

Elderly support



A guide to care home funding

▶ Understanding what funding options are available

Nash&Co
Solicitors

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Introduction

Here at Nash & Co Solicitors, we will help you support the people around you who really matter; those who you may be looking after. The law can be complicated at the best of times and that is why we are very approachable and understanding.

Our aim is simple; to understand your circumstances and to provide the best advice to achieve the best outcome – and we'll do this while supporting you at all times.

Talking to lawyers can often be intimidating. That's not what we are about at all. We pride ourselves on being sensitive and understanding, friendly and approachable. We are here to help where we can, and will support your loved one and you as a carer, to navigate the challenges that you face and to get the best possible outcome.

How is funding worked out?

There is an order that funding is worked out for people either going into care or having domiciliary care. Care in hospital is free at the point of delivery. But what about care in the home, supported living or care in a care home?

There are steps to go through to work out who pays and how much and they are set out here.

NHS Continuing Care Funding

Before funding for anything else is considered, an assessment for NHS Continuing Care Funding (CHC) should be undertaken. If this step is successful, the NHS should pay for the whole of the cost of the assessed needs of care, which in practice is usually the entire cost of full-time care.

CHC funding is granted based on the person's needs, when those needs are primarily healthcare needs as opposed to social care needs, such as washing, dressing or toileting.

This starts with a process known as a "Checklist", which is a shorter version of the full assessment of needs. A Checklist can be completed by any healthcare professional, including a social worker. If the Checklist process is successful, then the next step is the completion of a Decision Support Tool (DST) by a multi-disciplinary team. This should be done within 28 days of the Checklist, but in practise sometimes is not.

The DST should be completed with either the person or their family, if they are not able to participate and once this document is completed, the next step is recommending whether that person is eligible, which is then considered again by a Panel of health and social care professionals. Once this final decision process has been undertaken, the decision should be communicated in writing.

This decision can be appealed, and the process of appeal should be communicated in the decision letter.

If the person is eligible for CHC funding, the process in relation to fees should stop there, if not the next step is to establish if that person is eligible for Local Authority funding.



Local Authority Funding

The Local Authority has a statutory obligation to provide support and advice for anyone in their community with eligible needs.

Whether or not they also provide financial support is means tested. When someone is either in care or their own home, the first stage starts with how much assessable capital have they got?

If they have over £23,250, they will have to fund their own care. The person needing care or their relative can then commission care in a way that they wish, as they are paying for it, or can choose not to have care as might have been assessed as being needed if they choose.

If they have capital under £23,250, then there is a means tested process to go through and the Local Authority will look at both capital and income. There is a similar process of means testing when people are living in their own home, however, below is the process if the person is living in a care home.



A place that can meet that person's needs

A key part of looking at care placements is around whether that place can meet the person's needs. The Local Authority have a statutory obligation to comply with the provisions of the Care Act 2014, which includes a requirement to "promote an individual's wellbeing".

Therefore, the care plan of that a person's needs will need to be shared with any potential care providers, to see if they can

meet their needs. The care plan should include provisions around wellbeing, as well as things like washing, dressing and eating. It is therefore worthwhile ensuring that lots of detail around the person's needs is put into the care plan, including for example ensuring that they are placed close enough to friends and family to facilitate their ease of visiting and reduce the risk of loneliness.



Capital

Capital is the savings that the person has in their bank account, the property, their investments etc. The starting point is that if a person has over £23,250 (2021/2022) in capital, then they must fund their own care from their assets. This limit has not been changed for years. It is once a person's capital falls below this limit that the questions about income also become relevant.

Since the starting point is savings of £23,250, it is important to know that there are some important exemptions to this rule, which will reduce the value of the capital that is assessed. Although some assets are exempt, it is not possible to convert them from an assessable asset to an exempt one, if the person knows that they are about to need care, as this is considered a deprivation of assets. Under the Care Act 2015, the Local Authority has powers to pursue an asset that a person has deprived themselves of for a period of 6 years after the date of the gift. The same is true if the person gives it away, it is also considered a deprivation of assets.

