My Care Consultant

The role of residential property in paying for care

A practical guide for financial advisers and their clients

In association with

Pure Retirement

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About My Care Consultant

My Care Consultant (MCC) helps those in need of care to navigate the complex social and health care system, to understand the value of professional financial, legal and property management advice and to facilitate access to it. In so doing, MCC seeks to establish a clear pathway, a joined-up approach and to be an independent 'first port of call' in meeting the often complicated and urgent needs of many older people and those who care for them.

With a deep understanding of the intermediary market, MCC also works closely with financial advisers by providing independent technical and marketing support and consultancy, and by encouraging and supporting participation in the long-term care market. MCC offers practical information and guidance regarding non-regulated care advice and helps advisers combine this with regulated 'paying for care' advice. As a result, advisers can develop comprehensive propositions that better meet the full needs of their clients.

About the author

Anthony Miles provides strategic and technical support to My Care Consultant. He has over 30 years of experience working in Financial Services, many of which have been spent helping financial advisers develop their propositions for clients in later life. Anthony has a BA Honours degree in Geography from the University of Durham, an MBA from the Open University (specialising in financial strategy as well as creativity, innovation and change), holds the Diploma in Financial Planning from the Personal Finance Society, and also holds the Chartered Insurance Institute's care qualification CF8.

In recent years he has held various positions within major product providers, including Head of Strategic Accounts at Prudential plc and Head of Strategic Sales for annuity specialist provider Partnership. More recently he has worked with several clients including the Personal Finance Society (the professional body for financial advisers and support staff) where he has developed content for their Continuing Professional Development (CPD) programme, led their work on the ageing population and later life, as well as supporting their on-going collaborative engagement with regulators, government departments and other industry bodies.

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Contents

Introduction

It is often said that, after pension funds, residential property represents many people's largest financial asset. If we look at the distribution of property wealth, it is clear that a large proportion of such wealth across the UK is owned by older people approaching or in retirement. Indeed 88% of couple households over the State Pension Age are owneroccupiers with a median property value of £230,000 (source: Just Group, Property and Paying for Care , June 2018). This naturally puts residential property wealth at the centre of the debate about how social care should be funded.

Currently the role of residential property wealth in respect of social care is three-fold.

First is its role in the Financial Assessment which determines how much (if any) of the cost of an individual's eligible care needs will be paid for by their local authority.

Secondly, for those who are then deemed to be self-funders (i.e. having to pay their own care fees in part or in full), there is the extent to which their residential property can be used to pay for their care, and how it might be used to do this.

Thirdly is the residential property's role as a constituent part of estate planning.

This guide attempts to provide practical information and guidance in respect of these three roles, in a way that is accessible to home-owners so that they are more knowledgeable about how their property should be assessed as an asset and so that they are better able to make informed decisions about how best to use it, should they need to.

We do make reference to social care across the UK in this guide, however readers should be aware that social care is a government devolved matter. As a result, unless otherwise stated, it should be assumed that matters discussed, and examples used in this guide may only apply to those who are resident in England.

Notations used within this guide

This sign denotes sources of further information

This sign denotes an important point to be especially aware of

The state of UK residential property

Recent analysis of Britain's housing wealth reveals the extent to which homeowner equity is concentrated in the hands of older households, with over £75 in every £100 being held by the over 50s with a total value of £2.8 trillion. The over 65s alone own 43 per cent of that equity and are worth £1.6 trillion. By contrast, the under 35s account for less than £6 in every £100 of equity held by owner occupiers. (source: Savills Research, April 2018).

The distribution of this wealth is still concentrated in London and the South East, but the over 65 age group own a significant percentage of homeowner equity across all areas of Britain.

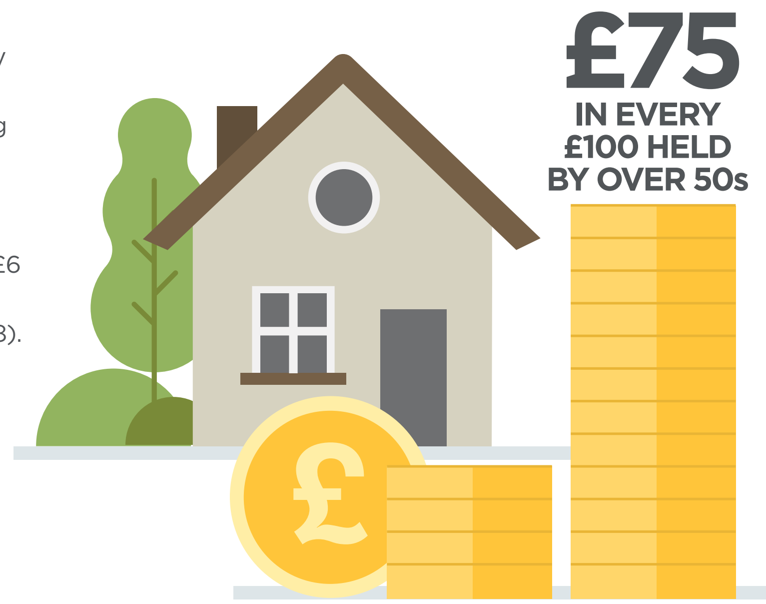


Figure 1: Homeowner equity by age group £billions.

Region	Age Group				
	Under 35	50-64	50-64	65+	Total
South East	£35	£148	£259	£348	£790
London	£81	£178	£229	£251	£740
East of England	£21	£87	£151	£202	£461
South West	£15	£59	£117	£176	£367
North West	£12	£46	£88	£119	£265
West Midlands	£11	£41	£79	£114	£246
Scotland	£11	£38	£73	£91	£213
East Midlands	£9	£37	£69	£90	£205
Yorkshire & Humber	£10	£35	£65	£84	£194
Wales	£5	£19	£39	£55	£118
North East	£3	£12	£26	£33	£74
Great Britain	£214	£701	£1,197	£1,566	£3,678

(Source Savills Research, April 2018)

Looking at average property prices with reference to the UK House Prices Index, January 2019, an annual price rise of 1.7% made the average property in the UK valued at £228,147.

(Source: https://www.gov.uk/government/publications /uk-house -price-i ndex-summary-january-2019/uk-house -priceindex-summary-january-2019)

House price growth was strongest in Northern Ireland where prices increased by 5.5% in the year to January 2019, followed by Wales, increasing by 4.6%. The lowest annual growth was in London, where prices fell by 1.6% over the year to January 2019, down from a fall of 0.7% in December 2018. This was followed by the East of England where prices fell 0.2% over the year, its first fall over the year since October 2011.

