



**Caesar & Howie**  
The Central Scotland Law Group

# Planning for Care Costs

The Options in Scotland

For more information or to speak to one of our trained advisers please telephone our team on 0800 005 1755.

**The Caesar & Howie Group**  
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## INFORMATION SHEET FOR CLIENTS ABOUT CARE COSTS

We are all living longer which is great. However many of us in our latter years will be managing illness or frailties and will need care – either in our own homes or in a residential care home. Care can be expensive and how to pay it is a worry for many people. Others worry about losing assets they may have built up in their lifetime. Whether highly motivated about potential care or not – thinking and planning ahead around this issue is just commonsense.

### CARE COSTS

If you go into a nursing home, you will be assessed to establish whether you are able to pay your own care costs or whether care will be provided to you without payment. Care costs are substantial. Consequently any reliance on care for a long period will be very significant financially. The value of your house will be included (except in certain limited circumstances such as the house still being occupied by your spouse or an elderly relative). The local authority financial assessment form will ask whether you have made any gifts within the past 6 months and whether you have disposed of the house you were formerly living in prior to entering the nursing home even if that disposal was many years ago.

### CAPITAL AND THE VALUE OF YOUR HOME (INFORMATION)

If you own your home then it will usually be counted as capital 12 weeks after you move permanently into a care home. The value of your home will not be counted as capital if certain close relatives still live there.

If you own capital (including your home unless exempted as above) over the limit set from time to time by the Scottish Government you will have to pay the accommodation costs relative to your care.

The capital limits can be found here

<http://www.careinfoscotland.co.uk/topics/care-homes/paying-care-home-fees/capital-limits/>

From these limits you can see in practical terms that any householder will have to pay for their own accommodation care costs.

If you are assessed as needing nursing home or residential care, you will be asked to claim any Income Support benefits or Pension credit you may be entitled to and these will be taken into account in a means test to ascertain how much you can afford to pay. Normally you will have to pay all your income towards the fees, less a small amount per week you can retain for personal expenses. You will receive your free personal care and nursing care allowances as appropriate to set against any fees you may have to pay.

BE AWARE THAT IF YOU GIVE AWAY MONEY OR ASSETS AND THE LOCAL AUTHORITY TAKE THE VIEW THAT THIS WAS DONE PRINCIPALLY TO ENABLE YOU TO QUALIFY FOR HELP WITH CARE COSTS THEN THE LOCAL AUTHORITY CAN LOOK BACK AT THE TRANSACTION, EVEN IF IT TOOK PLACE MANY YEARS AGO, AND THE VALUE OF THE HOUSE, OTHER ASSETS OR CASH GIVEN AWAY CAN BE TAKEN INTO ACCOUNT AS NOTIONAL CAPITAL WHEN ASSESSING YOUR LIABILITY TO CONTRIBUTE TO THE COST OF YOUR CARE. HOWEVER – IMPORTANTLY - AS THE LAW STANDS NOW THE COUNCIL CANNOT RECOVER THE ASSET FROM ANY THIRD PARTY NOW OWNING IT. GIVING AWAY ASSETS CAN ALSO GIVE RISE TO OTHER ISSUES RELATIVE TO INHERITANCE TAX (IHT) And, PRE – OWNED ASSET TAX (POAT), AND POSSIBLE CAPITAL GAINS TAX PAYABLE BY THE ASSET OWNER. A REVIEW OF ALL THESE ISSUES SHOULD BE UNDERTAKEN BEFORE ANY STEPS TO DISPOSE OF ASSETS ARE TAKEN.

## OPTIONS

It may not be sensible to dispose of assets. Retaining them and using them to buy the best possible care may be the preferred option of many people. However if having considered all the options someone wishes to take steps to shelter assets, there are four options which **may** prevent the value of your home being taken into account in care cost assessments.

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### OPTION 1 – HOME GIFT

Give your house to your children, retaining the right to live in the house. The date of a gift of a house is the date of registration of the disposition transferring ownership in the Land Register. If an application for assistance with care costs is made within 6 months of the date of transfer of assets, the assets may be clawed back, or the recipient made liable for the cost of the giver's care.

If the gift is made outwith the six month period, and for other stated purposes, it may not be taken into account for assessment of care costs. As a rule the longer the period between the gift having been made and the care assessment arising, the less likely it would be that the Local Authority could prove that the gift was made to avoid payment of care costs.

This transfer or gift can be done in a number of ways, but the way which usually suits most people is

- A. A Disposition (transfer of ownership) of the property with a reservation of a liferent (keeping the right to live there for the rest of your life) and
- B. A Power of Attorney in favour of someone reliable, to enable the liferent to be given up in future if you no longer need it.

