LONG TERM CARE IN A CARE HOME SETTING

Circe Welfare Officer role

As people live longer the demographics of Circle membership mean that in time more Brothers and spouses will come to need to think about Long Term *Care* outside of the home setting. Improving life expectancy does not mean that all those extra years of life expectancy are going to be healthy years. Morbidity, poor health, and loss of mobility mean that the prospect of *Care* will be more prominent in later life planning. Not a prospect many like to think about in their 50s and 60s. However, as someone ages it becomes more of a consideration. Often the first brush might be when resolving the problems for their parents not themselves!

More so of a problem, given self-funding and the surprise for many that Local Authorities not NHS are responsible for *Care* and that the assessment they undertake might mean no funding comes from the Local Authority until resources fall to a level where they then step in! If that were not enough, potentially losing the family home to self-fund *Care* could see a potential inheritance disappearing in a puff of smoke!

So, the first six points to be aware of are: -

- social *Care i*s rarely free - the amount payable (self-funding) depends on the level of need, and the outcome of a financial means assessment

- very early assessment of needs from the Local Authority is essential to decide the level of *Care* needed and to get into the queue for any Local Authority funding in time

- quickly followed by a financial means assessment taking into account income, savings and property owned by the person needing *Care* and how much the person needing *Care* will need to contribute towards the cost of their *Care* and support
    - if eligible for funding support, the Local Authority could pay some or most of the fees

- *Care* home fees vary depending on the area, the individual care home itself, plus the person's own personal financial circumstances
    - on the Age UK website there is a cost of Care And eligibility calculator

- in some circumstances NHS funding will be available and in England it is paid at the same rate

- all too often Attendance Allowance has not been claimed previously and so it mans a scramble to claim it as it will be assumed as a contributing income towards the cost of *Care*

The problem is most acute when the survivor comes to need *Care*. While the one spouse continues to live in the family home when the other is in a *Care* Home the family home cannot be considered for the means testing to establish what if anything the Local Authority will contribute to the cost of *Care* for the person needing care. Of course, any second property can be considered automatically.

Therefore, given the way the system operates and the general lack of knowledge by Brothers and spouse all too often it is a car crash waiting to happen!

Of course, someone with considerable wealth and income might not be faced with the same problems as others. They could well afford the quality of *Care* they desire. If there is a spouse then adequacy for the survivor should not be overlooked!

So, encouraging forward planning taking this into account is to be encouraged for: -

- those recently retired to plan ahead including this in their financial plans
- more urgently for older Brothers, spouses, and Widows closer to the point of this being an intractable issue due to deteriorating physical or mental health

The remainder of the factsheet sets out the broad principles in terms of financing *Care* in a *Care* Home not the home setting.

This will enable the Circle Welfare Officer to have a broader understanding of the issues and in the appropriate circumstances can make an intervention or nudge a Brother, spouse, or Widow to consider and then act as they see fit.

The details that follow relate to England and the situation is somewhat different in other parts of the United Kingdom (UK). For other parts of the UK a very useful source of information and insights are Age UK and the appropriate Citizens Advice Bureau for that part of the UK.

The relevant Upper and Lower Capital Limits used for the means tests can be found on the Age UK website or a Local Authority website to avoid out of date information being shown in this factsheet. The Personal Expense Allowance can be found there too.

This factsheet does not cover other aspects concerning *Care* provided in the person's own home or the selection of a *Care* home if self-funding.

For more insights on these aspects a good source of information is the Age UK website

Care assessment procedures

Care needs assessment

Before anyone can receive any financial assistance with the cost of *Care* home accommodation, the Local Authority must assess their *Care* needs, decide that they meet the eligibility criteria and agree a *Care* and support plan, which identifies residential *Care* as meeting their needs.

NHS funding

If *Care* needs are primarily health-based, the NHS arrange and pay for the *Care* under NHS continuing healthcare (NHS CHC). If are eligible for NHS CHC, the *Care* home placement will be free. When assessing needs, the Local Authority must refer the claimant to the NHS if it appears they may be eligible for NHS CHC.

If they do not meet the criteria for NHS CHC, but require nursing *Care*, the NHS pays a contribution towards the cost of the nursing *Care* directly to the nursing home. This is called NHS-funded nursing care (NHS FNC).