The key exempt assets: any investments with an insurance element (you should speak to an independent financial advisor about these products), your personal possessions and your property if certain conditions apply. The property is exempt if certain people are living in it: your spouse / partner, a relative over the age of 60, someone with a disability or a

child that the person is financially responsible for. The property is also exempt if the person is not permanently admitted into care.

If the property is owned jointly with someone living there, then there is case law that says that if the other person doesn't want to or need to sell the property, then the value of the half share is nominal, as they can only sell their half share and it is not an attractive proposition to the open market!

The law is complex when the property is jointly owned and the other owner is not living there, as the local authority can apply to the court for an order for sale. If this is your situation, please speak to Hilary Cragg at Nash & Co.



Income

If someone is in care, the person is allowed to keep their personal expenses allowance (PEA), currently £24.90 per week (2021/2022), if the person needs to keep more of their income, they can ask the Local Authority to exercise their discretion to allow them more.

This usually covers toiletries, new clothes and podiatry and any other ancillary costs. The rest of their income (apart from some needs-based benefits) are used towards the cost of their care. The first part of the care fees is then paid by the person themselves from their income, excluding PEA. The Local Authority will then pay the next bit of the fee, up to the weekly Local Authority rate. This "rate" is worked out on the person's needs, as the Local Authority will have a series of different rates depending on needs, so this would require an assessment of needs, as well as an assessment of finances.

If the chosen care placement's costs are more than the Local Authority rate, then there is a "third party top-up", but this is only payable if there is an alternative place that can meet the needs of the person. If there is no alternative or the alternative is more expensive than the standard rate, then this set of circumstances would require the Local Authority to increase their rate, however they might also insist that the person is moved to alternative cheaper accommodation once a place at the "standard rate" becomes available.

In order to move someone, the Local Authority should risk assess the move and the likely benefits and disadvantages of doing so, they are able to take account of their budgetary requirements as one of the considerations when looking at whether to move the person or not.

If the person is married or has a civil partner or partner and the other spouse, civil partner or partner has limited income and remains in the family home, then they can ask the Local Authority to exercise their discretion to allow the spouse, civil partner or partner to be given some of that income for their own use, to prevent them from living in abject poverty and should be allowed to have half of any occupational pension. The spouse, civil partner or partner would need to apply for means tested benefits in their own right as well.

Property

If the person owns a property but has not yet sold it and it is an available asset with which to fund care fees, then they can ask the Local Authority for a deferred payment scheme, where the Local Authority will pay for the care, but will accrue the debt, with a charge against the property and once the property is sold, the debt must be repaid. This bridges the gap in any shortfall of funding when the person does not have savings as well as their home.

If the person owns multiple properties, then the properties that are not their principal residence are assessable assets for the purposes of funding their care and if the capital is needed, they will be expected to sell them to fund their care.