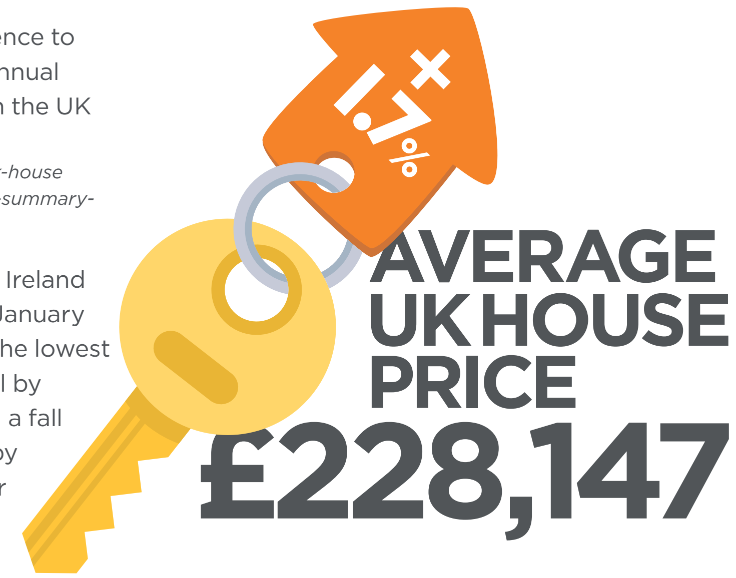


Figure 2: Average House Prices

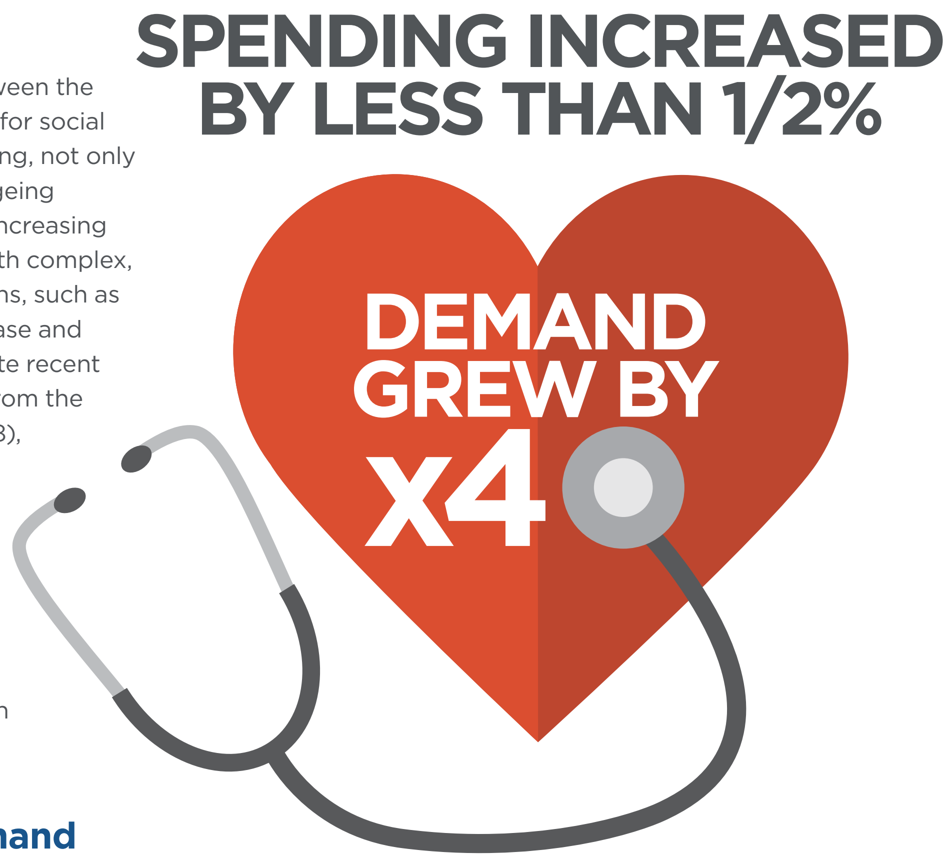
Region	Region	Monthly charge	Annual charge
England	£244,567	-1.0%	1.5%
Northern Ireland	£136,669	1.3%	5.5%
Scotland	£149,036	0.6%	1.3%
Wales	£160,232	-1.3%	4.6%
London	£472,230	-0.3%	-1.6%
South East	£321,174	-0.5%	0.1%
East of England	£288,494	-1.0%	-0.2%
South West	£253,926	-1.4%	0.5%
West Midlands	£195,399	-2.1%	4.0%
East Midlands	£192,757	0.2%	4.4%
North West	£160,811	-1.3%	3.4%
Yorkshire & Humber	£160,420	-1.0%	2.1%
North East	£125,233	-3.3%	0.9%
UK	£228,147	-0.8%	1.7%

(Source ONS UK House Price Index: January 2019)

The changing picture of social care provision

Demand is rising

There is a growing gap between the funding of and the demand for social care. Demand for care is rising, not only due to frailty amongst an ageing population but also due to increasing numbers of people living with complex, chronic or multiple conditions, such as diabetes, cancer, heart disease and dementia. In England, despite recent short-term cash injections from the government (£240m in 2018), social care spending increased by less than half a percent above inflation in 2017, while demand grew by four times that amount, with 10,000 fewer people receiving long-term support. (Source: The Health Foundation, October 2018)



The nature of demand is changing

The nature of demand in terms of domiciliary or residential care is difficult to accurately measure due to the fragmented nature of service provision. However, while the rhetoric of both Government and Local Authorities seems to favour domiciliary care, the evidence seems to suggest that spending cuts and less generous eligibility thresholds have recently had more impact on homecare than on residential care for older people. Indeed, many local authorities are no longer funding care for people with low and moderate care needs.

A significant number of homecare providers have confirmed a loss of council funded business, many handing back contracts , and most reporting that growth in the market is now focused on private and NHS-funded homecare, with indications that this is likely to remain so at least for the foreseeable future (Source: Home Care in England: views from commissioners and providers, The Kings Fund, December 2018)

Supply is under threat

When it comes to residential care, UK care home firms are under pressure from funding cuts, crippling debt and rising costs. According to accountancy firm BDO, in the period between 2014 and 2016 there was an average of 69 care home company insolvencies per year. The number rose sharply to 123 in 2017 and another 101 collapsed in 2018. Major operators to suffer financial difficulty include Four Seasons Health Care, which has been put up for sale after rescue talks failed, seven years on from the high-profile collapse of Southern Cross.

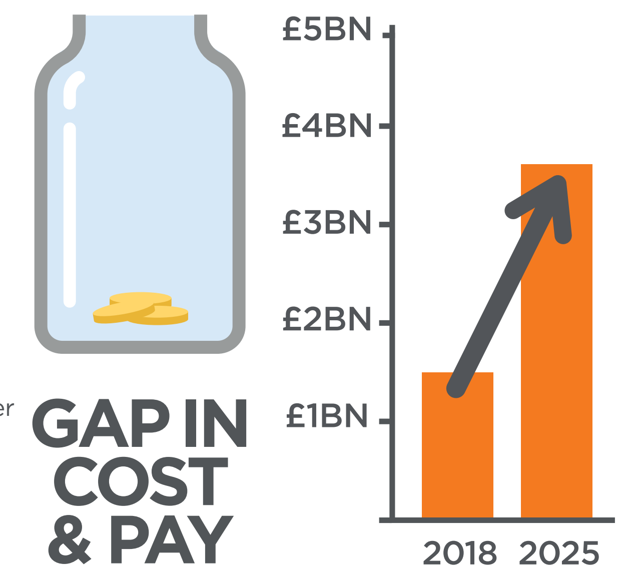
The rise of supply and demand-management approaches

Preventing, reducing or delaying the need for care, where feasible, was a key element of the 2014 Care Act, which stated that 'effective interventions at the right time can stop needs from escalating, and help people maintain their independence for longer' (Department of Health and Social Care 2018a).