Means test

A means test must then be promptly carried out to see whether the person should contribute to the cost. If eligible for funding support, the Local Authority must calculate the overall cost of *Care* and, using the means test, how much the person needs to contribute to the overall cost from their own financial resources. The Local Authority must ensure that the overall cost figure it calculates, called the 'personal budget', is high enough to meet the cost of at least one suitable *Care* home.

Both personal **income and capital are considered** in the means test. Property is one of the capital assets potentially being eligible for inclusion in the residential *Care* means test.

A Local Authority should only look to include eligible capital and income. The value of the family home is not included in the means test for any temporary stay in a *Care* home. Furthermore, the family home must be disregarded where a relative meets the qualifying conditions and has occupied the property as their main or only home since before the individual entered the *Care* home and continues to do so.

Eligible relative is defined as:

- a partner, former partner, or civil partner, except where they are estranged
- a lone parent who is their estranged or divorced partner
- a relative (quite widely defined) or member of the family of the person going into *Care* who is: -
    - aged 60 or over
    - a child of the person going into *Care* aged under 18
    - incapacitated

They must have been occupying the property before the person went into the *Care* home. The disregard lasts until the situation changes, at which time it may be included in the financial assessment.

Statutory guidance provides Local Authorities with a discretionary power to disregard the value of a property where it is the home of someone not covered by the above definition. It does not have to exercise this power but should give full consideration to a request to do so.

The residential property could possibly be disregarded when a qualifying relative moves into the property after someone has entered a *Care* home. Where this happens, the Local Authority will need to consider all the relevant factors in deciding whether the property should be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property can be defined as a relative's main or only home in this context.

A Local Authority has discretion to choose to apply the disregard when there is a sudden and unexpected change in the person's financial circumstances.

If the spouse, partner, or other relative lives in a disregarded property, they may at some point wish to move, perhaps to somewhere smaller and more manageable. However, the existing disregard only applies to the original property and once it has been sold the share of the proceeds of sale for the person in a *Care* home could be considered in the financial assessment.

Charging basis - Property and its treatment

Property can be a complicating factor in determining if it is taken into account and its value..

- There is a 12-week period disregard for property where someone enters a *Care* home on a permanent residential basis when the Local Authority is providing assistance with the placement

- If a property is not disregarded, its value will be assessed in the means test at its present market value, less any mortgage or loan secured on it, and less 10% of its value where there would be expenses involved in selling it

- If the person needing *Care* and the financial assessor agree that, after deducting any relevant amounts, the total value of the property is significantly more than the Upper Capital Limit, it is not necessary to obtain a precise valuation. However, the Local Authority should bear in mind how close the person is to the Upper Capital Limit when deciding whether to obtain a precise valuation and advise about options such as deferred payments

- In relation to residential property, it is the *Care* resident's actual share or beneficial interest that is taken into account in the calculation
    - Beneficial interest in a property, treated as having a beneficial interest in a property if the person in *Care* would be entitled to a share of the proceeds if it were sold. The Local Authority can decide if the person is beneficially entitled in possession to a share which is less than or more than an equal share of the whole beneficial estate

- Where a *Care* home resident is joint owner of a capital asset, for example property, the Local Authority must base its valuation on the sale value of the resident's beneficial interest to a 'willing buyer' on the open market at the time of the means test and that willing buyer could be a Local Authority

- It might be necessary to obtain a precise valuation of the residential property

If the property is going to be included in the permanent Care home means test, the Local Authority must ignore it for the first 12 weeks of *Care* to give space to decide what to do with the property and paying fees. For example, whether to enter into a deferred payment agreement with the Local Authority.

If the property is sold in the 12-week period, the disregard ceases to apply from the date of sale and the proceeds are counted as capital. Consideration can be given to arranging a deferred payment agreement during this time to ensure a smooth transition after 12 weeks. If the stay was initially temporary, the 12 weeks run from the date it is decided the placement is permanent.

Likely to qualify for help with fees from the Local Authority for the 12-week period if other capital assets are under the Lower Capital Limit.