Area of contention

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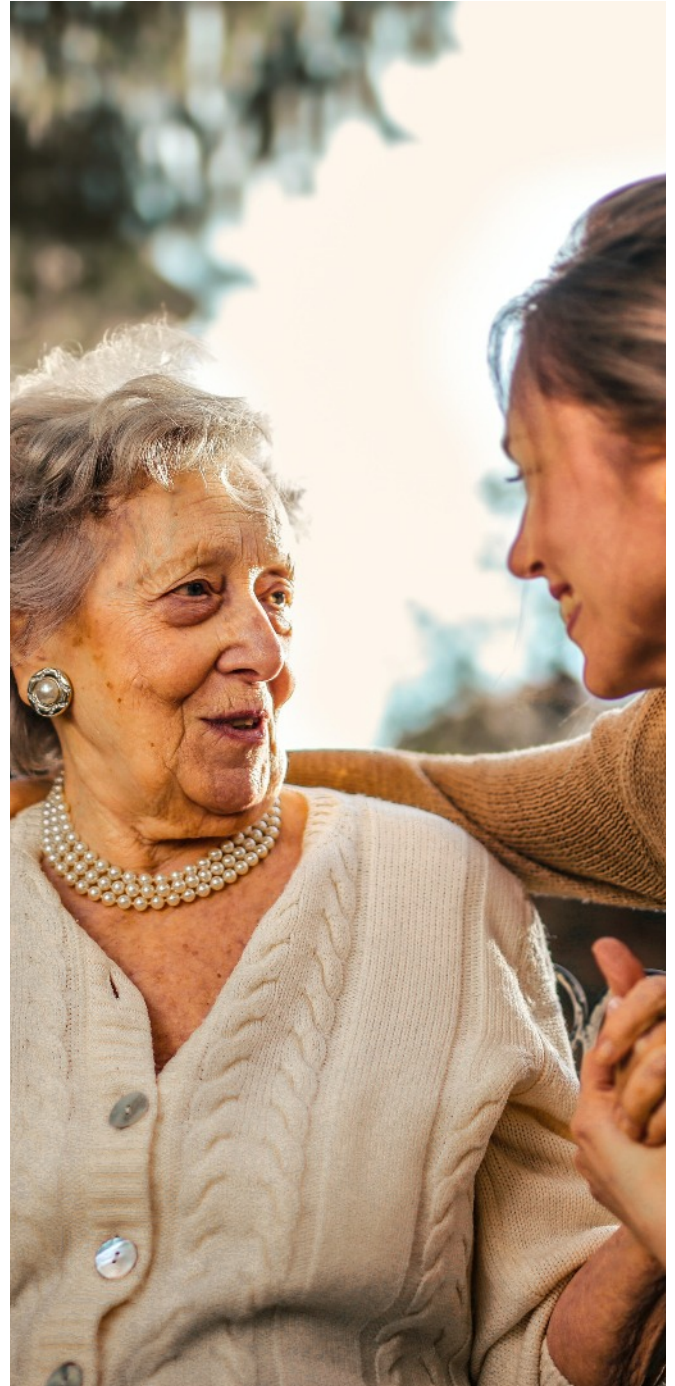
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Discharge / Assessment Funding

The situation often arises that someone who is in hospital is no longer clinically acute, but still needs support whilst they recover from whatever the health issue was that put them in hospital in the first place. In order that the person does not "bed block", they can be discharged to a care home for a period of a few weeks (often 4-6 weeks).

This initial discharge period is paid for by the NHS and once this period has expired the person then becomes subject to the funding assessment process, starting with establishing if they are eligible for NHS Continuing Healthcare funding and if not are subject to means tested Local Authority funding. This transition from free care to self-funded care or partially funded care can happen without a clear explanation at the beginning of the process and often with only a very few days' notice of the change, at which time invoices for care are presented to the person or their representative, without enough time to arrange for a package of care at home, which might be necessary after this period of rehabilitation in a care home, if the decision is to move them from a respite care home placement back to their own home.

If this applies to the person and you need advice, then seek help from Nash & Co.



Funded nursing care

Funded nursing care (FNC) contribution is a payment of £187.60 (2021/2022) and goes up each year. This is to pay for 24-hour access to a registered nurse within a nursing home, as people in residential homes or their own home have access to a registered nurse via the District Nursing service, attached to their GP surgery. This fee is paid directly to the nursing home, so often when the person asks about fees, the nursing home will reduce the quoted fee by the amount of FNC,

as they know that they will receive this, once an application is made. As long as the person in the nursing home receives some nursing care, then it is payable. In a dual registered home, the person must be admitted to a nursing rather than residential bed.

Care fees in the community

If the person has assets under £23,250, then they will have to pay their own cost of domiciliary care, which is like how costs are calculated when someone is living in a care home.