According to another report from the Kings Fund (Key challenges facing the adult social care sector in England, September 2018) significant numbers of councils in England now say they are adopting demand-management approaches to social care, which focus on designing assessments and services to promote independence rather than necessarily providing formal, ongoing support

An increasing funding gap

While there is broad consensus on the need for more money to be invested in adult social care, there is no consensus on the size of the funding gap. Estimates depend on which elements of potential additional spending are factored in – for example, whether one includes the funds required to widen eligibility or one increases the fees paid to providers. In its 'The lives we want to lead adult social care Green Paper (2018)', the Local Government Association estimates that adult social care faces an 'immediate and annually recurring' gap of £1.44 billion between the cost of care and what councils pay. It estimates that demographic changes (ie, more older people and more people with disabilities), together with inflation, will increase that gap to £3.56 billion by 2025. This gap is only in relation to maintaining the current level of services, not increasing access or improving quality.



Limited evidence of a proactive approach

In England, local authorities have a statutory duty under the Care Act to 'shape the market' for care and support in their areas. However, the Competition Market Authority said this market shaping was 'very variable' when it came to care home provision and that there was little evidence from council market position statements of a proactive approach to the sector (CMA 2017). The UK Home Care Association (UKHCA) has also criticised councils for in most cases failing to pay what it regards as a minimum sustainable price for providing home care services of £18.01 per hour (UKHCA 2016)

The long- awaited Green Paper

During the 2017 General Election campaign, the Conservative Party made a manifesto commitment to introduce the Green Paper, as well as a number of pledges regarding how individuals should pay for social care. The publication of the Green Paper has been delayed several times, but when (if) it eventually sees the light of day, the Government has said that the proposals in it will "ensure that the care and support system is sustainable in the long term". It is intended to be a consultative document that will apparently look to strike the right balance between what is paid by individuals, their families and by the taxpayer through the state.

The role of property in a Local Authority financial assessment for Social Care (England)

The cost of care and who pays?

Although not everybody will need to pay for care in their lifetime, for the foreseeable future it remains a significant risk for individuals and their families given the costs involved, the likelihood of needing care at some point and the current basis of means-tested support. According to a report by healthcare specialists Laing & Buisson in 2018, care home costs can range from £27,000 to £39,000 per year for a residential care home, or £35,000 to £55,000 per year if nursing is required. According to estimates on the Money Advice Service website, home care can start from around £14,000 per year for 14 hours of care a week, while round the clock live-in care for complex needs could cost in excess of £80,000 per annum.

As for the chance of needing care, it is frequently quoted that around 30 per cent of us will need long-term care at some point in our lives. Given that levels of projected pension income will not be enough to pay care fees, most people will struggle to find even a fraction of the required costs, even if they draw down all of their savings. But people are reluctant to set money aside for care until they find themselves in immediate need, given the competing demands on savings and for some, the flawed assumption that care as well as medical needs will all be met free of charge by the NHS. Even if they did save with care in mind, it's unlikely that they would accrue the sums needed.

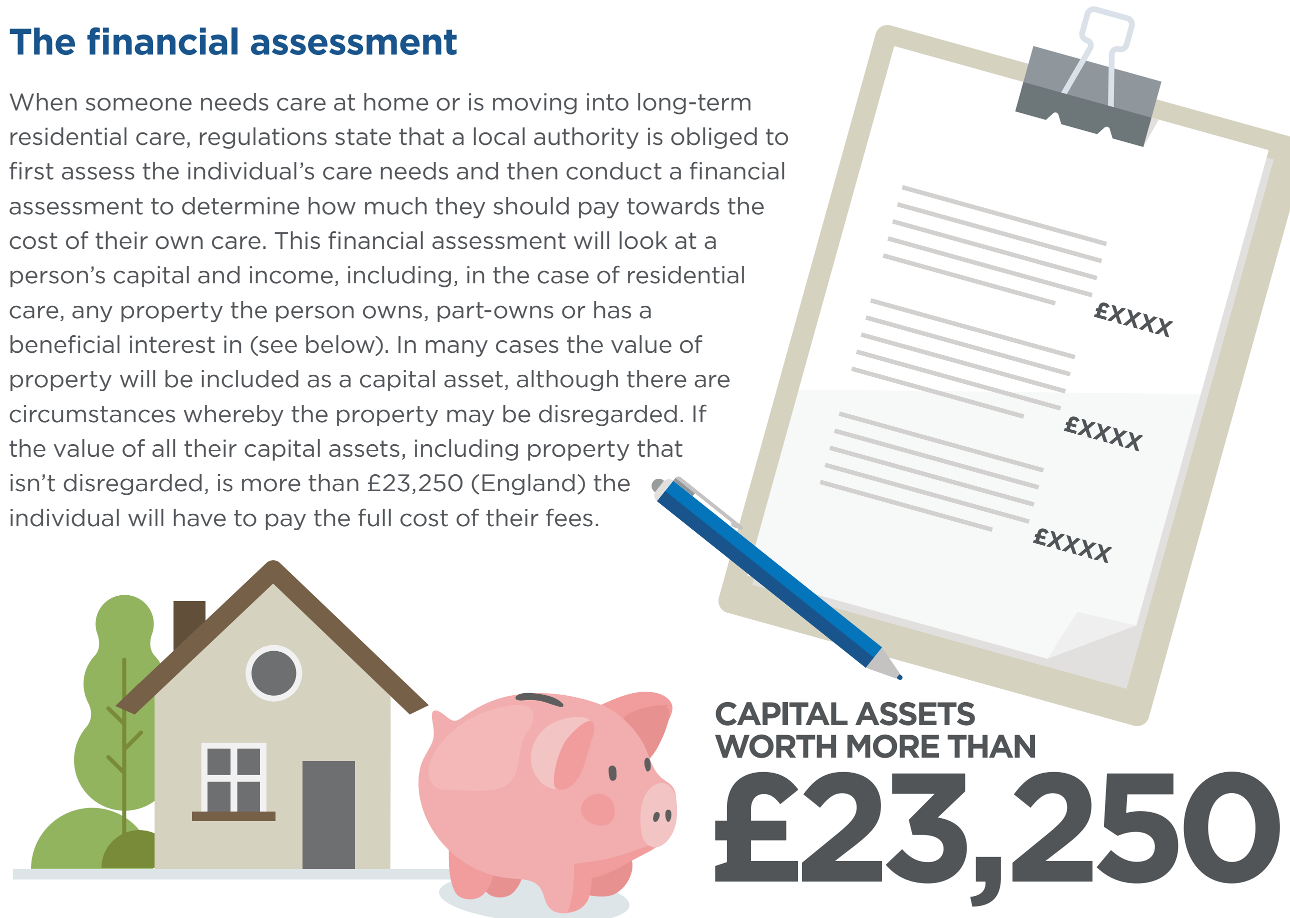
In conclusion

What this means when it comes to paying for care is that unless some radical approaches are taken in respect of the provision of care services and their funding, for the immediate future a significant and increasing number of older people across the UK will be paying for some or all of their social care. Given the overall cost of care, residential property wealth is likely to remain central to how many homeowners meet these costs in part or in full.

Although selling a home to pay for care is not uncommon today, there have been mixed messages from governments and other parties about whether the home is a store of value to be used to subsidise later life costs, or a protected asset that can be passed down through the generations. Exploring the most appropriate and suitable way that someone's residential property can be used to pay for care whilst also achieving other desired outcomes is increasingly an issue for those in need of care, and the role of professional financial advice is central to achieving better consumer outcomes.