Deferred payment agreements

If the home is included in the means test, it may be possible to delay selling it to pay *Care* fees by entering a 'deferred payment agreement' (DPA) with the Local Authority. This is where the Local Authority makes a legal agreement to provide financial support for the *Care* costs, on the condition they will be repaid from the sale of the property later. This usually involves the Local Authority placing a legal charge on the property with the Land Registry to secure repayment.

A DPA could last until death, after which the costs will be paid from the Estate. Or the DPA could be a temporary arrangement to give time to sell the home. The Local Authority must offer this option if certain qualifying criteria are met.

The local authority must offer a DPA if the person meets **all** the following criteria: -

- the local authority agree you have care needs that should be met through a Care home placement, and
- they have a legal or beneficial interest in a property that is their 'main or only home', and
- they have less than or equal to the Upper Capital Limit in capital, excluding their share in the value of their own home, and
- their own home is not disregarded in the financial assessment; and
- they agree to the conditions in the deferred payment agreement

The person requiring the DPA must be able to provide adequate security, so the authority are confident you can repay in the future. They must accept a first legal charge against the home on the Land Register as adequate security. If this cannot be done, the Local Authority have discretion to accept other forms of security. The Local Authority must discuss the option of a DPA if the eligibility criteria are satisfied.

The person needing Care must request a DPA – it cannot be forced upon them. The Local Authority must consider a request and decide if it is viable before agreeing to it. The Local Authority have a power to refuse a DPA once it has considered the situation. This can be, for example, if it is unable to secure a first charge on the property, or the person does not agree to the terms and conditions of the agreement.

Two financial tests in more detail

There are two basic tests that are applied to identify who will be a self-funder for their *Care* costs:-

- Capital test
- Income test

Capital test limits

Where savings and assets owned by the person needing *Care* exceeds the Upper Limit then the person is deemed to be self-funding for *Care* as shown below. That is the simpler situation and the one which best suits the Local Authority given their budgetary pressures.

It becomes more complicated after that as a notional income assessment is made meaning that if the notional income is not matched by actual income it will point to the sale of assets until the capital falls below the Lower Capital Limit.

Capital	**Self-funding**
Above the Upper Limit	Must pay full fees – self-funding
Between Upper and Lower Limits	Contribute from income included in the means test, such as pensions, plus an assumed ('tariff') income based on capital between the Lower and Upper Capital Limits. The Local Authority pay the remaining cost of *Care*
Below the Lower Limit	No longer pay a 'tariff' income based on eligible capital but must continue paying from income included in the means test. The Local Authority pay the remaining cost of *Care*

The current Lower and Upper Capital Limits can be found on the Age UK website.

If capital, such as savings, is held jointly then the joint owners are generally treated as having equal interests in that capital at the time of the means test. There is an exception for jointly owned property, which is calculated in terms of the present sale value of the person's beneficial interest. Beneficial being a legal term with particular significance in this matter. This means the part owned by the person needing *Care* could be sold with the proceeds of sale going to them.

Income test limits

If savings and assets are less than the Capital Test Upper Limit then an income test applies on savings and assets falling between the Upper and Lower Limits. The lower capital limit is the point at which capital below that figure is disregarded in the means test.

Where assets are between the Capital Test Upper and Lower Limits a weekly **tariff income** figure of £1 for every £250, or part thereof, of assets between those two levels will be calculated and considered by the Local Authority support.

Capital that is disregarded indefinitely includes: -

- the surrender value of life insurance policies or annuities
- the value of funds held in trust or administered by a court that can only be disposed of by a court order or direction and which derive from a payment for personal injury, including compensation for vaccine damage and criminal injuries
- the value of certain types of investment bond with a life assurance element

Certain types of income, such as money from certain disability benefits (mobility component of Disability Living Allowance or Personal Independence Payment), are ignored in the means test. The Local Authority will usually make its calculations on the basis that any income that is available from benefits such as Pension Credit and Attendance Allowance is being claimed so it is important to ensure that application has been made for any possible benefits.

Local authorities may require a contribution towards *Care* costs from a person's income, but the person in *Care* has a right to retain a proportion of their income, which is called the Disposable Income Allowance (DIA). This is a fixed amount of a person's income which the Local Authority must allow someone to retain (if they want to retain it). The Local Authority can require someone to contribute the rest of their income but must allow them to retain as much of their Disposable Income Allowance as they want to.