A number of other issues arise. If the house in which you live is owned by others, any one of the owners has a right to demand that the house be sold and the proceeds divided. They may not wish to do so but may be forced to do so in the event of personal bankruptcy or in the event of a divorce as the part owned may be taken into account in the divorce settlement or that share in the house may pass to someone else if the owner were to die. If the house is sold for whatever reason, capital gains tax may arise as the house is not

the principal private residence of the owners of the house. All of these factors must be carefully considered before proceeding. Please ask about **Homegift** for further information.

To protect your own right to occupy the house, it may be necessary to retain a Liferent or right to occupy the property rent free. IHT and POAT, if applicable, may make this unattractive. In addition, one of the effects of such an agreement may be to reinforce the impression that the gift was not in fact a genuine and outright gift but rather an attempt to avoid nursing home fees.

For recipients of a "Homegift" as described above, there are two potential problems. Firstly, the possibility that they may have to pay care costs or sell or mortgage the house to pay care costs or convey back the house if the DWP successfully establish that the transaction only took place to enable the giver to qualify and it was within six months before benefit was claimed. Secondly, there is the potential Capital Gains Tax problem. Please ask about this if you think it may affect your situation.

In summary, this option may work but it is not possible to know for certain until the assessment is being made. This can be a complicated exercise, especially if it involves Inheritance Tax Planning, but it is something that you have to do while you are well and in full possession of your faculties.

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#### OPTION 2 – TRANSFER OF HOUSE INTO TRUST

A Discretionary Trust can be set up and the house transferred into the Trust. This puts ownership of the house beyond your own reach and therefore the asset does not belong to you. At the same time your own right to occupy the house is protected as the Trust will not become bankrupt, divorced or die. There are various other benefits from completing such trusts and these may include taking the property out of an assessment for care costs, therefore avoiding the need for it to be sold. However Capital Gains Tax may well arise on a future sale of the property and the local authority might seek to attack the arrangement as a ruse intended primarily to try to avoid nursing home fees as in Option 1. **Please ask about Discretionary Trusts** if you think one may benefit you. IHT and POAT, if applicable, may make this unattractive.

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#### OPTION 3 – LIFETIME MORTGAGE

Lifetime mortgages have become more common as a means of releasing funds prior to your death to supplement your income after retiral, to pay for luxuries such as cars or holidays or, to release funds to be gifted to your children. Lifetime mortgages are particularly popular with individuals whose wealth is mainly tied up in their home but who do not wish to sell their property as they are designed to enable you to continue living in your own home without having to pay mortgage interest and at the same time to release monies early. There are various schemes available. As this is a commercial transaction, it is unlikely to be attacked as depriving you of your own assets in order to qualify for assistance with care costs.

As always there are disadvantages. When the house is sold part or all of the proceeds will be payable to the lender and therefore will not pass to your children or be available to you.

On the other hand the money released by the lifetime mortgage is immediately available and can be spent or gifted so long as the purpose of any such gifts is not to reduce your assets in order to qualify for assistance with care costs. Subject to that, this option should work to diminish the assessment.

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#### OPTION 4 – IMMEDIATE CARE (OR NEEDS) ANNUITY (CARE BONDS)

Another possible measure is to take out insurance to cover the cost of your care. In the event of going into a nursing home, the insurance would pay a regular stream of income for the rest of your life offsetting the costs of care and meaning that no assessment of your means needs to be carried out. The premium on such insurance can be paid a lump sum at the point of entering care. The premiums are, of course, dependent upon the age and state of health of the applicant. For an older person in poor health, this option could be particularly cost effective.

The Inland Revenue have stated that the amount payable by the annuity can only be equal to or less than the actual charge made by the care home, that there cannot be a surplus to the estate, should there be a reduction in the home care fees charged or in the unlikely event that the individual returns to their home to look after themselves.

The usual method of purchase is a single lump sum payment in exchange for an income to cover all or part of the costs of long term care for the life of the individual. It is also possible to have different options depending on the circumstances and assets where the immediate needs annuity can be deferred.

#### **TO SUM UP.**

Option 1 can be effective against a care cost assessment and option 2 is at the moment proving effective for the same purpose. However we cannot say for certain that assessments will be made in the future under the same legal and practice framework as they are currently being made. We cannot therefore say for certain that both options will always work in the future. For that reason clients using either of these options have to accept there is a certain risk involved. In both options 1 and 2, the longer the passage of time before the assessment, the better.

For care costs there is no one size fits all solution. Each family should consider care costs in their forward retiral planning, take advice, and choose whichever route which best suits their needs and wishes.

Please note that we do not advise on tax matters unless specifically agreed in our terms of engagement letter and clients must take their own advice on tax matters. We are of course happy to refer you to tax advisers, and to co-operate with any tax advisers you instruct.

We understand this is a complicated area and requires careful thought.

If you are concerned about this or would like to find out more please phone Sarah Patrick or Lesley

Cunningham on 01506 815900.