The financial assessment

When someone needs care at home or is moving into long-term residential care, regulations state that a local authority is obliged to first assess the individual's care needs and then conduct a financial assessment to determine how much they should pay towards the cost of their own care. This financial assessment will look at a person's capital and income, including, in the case of residential care, any property the person owns, part-owns or has a beneficial interest in (see below). In many cases the value of property will be included as a capital asset, although there are circumstances whereby the property may be disregarded. If the value of all their capital assets, including property that isn't disregarded, is more than £23,250 (England) the individual will have to pay the full cost of their fees.



What is covered by the term 'property'?

'Property' means any building, accommodation or lands that a person owns or jointly owns. For most people this is their home, but it can also include, for example, houses owned or part-owned by them but lived in by someone else, holiday homes (including those overseas) or commercial property. Due to the mandatory exclusion of 'personal possessions' from the financial assessment, it is not always clear exactly what type of property should be included - for example, mobile homes? HMRC guidance provides a summary of how mobile homes, caravans and houseboats are typically dealt with from a stamp duty perspective, and this guidance is often used to inform the position taken by a local authority when it comes to their inclusion within the financial assessment.

HMRC guidance SDLTM 10023
https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-taxmanual/sdltm10023

Property disregards?

Property can be excluded from the Local Authority financial assessment either automatically (known as a mandatory disregard) or when the Local Authority deems it appropriate to disregard the property given the specific circumstances of the individual (known as a discretionary disregard)

Mandatory disregards

A person's main or only home will NOT be included as an asset in the financial assessment, when:

1. care and support are to be provided in the home (i.e. domiciliary care)
2. care and support are to be provided in a residential care home, but only for a temporary period, for example for respite care or rehabilitation.
3. long term care and support are to be provided in a residential or nursing home and the person's main or only home is still occupied by any of the following people:
   - A partner, civil partner or former partner (except where the person in care is estranged or divorced from the partner)
   - A lone parent who is the individual's estranged or divorced partner with a child that is under 18
   - A relative or family member of the person in care who: is aged 60 or over; or is the child of the person in care and is aged under 18; or is incapacitated.

Discretionary disregards

A local authority may also use its discretion to disregard an individual's property in other circumstances. However, the local authority will need to balance any such discretion with ensuring a person's assets are not maintained at the public expense. An example where it may be appropriate to apply the disregard would be where the property is the sole residence of someone who has given up their own home in order to care for the person who is now in a care home or is perhaps the elderly companion of the person.

A property may also be disregarded when a qualifying relative moves into the property after the resident enters a care home. Where this happens, the local authority will need to consider all the relevant factors in deciding whether the property must be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness.

12- week property disregard

If an individual's capital assets, other than their home, amount to less than the upper capital limit used in the financial assessment (currently £23,250 for 2019/2020), the local authority is obliged by statute to disregard the value of the person's property for twelve weeks from when they move permanently into residential care accommodation (or until the property is sold if that is earlier). If an initial stay was temporary but subsequently becomes permanent, the 12- week property disregard starts from the date that permanency was agreed.

The twelve-week property disregard is mandatory and local authorities are under a statutory obligation to abide by it as soon as they are aware that it applies. Delays by local authorities in providing funding does not affect entitlement to it and could render the local authority liable to reimbursing anyone who has paid a higher contribution towards their care costs than they should have during this mandatory disregard period.

The meaning of 'occupy' is not closely defined within the Care Act Statutory Guidance. In most cases it will be obvious if the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear, and the council should undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply. The Local Government and Social Care Ombudsman has in the past made reference to the following questions a Local Authority might ask to clarify 'occupation':

1. **Does the relative currently occupy another property?**
2. **If the relative has somewhere else to live do they own or rent the property (for example, how secure/permanent is it?)**
3. **If the relative is not physically present is there evidence of a firm intention to return to or live in the property**
4. **Where does the relative pay council tax?**
5. **Where is the relative registered to vote?**
6. **Where is the relative registered with a doctor?**
7. **Are the relative's belongings located in the property?**
8. **Is there evidence the relative has a physical connection with the property?**

It is also important to understand the term 'applicable date' in terms of assessing occupancy of a potentially disregarded home by a qualifying individual – it is the date on which the person in need of care becomes eligible for support by the Council; not the date on which they went into the care home.

The following case provides useful guidance from the Ombudsman in respect of these and other issues around mandatory and discretionary property disregards
https://www.lgo.org.uk/decisions/adult-care-services/charging/17-006-551#point1

26-week property disregard

Certain capital assets must be disregarded for at least 26 weeks in the financial assessment, but the Local Authority can apply the disregard for longer where it considers this appropriate. These assets include:

1. Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced.
2. Assets of any business owned or part-owned by the person in which they were a selfemployed worker and have stopped work due to some disease or disablement but intend to take up work again when they are fit to do so.
3. Money acquired specifically for repairs to or replacement of the person's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received.
4. Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the person takes action to effect the repairs.
5. Capital received from the sale of a former home where the capital is to be used by the person to buy another home. This should apply from the date of completion of the sale.
6. Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited.
7. Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.

Estate Planning involving property

The basis of property ownership

The name(s) on the deeds of the property would in normal circumstances establish the property's ownership. However, it's important to bear in mind the distinction between 'legal' and 'beneficial' ownership of property, with most people having both. Someone has a beneficial interest if they are entitled to a share of the proceeds of a sale and it is this that is taken into account in a local authority Financial Assessment

If a person contributed towards the purchase price of a property, or otherwise contributed towards it at a later date, the local authority may be able to establish that they have a beneficial interest in the property, even if on paper it is legally owned by someone else.Similarly, the person being assessed may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property must not be taken into account.

If a property was purchased under a 'right to buy' scheme at a discount, the person who qualified for the right to buy discount may be assessed as having a beneficial interest equal to the discount, even if he or she didn't contribute financially towards the purchase.

If the beneficial interests in a property are disputed, it may be necessary to consult a solicitor.

Basis of property valuation

Where a property is included in the Financial Assessment, it is assessed at present market value, minus any mortgage or secured loan charged against it and minus a further 10% of the market value where there would be expenses incurred in its sale. Once the property is sold, the owner is treated as having the full share of the sale proceeds that they are entitled to, after any secured debts and the actual expenses of the sale have been paid.

Valuation of jointly owned property

If a property is jointly owned with someone who doesn't fall into any of the property disregard categories previously listed, then the local authority will take into account the appropriate share that belongs to the person being assessed. Whilst most jointly owned assets are simply calculated by dividing the value of the asset by the number of owners, in the case of property and land a different basis of ownership applies: here it is the 'beneficial interest' of each owner that should be taken into account, in other words the right to the proceeds of sale.

The value of someone's beneficial interest depends on how attractive it is to purchase. It may well be construed that because a joint owner has a right to occupy the property, it is unlikely that there will be a willing buyer prepared to purchase the share of the property. In such circumstances, the 'market value' of the share could be regarded as nil. Legal advice should be sought in these circumstances.

Dispute

Where the value of a property is disputed, the Care Act 2014 Statutory Guidance states that the matter 'should be resolved as quickly as possible' and local authorities should try to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period where a person is in a care home. This will enable local authorities to work out what charges a person should pay and enable the person, or their representative, to consider whether to seek a deferred payment agreement.

Serious consideration should be given to obtaining expert legal advice if you wish to dispute a local authority valuation or you are told that your beneficial property interest has a value for the following reasons: the local authority takes the value of your property and divides it by the number of joint owners; the local authority offers to be the willing buyer, or ; any willing buyer would be able to force a sale

There are few ways of legitimately transferring ownership of property so that it doesn't become part of someone's assets when undergoing a local authority Financial Assessment. Caution should always be exercised in respect of most forms of estate planning typically promoted as legitimate ways of avoiding care fees.

