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Love later life

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1 Sources and

2 What is deliberate deprivation of assets?

Deliberate deprivation of assets means you have intentionally decreased your overall assets, in order to reduce how much you are required to pay towards your needs for care and support.

The local authority must show that you knew you may need care and support in the future when you carried out this action. It is therefore an evidence-based test of both foreseeability and intention.

Inheritance Tax gifting rules do not apply to social care. Any past disposal of assets can be considered as possible deprivation.

Other reasons for deprivation of assets

Annex E of the guidance states that deliberate deprivation should not be automatically assumed because *someone no longer has an asset and a local authority should ensure it fully explores this*

For example, if you pay off a debt that is not immediately due, this must not be considered as deprivation. This is why a local authority must consider explanations and any supporting evidence in each case before it makes its decision.

3 Deprivation and the financial assessment

A local authority can choose whether to charge you for services to meet your assessed needs under the Act. They may provide services in your own home or elsewhere such as a day centre, or you may need to live in a care home or supported accommodation such as sheltered housing.

If a local authority arranges your services, you are usually financially assessed to see if you must contribute towards your care costs. The local authority calculates your contribution by taking into account your income and capital. There is a general charging system under the Act for both residential and non-residential care, but it has some differences depending on the type of service you receive.

Annex E of the guidance states:

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. 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.

You may want to pass on savings or other capital to your children or others during your lifetime, but it can affect your eligibility for local authority funding assistance with care fees, as well as means tested benefits such as Pension Credit.

4 When is deprivation deliberate?

The guidance advises local authorities to understand that avoiding your assessed care charges may not be the only motive behind the disposal of eligible capital or income ahead of your financial assessment.

Unpredictable consequences of your actions

The nature of the rules on deliberate deprivation of assets mean it is not possible to predict with certainty whether the local authority will raise the issue during a future financial assessment. An authority will not usually advise you beforehand how it might treat a particular transfer at a later date. The rules relate to the moment your financial assessment happens.

Case study examples from Annex E of the guidance

Example of where deprivation has not occurred:

Max has moved into a care home and has a 50% interest in a property that continues to be occupied by his civil partner, David. The value of the property is disregarded whilst David lives there, but he decides to move to a smaller property that he can better manage and so sells their shared home to fund this.

could be taken into account in the financial assessment, but, in order to ensure that David is able to purchase the smaller property, Max makes part of his share of the proceeds from the sale available.

In such circumstance, it would not be reasonable to treat Max as having deprived himself of capital to reduce his care home charges.

Example of where deprivation of assets may be considered:

Emma gives her daughter Imogen a painting worth £2,000 the week before she enters care home. The local authority should not consider this as deprivation as the item is a personal possession and would not have been taken into account in her financial assessment.

However, if Emma had purchased the painting immediately prior to entering a care home to give to her daughter with £2,000 previously in a savings account, deprivation should be considered.

5 Deprivation of capital

Deprivation covers a broad range of ways you might transfer a capital asset out of your possession. Annex E of the guidance has examples that may be deemed to be deprivation of capital:

a lump-sum payment to someone else, for example as a gift

substantial expenditure has been incurred suddenly and is out of character with previous spending

the title deeds of a property have been transferred to someone else

assets put into a trust that cannot be revoked

assets converted into another form that are disregarded

Other courses of action, such as selling an asset for less than its true value, may also be seen as deprivation. The onus is on you to prove you no longer possess an asset.

Transferring a capital asset does not necessarily mean it is not taken into account in your financial assessment. If the local authority find that deliberate deprivation has occurred, the asset can still be '*notionally*' included in the calculation.

'*Notionally*' means that, even though you may not have that capital asset anymore, you are treated as if you do still possess it. See section 7.2.1 for more information about notional capital.

Annex E has examples of acceptable evidence to show you no longer possess a capital asset:

a trust deed

deed of gift

receipts for expenditure

proof that debts have been repaid.

6 Deprivation of income

It is possible to deliberately deprive yourself of income. For example, if you give away or sell the right to income from an occupational pension. It could be treated as deprivation if you are entitled to Pension Credit but have chosen not to claim it.

The local authority must determine whether deliberate deprivation of income has occurred. The guidance states they should consider:

was it your income?

what was the purpose of the disposal of the income?

the timing of the disposal - when the income was disposed of, could you have a reasonable expectation of the need for care and support?

As income can be converted into capital, deliberate deprivation can relate to the tariff income calculation in the financial assessment. The local authority can consider whether depriving yourself of a source of income has had the effect of reducing what you are required to pay.

If the local authority considers you have deliberately deprived yourself of income, they may treat you as possessing '*notional*' income, meaning the amount of income is still included in your financial assessment.

