

Bulletin 49

October 2011

Funding for care homes – how assets are taken into account and options for estate planning

By 2035 it is estimated that one-quarter of the population will be over 60 years of age, which will put further pressures on the cost of care for local authorities. This month we look at how local authorities assess an individual's ability to pay and what options are available for estate planning.

A local authority must carry out two assessments before it accepts responsibility for the cost of care of an individual. First an individual's state of health is assessed by the local authority as to the need for care in a Care Home. Secondly, it carries out a financial assessment. This looks at both an individual's capital resources and his or her income.

An individual is treated as being able to meet the full cost of care if their available capital assets (after certain disregards) exceeds £23,250. If individuals have capital available over £14,250 they may still be asked to contribute in part towards the cost of care notwithstanding that their capital stands at less than £23,250. Even when an individual has capital of less than £14,250 there may still be an obligation to contribute from income to the costs of the Care Home. Much will depend upon the nature of the income and whether it will be disregarded in whole or part.

Certain steps undertaken by individuals for inheritance planning may have an adverse affect upon eligibility to receive payment from the local authority for their care. The key criteria in assessing liability by the local authority is whether the individual intentionally or deliberately removed an asset from their estate to avoid paying for care fees. Examples which may result in a local authority adding back the value of an asset to an individual's estate are:-

- Selling assets at an undervalue
- Converting assets into disregarded assets
- Paying off somebody else's debts
- Putting money into trust
- Giving assets away.

The onus lies with the local authority to show the intention to deprive. If individuals can show that the primary motivating factor was not an intention to deprive themselves of the asset but was for inheritance tax planning purposes, they will be in a stronger position to negotiate with the local authority. The health and age of the individual who gives away an asset will also be taken into account by the local authority.

One of the consequences of a finding by the local authority of deliberate deprivation of an asset is that the individual may become responsible for the full costs of care even though he does not have access to the funds. The local authority has several methods of recovery open to it including an application to set aside a transfer of assets under the Insolvency Act 1986. Early planning by an individual is crucial in these circumstances. Thought must be given since capital gains tax may become payable on the gift or transfer of an asset. The possibility that the recipient may become involved in a divorce, die or become bankrupt also needs to be factored into the plan. The use of trusts and careful will drafting can also help to ensure that wealth is passed to the family and not the local authority!

If you require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact: Duncan Bailey in Liverpool on 0151 600 3451, Richard Bate in Manchester on 0161 836 8840 or Stephen Marriott in Preston on 01772 229 816.

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