Things to be wary of

Transferring ownership

It can seem like an attractive option to transfer property out of the owner's name, or to sell it to a family member at below market value, so that its value is excluded from any financial assessment, allowing a property to be retained as a family asset. However, caution is strongly advised before taking this action. A local authority can examine such a transfer and if they think it was carried out primarily to reduce the contributions that someone makes towards their care fees, the authority can assess the person as if they still owned the transferred property and include its value in the assessment. Reference should be made to the 'deprivation of assets' rules that apply.

Further information in respect of the treatment of property (and other capital assets) in respect of Local Authority financial assessments can be found in Appendix B: Treatment of Capital in the Care Act Statutory Guidance

https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-supportstatutory- guidance#AnnexB

Asset Protection Trusts

The idea of an Asset Protection Trust is to take a person's main asset – frequently the family home – and transfer it into a trust so that technically they no longer own it. The theory is that if a person no longer owns the property, it cannot be taken into account when the local authority decides whether they should pay for some or all of their care costs. In practice, this is unlikely to work, especially if this is the principal, stated aim of taking such action.

When conducting a financial assessment, local authorities can look at assets that a person has sold or given away to deliberately reduce their wealth – including the use of an Asset Protection Trust. The local authority simply has to demonstrate that it is likely that the individual knew, at the time of setting up the trust, that they might need care in the future. See the legal case of 'Yule v South Lanarkshire Council [1999] 1 CCLR 546' which established that there is no time limit in applying this rule.

"If people are trying to protect their house in the avoidance of care fees then that's not allowed; that is a clear deprivation of assets. It doesn't work... As soon as we find out a property has been transferred, we will be looking into the motivation, we will be asking questions."

Bridgette Shilton, chair of the National Association of Financial Assessment Officers ; http://www.bbc.co.uk/news/business-39589083

If trusts are genuinely set up for reasons other than avoiding care fees, they may succeed in avoiding care fees as well. When it comes to deliberate deprivation, 'intention' and foreseeability (of the future need for care and support) are key determinants of a deliberate deprivation conclusion.

Legitimate actions to consider

'Tenants in common'

A person can take legitimate steps to protect their share of the family wealth from care home fees. Where a property is owned on a 'joint tenancy' basis (where the interest of a deceased owner automatically gets transferred to the remaining surviving owner/s), this can be changed so that a person and their spouse or civil partner own the home as 'tenants in common' (where the interest of a deceased owner is passed to their legal heirs).

Where a property is owned as 'tenants in common', a will can be written or rewritten so each party can leave their share of the property to anyone they choose. At the same time they create a 'flexible life interest trust' for their spouse or civil partner which means that if they die before him or her, their share of the property will be held in trust giving their surviving spouse or civil partner the right to live in the property for the rest of their life.

The effect of the above actions is that if a spouse or civil partner goes into care after their partner's death, only the value of their share of the property would be taken into account in the local authority means test. And the value of this share may in practice be reduced to nil as it would be unlikely that anyone would want to buy it which would mean that the entire value of the property could be excluded from the means test.

Whilst the above is a recognised way of reducing the extent to which property is taken into account in a local authority Financial Assessment, and is relatively straightforward to set up, anyone considering taking such action should always consult a suitably-qualified solicitor such as a member of the Society of Trust & Estate Practitioners.

Using residential property to pay for social care

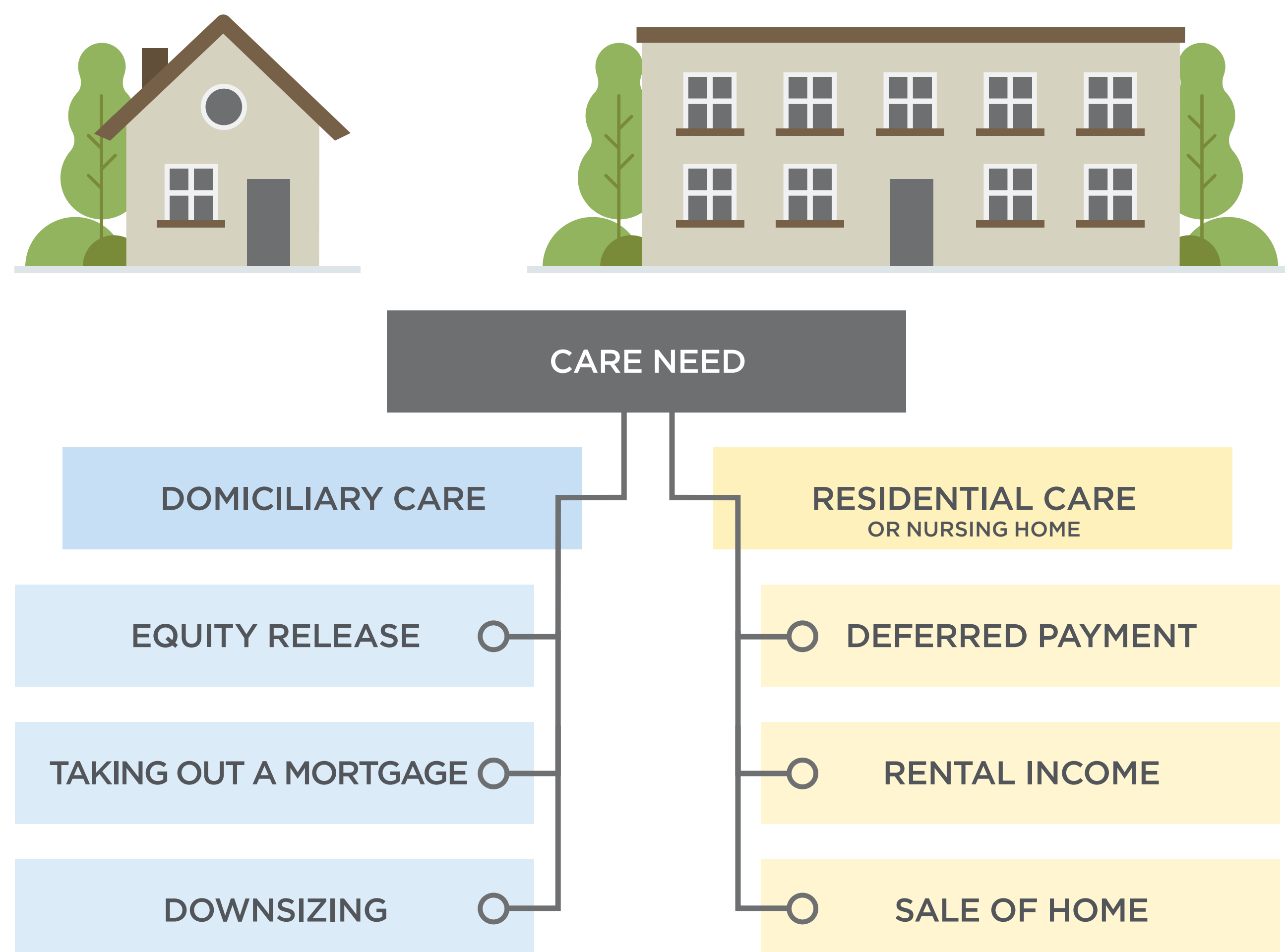
Where, following a local authority financial assessment, a person is deemed responsible for the future payment of all or some of their care fees, they are known as a 'self-funder'.