Half of a private or occupational pension must be ignored by the Local Authority (but will not be ignored for Pension Credit purposes) where the pension is received by a married person or a civil partner in a *Care* home, provided this amount is paid to his or her spouse or civil partner –and the spouse or civil partner does not live in the same residential or nursing *Care* home.

The Local Authority must let the person in Care you to keep a Personal Expenses Allowance (PEA) and that cannot be used to meet the cost of meeting eligible needs if a permanent or temporary *Care* home resident. It is for their own personal use.

Local Authorities have a discretionary power to increase the PEA. The statutory guidance has illustrative examples to assist Local Authorities in the use of this discretion. One relates to where one of a couple goes into a Care home, their property is disregarded in the financial assessment, and they have ongoing housing costs.

Deprivation of an asset

If someone gives away assets or otherwise dispose of them to put themselves into a more favourable position to gain Local Authority assistance with their *Care* home fees, the Local Authority may be able to assess them as if they still had those assets. Statutory guidance allows a Local Authority to use its discretion when assessing the timing and motive for the transfer of eligible capital. The statutory guidance also confirms that eligible capital can occasionally be disposed of for justifiable reasons other than deliberate deprivation. This approach can be taken to capital and income.

It would not be reasonable for local authorities to treat a *Care* home resident as having deprived themselves of capital on purpose if they make part of their share of the proceeds from the sale of the family home available to their spouse or civil partner to buy a more suitable property.

Top-up fees

If the choice of *Care* home accommodation costs more than the Local Authority is willing to pay, someone else can make up the difference between that figure and the Care homes fee. This is known as a third-party top-up fee.

Take financial advice before deciding upon this course of action. Consider: -

- what would happen if circumstances changed and could no longer afford the top-up fee?
- *Care* home fees often increase every year but the Local Authority does not always increase their funding by the same amount. Therefore, the amount of top-up fee could be open-ended with an increase to cover the difference between the two figures

Occasionally a charity may agree to pay top-up fees. Contact Turn2us to find out if might be eligible for help.

If it is in prospect that it will not be possible to continue payment of the top-up fee it is essential to contact the Local Authority and Care home at the earliest opportunity.

Guidance and advice

By this point the inevitable question has arisen. ‘Is professional advice’ necessary?’

Too many individuals either never pay attention to this because ‘it is not going to happen to me’ or are totally oblivious of the consequences leaving close family or friends to try salvage the situation in their hour of need.

Sound professional and regulated advice as with Inheritance Tax planning can pay dividends. Some people may worry about Inheritance Tax but if Care needs arise and with self-funding costs running at anywhere in the region of say £40,000 to £60,000 a year a potential Estate can be quickly run down with Inheritance Tax never materialising.

Sound planning can mitigate some of the potential financial damage.

Sources of help and information

Age UK
National Charity. Website with information in relation to finding and arranging care, paying for care, housing options, problem with care, help for carers, looking after a loved on
https://www.ageuk.org.uk/information-advice/care/
Select 'Information and Advice' and then within that section select 'Care and support'

Factsheets on their site that can be downloaded: -

- How to find a care home
- Deprivation of assets in social care
- Paying for care in a care home if you have a partner
- NHS continuing care and NHS funded care
- Paying for permanent residential care

Attendance Allowance
https://www.gov.uk/attendance-allowance Helpline 0800 731 0122 Textphone 0800 731 0317

Financial Conduct Authority
Register of Independent Financial Advisers to check if an Adviser id Registered and Regulated. A consumer safeguard
https://register.fca.org.uk/s/

Money Helper
https://www.moneyhelper.org.uk/en/family-and-care/long-term-care

STEP
A global professional association for those advising families across generations. Their mission is to inspire confidence in families planning their assets across generations by setting and upholding high professional standards, informing public policy, promoting education, and connecting practitioners globally to share knowledge and best practice. On website can search for STEP members and firms
https://www.step.org/

Turn2Us
National charity that helps people in financial hardship to gain access to welfare benefits, charitable grants, and support services
https://www.turn2us.org.uk/

Source of information: Age UK

The information contained in this factsheet is intended for general guidance only and it does not constitute advice