following factors into account when investigating a deprivation of assets:

- Was avoiding the care and support charges a significant motivation?
- When the asset was disposed of, could the person have reasonably expected they would need care and support?
- Did the person reasonably expect they would need to contribute to the cost of their care?

Government guidance confirms it would be unreasonable for a local authority to consider a disposal to be a deliberate deprivation if, at the time, you were fit and healthy, and could not have foreseen the need for care.

## What is meant by 'deprivation'?

The rules on deprivation of assets are concerned with situations where the value of your assets has been reduced. As such, deprivation covers a broad range of ways in which you might transfer an asset out of your possession. Some examples include:

- Making a lump-sum payment to someone else, such as a gift.
- Substantial expenditure which has been incurred suddenly and is out of character with previous spending.
- Transferring the title deeds of a property to someone else.
- Putting assets into a trust that cannot be revoked.
- Converting assets into another form that would normally be disregarded in the means test, for example personal possessions.
- Reducing your assets by living extravagantly, for example gambling.
- Using assets to purchase an investment bond with life insurance.

## How far back can this go?

Contrary to popular belief, there is no 'cut-off' point when deprivations will be automatically disregarded. The local authority can consider any deprivations you have made – no matter how long ago – to assess whether these were done to deliberately avoid care and support charges.

Some people believe there is a 'seven-year rule' which prevents local authorities from looking at disposals made more than seven years ago. However, this is incorrect. A seven-year rule applies to lifetime transfers for inheritance tax but not in relation to care home fees.

## What are the consequences of a deliberate deprivation of assets?

Although there are many reasons why you might want to give an asset away, if the local authority finds that a deliberate deprivation of assets has occurred, they have a range of powers they can use. These are intended to put them back into the position they would have been, had the deprivation not occurred.

Their powers include:

- Recovering care charges from the person who is now in possession of the asset.
- Starting County Court proceedings against you to recover debts. This step could be taken if you do not pay the charges as assessed by the local authority, or if you have misrepresented information to them about your financial position.

## Why do deprivation of assets provisions exist?

The rules on deprivation of assets are set down in the Care Act 2014. Some background to the rules is provided in Annexe E of the statutory guidance to the Act:

*"People should be treated with dignity and respect and be able to spend the money they have saved as they wish – it is their money after all. Whilst the Care Act 2014 represents an important step forward in redefining the partnership between the state and the individual, it is important that people pay the contribution to their care costs that they are responsible for. This is key to the overall affordability of the care and support system. A local authority should therefore ensure that people are not rewarded for trying to avoid paying their assessed contribution."*

## How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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