According to the influential LangBuisson Market Report (28th Edition), around 44% of the nearly 400,000 over-65s in UK care homes are completely self-funded and another 12% pay some of their costs. These percentage figures are increasing year on year.

In terms of care at home, the percentage of self-funders is more difficult to estimate due to the diverse nature of service providers, but significantly more people receive care at home than in a care or nursing home and evidence suggests that local authority spending cuts and increased eligibility thresholds have impacted more heavily in recent years on local authority funded homecare than on residential care for older people.

There are several ways this increasing body of self-funders can pay for their care, some of which involve the use of the residential property they own. Which of these ways of funding care is most appropriate for any individual depends on several factors, but the starting point in assessing suitability is whether care is needed at home (domiciliary) or in a residential care or nursing-home.

The following diagram illustrates the main 'paying for care' options typically (although not exclusively) associated with both types of care provision and which involve the use of residential property.



Equity Release

When it comes to using equity release to pay for care most schemes are designed for those who want to stay in their own home in receipt of domiciliary care, or where one spouse or partner needs residential care but the other continues to live at home (equity release arrangements typically require repayment of the loan in full if the last of joint owners move permanently into a care home, although there are some alternative options available.)

The money released can be used to pay directly for care fees or to create an investment plan or to fund an immediate needs care annuity to help cover some or all future care fees.

There are two kinds of equity release schemes:

- a lifetime mortgage: this is a loan secured against the property that is not usually paid back until the last living borrower dies or moves into permanent long-term care. You may make regular interest payments on the loan, or the interest may be 'rolled up' until the total loan is repaid. It lets you borrow money against the value of your home, which is paid back when the property is sold or when you die.
- a home reversion scheme: these are not loans, meaning there is no interest to pay. Instead, the borrower receives a cash sum or sums for selling part or all of their home to the equity release provider. When the property is sold, which again is usually after the last living borrower dies or moves into permanent long-term care, the equity release provider receives a share of the proceeds.

In recent years equity release schemes, and in particular the lifetime mortgage variant, have cemented a mainstream position as part of modern retirement planning and care fees funding.

According to the Equity Release Council, a steady growth of activity over recent years saw over £1bn of property wealth released in both Q3 and Q4 2018, with lifetime mortgages now making up approximately a third of all new mortgages among customers in their midfifties and beyond as they continue to increase market share.

This growing consumer demand has continued to encourage – and be encouraged by –product innovation, creating a wide range of options to suit varying needs.

Again, according to the Equity Release Council, product options grew from 86 available in January 2018, to 139 in August 2018. This trend gathered pace in H2 2018 to the extent that, by January 2019, with 221 options, the product range had more than doubled in comparison to 12 months earlier (see table).

	Product options with this feature - Jan 2018	Product options with this feature - Jan 2018
Downsizing repayment option	36	114
Interest services (regular interest payments)	8	45
Drawdown facilities	41	61
Regular income payments	0	32
Inheritance guarantee	42	83
Sheltered/age restricted accommodation	35	77
Fixed early repayment charges	46	89
No charge voluntary/partial repayments	60	127
Total product options	86	221

Source: https://www.equityreleasecouncil.com/news/equity-release-council-publishes-spring-2019-equity-release/

Suitability

Paying for care with equity release may be suitable where:

✓ You need to fund long term care and you have already paid off, or nearly paid off, your mortgage.

✓ A quick sale would make it difficult to realise the full value of the house.

✓ The property remains occupied, either because care is domiciliary, or a spouse or partner remains in the property.

Paying for care from equity release may not be suitable where –

× A homeowner currently lives alone and may soon need to move into residential care

Advantages

✓ It can provide a guaranteed regular income or a large lump sum (subject to limits imposed), and funds can usually be accessed more quickly than waiting for a sale.

✓ The individual gets to keep and stay in their own home.

✓ No regular payments of interest or capital are required.

✓ Some equity release schemes allow for regular/sporadic payment of interest to reduce the amount of outstanding debt.

✓ The loan need only be repaid on death or on the sale of the property.

✓ There's the potential to benefit from any future increases in the value of the property.

✓ Fixed rates prevent interest spiralling out of control.

✓ Many schemes guarantee that the total debt cannot exceed the value of the property (a negative equity guarantee).

✓ When the house is eventually sold, and the debt paid off, there may be money left over to provide some inheritance.

✓ The equity released on a main residence is tax free.

✓ Equity-release schemes can help to reduce Inheritance Tax liability.

✓ It keeps the property in the estate (for now)

Disadvantages

- × The owner will not be able to release the full value of the property (compared to selling the property).
- × If using a home reversion plan, sole ownership of the home is lost.
- × Interest will be charged, which typically results in debt accrual.
- × Interest is usually higher than standard mortgage rates.
- × Usually the property must be sold when the debt needs to be repaid.
- × It might affect the individual's entitlement to means-tested benefits, as any money raised through equity release is likely to affect the assessment of income and capital and may have an impact on their tax status (see below – 'learn more').
- × Taking out an equity release loan may undermine the subsequent availability of and access to a Deferred Payment Scheme (due to the fact that the local authority would not necessarily be able to secure the required first legal charge on the property).
- × Any inheritance passed on to beneficiaries will be substantially reduced and won't include the property itself unless the outstanding loan is repaid from other sources.
- × It can be inflexible if the individual's circumstances change – e.g. they will usually need the provider's permission for someone else, such as a relative, carer or new partner, to move in.
- × There are costs involved – such as arrangement, valuation, legal and set-up fees.
- × If someone sells up or dies soon after taking out a plan, their estate could incur a loss.
- × They might not be able to transfer all the debt that has accrued if they subsequently move to a smaller, lower value property, although downsizing repayment options are increasingly available.
- × There will be an ongoing requirement to have buildings insurance.
- × Lenders will expect the client to keep the property in good condition, so they will need to set aside some money for on-going repairs and maintenance.
- × Unless the money released is used to purchase a long-term care plan, the money could run out meaning a need to find alternative ways to continue paying for their care.
- × Early repayment charges may apply, if they want to redeem the mortgage early (for example, if they no longer need to pay care fees).

When it come to the impact on benefits and tax, essentially, all sums released by any form of Equity Release mechanism will either be considered to be capital or income. For further information the Council of Mortgage Lenders have a useful guide that can be found here:

https://www.cml.org.uk/documents/equity-release-and-the-impact-onbenefits-and-tax/er-and-the-impact-on-benefits-and-tax-may-2016.pdf.

Taking out a mortgage

Standard mortgages

It is worth noting that standard mortgages for those in later life are increasingly available for those who can demonstrate affordability. Nationwide, the UK's largest building society, announced in May 2016 that it would now lend to qualifying borrowers up to the age of 85. Some smaller lenders, for example, Dudley Building Society, have scrapped upper age limits across their whole product range. Dudley Building Society says it considers "all borrowers to be equally worthy of consideration" and "does not discriminate by age".

Retirement interest-only mortgages

Retirement interest-only mortgages (RIOs) are a relatively new set of products designed to help older borrowers who may struggle to get a standard residential mortgage. They allow people to borrow against their property and only pay back the interest (not the loan itself) each month.

RIOs are very similar to standard interest-only mortgages but there are some key differences. With most RIO mortgages, one only repays the loan when the property is sold, the owner moves into permanent residential care, or they die. But some retirement interest-only mortgages carry terms like a regular mortgage, meaning you either pay them back after a set number of years or when you reach a certain age - 90, for example. Rather than having to take steps to prove your income, as you do with a standard residential mortgage, you only have to prove that you can afford the interest. Some RIOs allow you to repay some of the capital as well as the interest. This cuts down the size of the loan over time, meaning that more of the value of the property can be passed on to beneficiaries when the owner dies.