See section 7.2.2 for more information about notional income.

7 The consequences of deliberate deprivation

7.1 What is notional capital and income?

If deliberate deprivation is found, the local authority can decide to treat you as if you still possess the asset for the purpose of the financial assessment. This means treating you as having '*notional*' capital or income, even if you no longer actually possess it.

If you deprive yourself of an actual resource and convert it into something of lesser value, you are treated as notionally possessing the difference between the value of the new resource and the one replaced. For example, if the value of personal possessions acquired is less than the sum spent on them, the difference is treated as notional capital.

Local authority options to recover debt

A local authority can start County Court proceedings to recover a debt if you do not pay the amount due. This can result in having a legal charge placed on your property, which ensures they receive the outstanding funds when it is sold.

However, a local authority should only use this power after all other reasonable alternatives for recovering the debt have been exhausted. This requires appropriate engagement with you or your representatives to find out why the debt has accrued.

The local authority can no longer unilaterally decide to place a charge on your property in the way it could under previous legislation.

The following options are recommended in guidance before proceeding to County Court.

Negotiate an agreement. This can be through dealing directly with you or your representative to broker a solution. This can be instigated by the local authority, but in some circumstances, it may be better led by an independent person such as an advisor or solicitor. In some cases, local authorities must involve an independent advocate to support you to understand the options available.

Mediation. An independent third party assists you and the local authority to reach an agreement. This could be carried out by a professional mediation service but can be carried out by anyone not involved in the issue, such as an independent social worker or a local voluntary organisation. It is important to understand it is you and the local authority, not the mediator, who decide the course of action.

Arbitration. This involves an independent arbitrator hearing both sides of the issue and making a decision that resolves the issue. Local authorities should be aware that arbitration is usually binding on both sides and therefore they cannot usually take the case to court after the arbitrator has made a decision.

The duty to act reasonably

Local authorities are bound by the public law principle of acting reasonably at all times and they must also act in accordance with human rights legislation and the wellbeing principle in the Act.

In most cases, especially where a failure to pay the correct charges was inadvertent, there are other simpler routes to follow.

Any debt repayments must be affordable, based on your individual circumstances. Even if there is a debt, they need to consider whether it is appropriate to recover it. There may be many complex issues to take into account.

In deciding how to recover a debt, the local authority should consider all the circumstances of the case before deciding a course of action. For example, was it deliberate avoidance of payment or due to circumstances beyond your control? This could be because you have developed cognitive difficulties leading to a lack of mental capacity.

The authority should concentrate on how to avoid you getting into debt in the first place. For example, by giving you a clear explanation and written information on your responsibilities for paying for care and support at the outset of any arrangements they make for you. The local authority has a duty to maintain adequate records relating to any debt and any recovery action they take.

If you lack mental capacity

If you are assessed as lacking mental capacity to deal with the debt, the local authority must act in line with the *Mental Capacity Act 2005*. This means they must establish whether there is someone with legal authority to act on your behalf, such as a Lasting Power of Attorney or deputy, and if there is, engage with that person with a view to resolving the debt.

If no one has authority to act for you, the local authority should explore whether someone who knows you, such as a family member, is willing and able to acquire legal authority. If there is no one willing and able to do so, it may be appropriate for the local authority to apply to the Court of Protection to be appointed as your deputy. For further information, see section 6 of factsheet 22, *Arranging for someone to make decisions on your behalf*.

The local authority should not try to recover debts while there is no one with legal authority to act for you, for example by sending letters demanding payment. Instead, they should wait until legal authority is in place and then engage with that person.

9 The information and advice duty

The local authority is required to provide information and advice to everyone who needs it in their area. This must cover the following:

the local care and support system and how it operates

the choice of types of care and support

the choice of providers available to you

how to access the care and support available

how to access independent financial advice on matters relevant to the meeting of needs for care and support, and

how to raise concerns about the safety or wellbeing of someone who has needs for care and support.

For further information about independent financial advice, see section 12 of factsheet 43, *Getting legal and financial advice*.

10 Challenging local authority deprivation decisions

If you disagree with a decision by the

Useful organisations

Carers UK

www.carersuk.org

Telephone 0808 808 7777

Provides information, advice and support for carers, including information about benefits.

Citizens Advice

www.citizensadvice.org.uk

Telephone 0800 144 8848

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Equality Advisory Support Service (EASS)

www.equalityadvisoryservice.com

Telephone helpline 0808 800 0082

Provides information and advice about the *Equality Act 2010* and human rights.

Local Government and Social Care Ombudsman

www.lgo.org.uk

Telephone 0300 061 0614

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru Advice

www.agecymru.org.uk

0300 303 4498

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 124 4222

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