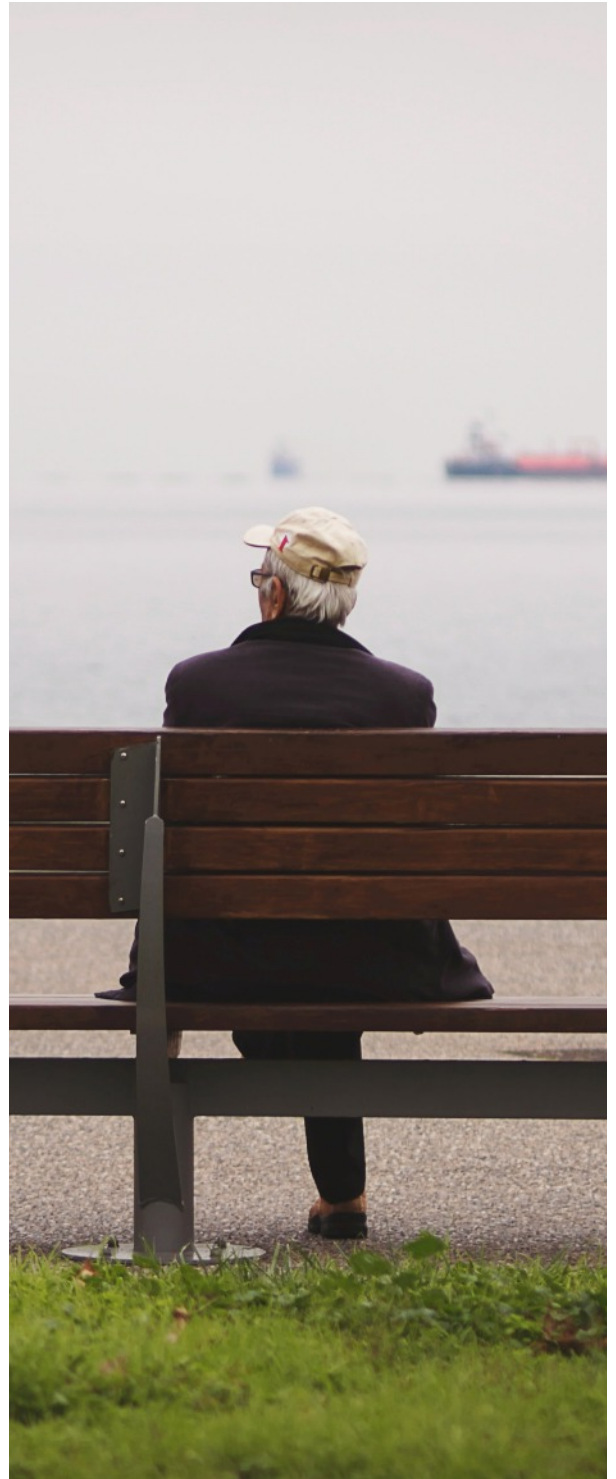
When their assets are under £23,250, the way that their contribution to care fees is managed is very similar, but the amount that the person can keep is more than the PEA, as they will need more money to maintain themselves and the house, including heating, lighting, and food etc.

Other benefits

It is worthwhile contact your local Citizen's Advice Bureau or Age UK to ask them to do a benefit check, which will cover needs-based benefits, such as attendance allowance, personal independence payment, mobility allowance and for those in their own home, severe mental impairment exemption for council tax. This list of benefits above is not exhaustive. There may also be some means tested benefit that the person is entitled to receive, which can be checked.

Other issues

There are a number of options for self-funders in paying for their care, depending on their financial situation. It might be worthwhile contacting an independent financial advisor to discuss the options, for more information, contact Society of Later Life Advisors (SOLLA), so they can assist to review the various options.



Hilary Cragg

Partner / Elderly Law

As a Partner and practicing solicitor, Hilary has a particular interest in issues concerning elderly and vulnerable clients. She deals with all related legal matters, from will writing and Lasting Powers of Attorney to care home funding issues and disputes about care. Hilary came to the law after careers in retail, training and banking. She joined Nash & Co in 2008 as a trainee solicitor and qualified in March 2010.

Hilary is an Accredited Member of Solicitors for the Elderly (SFE), a Committee Member of the Devon & Cornwall Regional Group for SFE, and a Full Member of STEP (Society of Trust and Estate Practitioners).

Hilary is highly active in raising awareness of dementia. As part of the Prime Minister's Dementia Challenge Team she has talked to ministers in both the House of Lords and House of Commons about supporting people living with dementia and regularly speaks at conferences.

Through local Dementia Action Alliance groups, Hilary is a Dementia Friend, Dementia Champion, and Purple Angel Ambassador.



Hilary writes a regular blog about Elderly Client Law -www.elderlylaw.wordpress.com. You can also find her on Twitter (@hilarycragg).

Hilary is also author of the book "Compassion with Dementia", a comprehensive and essential handbook for carers, families, professionals and anyone affected by dementia.

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