Advantages

- ✓ No need to demonstrate a suitable plan for repaying the mortgage.
- ✓ More likely to have something to pass on as inheritance.
- ✓ No problem of interest roll-up – which is when interest builds and builds - like with equity release.
- ✓ Avoids having to downsize to a smaller property.
- ✓ The loan term is not fixed.
- ✓ Generally cheaper when compared to most Lifetime Mortgages.
- ✓ You can unlock some of the equity in your home to pay off outstanding debt.

Disadvantages

- × You will need to pass the mortgage affordability checks to prove you can afford the interest-only repayments.
- × Your home will be sold off to repay the loan when you die, enter long-term care or sell your home.
- × Your home is at risk if you do not keep up the repayments.
- × The amount you can borrow is based on your retirement income and the ratio between the loan and the value of the property.

Downsizing

Should a person need domiciliary rather than residential care, at least for the foreseeable future, they could consider downsizing to raise a lump sum from any equity released to pay for their future care needs, either directly or via an investment or the purchase of an immediate needs annuity. This could also involve moving into a more appropriate property in terms of design and/or layout and/or a more secure and supportive setting such as dedicated 'extra care' residential developments where help is readily available when needed.

Suitability

Paying for care from the sale of residential property and downsizing may be suitable where -

✓ There is a need for domiciliary care rather than residential care.

✓ The person wants to live somewhere that might better cater for their needs both now and in the future.

Paying for care from the sale of residential property and downsizing may not be suitable where -

× The person needs residential care now or in the immediate future.

× They wish to stay in their current property.

× There is a lack of suitable property to move to.

"Less than 3% of housing in the pipeline is aimed at older people and yet, in 20 years' time, those aged 65 or over will make up 23% of the population"

Knight Frank - 'Retirement Housing 2014'

Advantages

✓ It makes capital available.

✓ It is a sensible option if fewer people are to live in the house going forward.

✓ It will usually be a more cost-effective option than equity release, as no interest is charged or accrued.

✓ It could provide the opportunity to live somewhere that might better cater for the person's needs now and/or in the future.

✓ Moving to a bungalow, a serviced apartment in a retirement village or into sheltered housing can bring other advantages that they might not have considered, such as an easier to maintain home, better accessibility, and/or a possible reduction in the cost of care due to modifications in the new property.

Disadvantages

× It can be a lengthy process.

× It can have an impact on means-tested benefits.

× Not everyone wants to sell the family home.

× It may not generate sufficient funds..

Deferred Payment Arrangements

Since April 2015 and following the introduction of part one of the Care Act 2014, local authorities in England have had to offer a loan (often referred to as a deferred payment agreement or DPA) to meet care costs, secured on the home of the individual in care, at a fixed interest rate. This is known as the "universal deferred payments system" and was introduced to ensure fewer people were forced to sell their home in their lifetime to pay for their care.

It should be made clear to anyone considering this means of payment that the payment for care and support is deferred, not 'written off' – the costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date.

A deferred payment scheme is solely set up for the purpose of paying for care home fees. It is not suitable for other types of care, such as home care – and is most appropriate for individuals who know they will be in residential care for a long period of time.

Who is eligible?

The regulations specify that someone is eligible for, and so must be offered the option of a deferred payment scheme if they meet all 3 of the following criteria at the point of applying:

a) their needs are to be met by the provision of care in a care home. This is when someone is assessed as having eligible needs which the local authority decides should be met through a care home placement. This should comply with choice of accommodation regulations and care and support planning guidance, so should take reasonable account of the person's own preferences.

b) they have less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets).

c) their home is not disregarded - for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. the person applying for the deferred payment agreement must be someone whose home is taken into account as an asset in the local authority financial assessment and so might need to be sold to pay for their care).

What happens if a person is eligible?

If someone is eligible, the council will pay their care home bills on their behalf. The person in care can delay repaying the council until they choose to sell their home, or until their death. They will sign a legal agreement with the council, saying that the money will be repaid when their home is sold.

The local authority usually ensures that the money owed in care fees will be repaid by putting a legal charge on the property. It does this by contacting the Land Registry to place the charge. The charge is removed when the outstanding debt is repaid.

Usually no more than 90% of the value of a home can be used in this way to pay for fees (minus the lower capital limit of £14,250 - for the financial year 2019/2020). In practice, many local authorities will set a limit between 70% and 80%. This is to leave the homeowner or the executor of their will with enough money to cover the costs of selling the property and also to make sure the local authority will still get their money back if house prices fall.

What are the costs involved?

The charge for setting up the agreement will normally reflect the actual costs that the council incurs. There may also be an annual administration charge on the anniversary of the agreement. The set-up charge and the annual charge can normally be paid separately, or they can be added to the loan amount, but the latter will also incur interest. These charges cover legal costs, land searches, registry and valuation charges.

It's important to note that local authorities are not permitted to operate a deferred payment scheme at a profit, only to cover the costs involved.

How much are the Interest payments?

- Since 1st April 2015, local authorities have been able to charge interest from the start of an agreement, up to a maximum percentage which is specified in regulations (linked to the market gilt rate plus 0.15%). The interest rate charged by the local authority is reviewed twice a year and is applied from 1st January to 30th June and 1st July to 31st December each year.
- The rate applicable from 1 January 2019 to 31 July 2019 is 1.65 per cent.
- Interest is accrued on a compound basis on the amount deferred, even if the equity limit is reached.
- Interest continues to be applied during breaks in care and after death, until the deferred amount is repaid.

When might a local authority refuse to grant a deferred payment scheme for a qualifying individual/s?

Examples include:

- Where the local authority doesn't think that enough security exists against the loan. They may be able to refuse an agreement on the basis that they risk not getting back the money they will spend on care fees.
- Where it is not possible for the local authority to secure a first charge on the property.
- Where a person doesn't agree to all or any of the terms and conditions of the agreement (for example, a requirement to insure and maintain the property).
- Where a person doesn't have the mental capacity to agree to the arrangement, and they don't have a legally appointed attorney or deputy willing to agree.
- Where a person is seeking to pay a top-up. In principle, people should be able to defer their full care costs, including any top-ups. But at a minimum an eligible person must be allowed to defer their 'core' care costs.
- When the property involved is jointly owned. In this situation the local authority must get signed consent from all owners to put a legal land registry charge on the property and not to object to a future sale for repaying the debt to the local authority.

To be eligible for a deferred payment scheme there should be no-one else living in the property who needs to stay there such as a spouse, partner, child, a relative aged over 60, or someone who is sick or disabled. However, the local authority does have the discretion to offer a deferred payment arrangement where a property is jointly owned. This raises the question as to whether the property discharge rules for joint owners applies.

There is some anecdotal evidence that some local authorities are offering deferred payment arrangements on property that is both jointly owned and occupied by one of the abovementioned people. Whilst a local authority must seek the consent of all owners in this situation, it can often be at a time when there is immense pressure to resolve matters. It could be that in these circumstances joint owners provide such consent, despite the fact that they are potentially agreeing to make themselves homeless. If the individual in need of care dies in care, the local authority will then require repayment of the loan plus any accrued interest, in spite of the fact that the remaining joint owner is left vulnerable to homelessness.

Circumstances where a local authority may refuse to defer more charges within an existing deferred payment arrangement*

Refusal to continue to defer charges might happen when:

- the individual's total assets fall below the level of the means-test and they become eligible for local authority support.
- the individual no longer needs care in a care home.
- the individual breaches certain terms in their contract and the local authority cannot resolve the breach.
- the property becomes disregarded and the individual consequently qualifies for local authority support in paying for their care.
- the 'equity limit' is reached.

*(Source: https://local.gov.uk/sites/default/files/documents/guidance-deferred-payment-4c7.pdf)

Local authorities must give at least 30 days' notice if they decide not to defer any further charges for someone who has an active deferred payment arrangement in place. Repayment is still subject to the usual terms of termination and local authorities should provide the person with an indication of how their care costs will be met in future e.g. by the local authority (which may require a change of care home due to the fees the local authority is prepared to pay) or from the individual's income and assets.

Other ways a local authority may consider being repaid if a charge on the property is not possible or the property is not deemed to be suitable security

- Agreement to accept an assignation of a life policy to repay the costs on death.
- Agreement to accept a guarantor who has security against which the local authority can secure a legal charge.
- Agreement to accept a solicitor's undertaking in respect of the availability of future funds.

Please note, a local authority is not bound to accept any of the above 'alternative' means of security.

Suitability

Paying for care fees using a Deferred Payment Scheme may be suitable where -

✓ The individual doesn't want to sell their home to pay for care fees after the 12-week disregard period.

✓ The property is not sold within the 12-week disregard period and other funding options are not viable.

✓ A friend or relative is still living in the property, but they are not covered by a mandatory or discretionary property disregard.

✓ The individual is prepared to use the equity within their property to pay for care fees.

✓ The individual wants a cost effective 'bridging loan' to give them time and flexibility to sell their home when they choose to do so (perhaps to avoid a temporary dip in market valuation or to provide time to secure a targeted price).

Paying for care fees using a Deferred Payment Scheme may not be suitable where –

× The Local Authority is unable to secure a legal charge on the property.

× The owner doesn't want to see the debt created by deferred care fees growing.

× The owner and/or their family don't want to sell 'the family home' (although they should be made aware that the repayment of the Deferred Payment Scheme loan can be made by a third party if that is a feasible or preferable option at the time).

× The owner wishes to provide an inheritance (using a significant amount of property equity to do so).

× Alternative means of payment are available.

× Where another person (apart from the person in need of care) continues to reside in the property and requires security of occupation at the point the person in need of care dies.

× An existing equity release scheme is in place, as it may not be possible to join a deferred payment scheme.

Advantages

✓ The Local Authority will pay for the costs of care, so the person in care won't have to find the money straight away.

✓ There is a maximum rate of accrued interest that the local authority can charge.

✓ Debt is only built up against the value of the home for the time that the individual is in care. If they know they may only need to spend a short time in care, for example because a condition is terminal, this may be an option worth considering.

✓ In a rising market, the value of the house should continue to increase in value, effectively paying towards care costs.

✓ Because the house is not sold in this scenario, therefore not producing capital, individuals can continue to claim Attendance Allowance, Disability Living Allowance (the care component), or Personal Independence Payment (daily living component), if they are entitled to any of these benefits.

✓ Renting out the home may be allowed, and part of the rental income can then be used to pay care home fees. In such circumstances, the Deferred Payment Scheme debt may end up less than it would otherwise be, the property will be occupied, and tenants can pay utilities and council tax.

✓ If the property is rented out during a deferred payments agreement, the local authority should permit retention of a percentage of rental income. The local authority may offer other incentives to encourage the rental of properties.

✓ Sometimes the local authority might offer to place tenants from their housing list into the empty property and pay rent to the homeowner.

Disadvantages

× The ongoing cost of upkeep and maintenance of the house.

× The ongoing cost for heating and lighting bills so that the house does not look unoccupied.

× Keeping the house insured (potentially a problem if no-one is living there).

× Ongoing mortgage payments will still need to be made if a mortgage is outstanding.

× House prices could fall leaving less money to pay back the care fees.

× Deferred Payment Schemes do not provide a "no negative equity" guarantee.

× Interest that could have been earned on the proceeds if the house had been sold and the equity put into savings or investments, would be lost.

× If the client's health circumstances change and they move from the residential home they are in (and/or return home) the agreement will most likely end, and in such circumstances, the loan would need to be repaid within a few months.

Rental Income

If someone is moving into a care home and they own a property, one way for them to generate more income to put towards care fees may be to rent out their property. In some cases, this may cover the cost of care. In others it will at least contribute towards it. This can then be topped up from savings, pensions or other sources of income or realisable assets.

Suitability

Paying for care from rental income may be suitable where:

✓ The person does not wish to sell their property right now (e.g. a quick sale would make it difficult to realise the full value of the property).

✓ They own a second home which could be rented out.

✓ They have insufficient alternative income or assets to fund the full extent of care fees.

✓ They and their family are comfortable with rental as a main or partial care funding option.

✓ Their property is in a desirable area with good prospects for a healthy rental income.

✓ They are not totally reliant upon rental income to pay fees and have access to other sources of funding (e.g. back-up money set aside), given the possibility of rental income stopping unexpectedly or for periods of time between tenants.

Paying for care from rental income may not be suitable where:

× A person wishes to remain in their own home or have a partner or relative who would like to continue to reside there.

× There are no family members or trusted friends to support the individual in care. Even when a specialist property management company is used, the person in care will still be answerable for costs and ultimately may be the key contact and decision maker in the process.

× They will be reliant upon the rental income to fund a significant level of care fees with no other source of income or realisable assets.

Advantages

✓ It makes the residential asset work – delivering a potential continuous stream of income for an infinite period – eliminating the need to worry about running out of funds needed to pay for care.

✓ It keeps the property in the person's estate.

✓ The property remains occupied.

✓ Tenants pay utilities and council tax.

✓ It enables the home owner to benefit from increases in the value of the property.

✓ It can prevent the need to sell the property in a falling market.

✓ Letting the property and using all or part of the rental income to fund care can be advantageous if the family is keen to retain the property, or if a quick sale would make it difficult to realise the full value.

Disadvantages

× There may be periods with no tenant and therefore no income.

× The possibility of maintenance and/or tenant troubles – there will most likely be costs such as redecorating, replacements and repairs.

× Being a Landlord means responsibilities as a landlord that someone in care may not be able to meet (e.g. ensuring the property meets strict safety rules - ensuring that all furniture and furnishings supplied are compliant with the Furniture and Furnishings (Fire) (Safety) Amendment Regulations 1993, servicing all gas-related equipment and providing an annual gas safety certificate. Ensuring the electrical wiring in the property is safe and in good working order throughout etc).

× It can be time consuming, requiring the use of a letting agent (with related costs) or a family member or friend to manage the property.

× The net return may be insufficient to cover care fees and other costs.

× If renting continues for more than 3 years, the eventual sale of the home could give rise to capital gains tax liability.

× Rental income might push the person in care over the limits for local authority help or affect other benefits.

× Care home costs may rise faster than the rental income.

Consideration should be given to the use of a professional letting agent registered with a professional body such as ARLA (the Association of Residential Letting Agents) to provide additional consumer protection.

For more information call us on
020 3290 3110

Or email us directly at
ask@mycareconsultant.co.uk

My Care Consultant Services Ltd, International House, 12 Constance Street, London E16 2DQ, UK.
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