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GOING INTO A CARE HOME? WHAT DO YOU NEED TO KNOW?

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GOING INTO A RESIDENTIAL CARE HOME

At Taylor Bracewell we know how worrying it can be when you or a loved one needs to go into care. This guide is aimed at giving you some background as to what you can expect to happen, the different rules and procedures you may encounter and where to turn for more advice.

BACKGROUND

The current law which regulates care funding and the Local Authority's obligations can be found in the Care Act 2014. This Act was implemented in part in April 2015. The Act consolidated various laws which previously governed the care and support systems in England.

The Act sets out the legal duties and powers which the Local Authorities have, as well as highlighting their responsibilities.

Not all of the Care Act 2015 has been brought into force. The implementation of various provisions, including funding reforms, has been delayed until April 2020. This guide therefore focuses on the current systems which are in place.

RESIDENTIAL HOME OR NURSING HOME - WHAT'S THE DIFFERENCE?

A care home could be a nursing home or a residential home, but what is the difference? Generally speaking, a residential home is where someone needs personal care only. A nursing home is where they need both personal and nursing care.

THE AVERAGE COSTS OF CARE

The costs of care vary drastically depending on where you live and the amount of care you need.

The cost of a care home will generally cover things like your accommodation, meals and laundry and the facilities provided by the particular home However, it will not necessarily cover various activities, for example any trips run by the home or any particular personal requests that you may have.

Across South Yorkshire the costs of residential care ranges from £400-£1500 per week. A nursing home can cost even more. However people who require nursing care may receive 'Funded Nursing Care' which we will talk about in more detail below.

LOCAL AUTHORITY FUNDED OR PRIVATELY FUNDED?

When you think you may need care you need to consider who would be paying for that care - Is it something that the Local Authority would pay for or would you be paying for it yourself?

The starting point is to consider what capital and income you have available. Capital usually includes your property, savings and investments. Income usually includes your state pension, occupational pension, payments from annuities, benefits and allowances. Unspent income is a bit trickier as that can become capital.

For couples, only the capital and income of the person going into care will be taken into account. If you have joint bank accounts then half of this value would be taken into account.

If you believe that this assessment would be unfair then you may be able to make arrangements to reflect the accurate position of any joint finances but should always take advice about this before changing any of your financial circumstances so that you are not seen to be giving away your assets which would fall foul of the deliberate deprivation rules (see below).

Many peoples main concern is their property, as this is usually their most valuable asset. If you live on your own then the value of your property will be taken into account.

If however, you live with:

- Your spouse or partner
- A close relative aged over 60
- A close relative under 60 and incapacitated, or
- A child under 16 who you are responsible for supporting

then your property will be disregarded when assessing you for care fees funding.

THE FIGURES

If you have capital less than £14,250 then the Local Authority may fund the cost of your social care and accommodation care costs. An income assessment will take place to see what you may have to contribute from your income.

If your capital is over £23,250 then you will have to pay for your care in full.

If your capital is between £14,250 and £23,250 then the Local Authority will contribute towards your care fees. For every £250 which you have over £14,250 the Local Authority will reduce their contribution by £1 per week and you will have to make up the difference.

If your capital is below the upper threshold of £23,250 but your weekly income is more than your care home costs and the personal expenses allowance of £24.90 added together then you will have to pay your care fees in full and will get no contributions from the Local Authority.

OTHER TYPES OF CARE FUNDING

There are two other types of care funding.

<u>FUNDED NURSING CARE</u>
This is when you are assessed as needing nursing care. The NHS contribute towards the funding of this, regardless of whether you are paying for your care or the Local Authority are paying. This payment is known as Funded Nursing Care (FNC). The NHS contributes £155.05 per week either to the care home directly or to the Local Authority.

<u>NHS CONTINUING CARE</u>
This is when you may be assessed as having particular healthcare needs, and as a result of this you may be entitled to full funding from the NHS for this - this is known as NHS Continuing Care. This is something that can be assessed on a regular basis to ensure that you continue to quality.

SO WHAT'S NEXT?

If you believe that you need some form of care and that you may qualify for Local Authority help then you should contact your Local Authority for an assessment of your needs.

THE ASSESSMENT PROCESS

The assessment is merely trying to assess whether there is a need for care and support under the Care and Support (Eligibility Criteria) Regulations 2015. At this stage it is nothing to do with the costs of care, who would be funding any care needs or even the type of care needed.

When the Local Authority's establishes that there is need for care and support it has to have regard to Regulation 2 which states that an adult will, generally, meet the criteria for care:

1. Where the needs arise from, or are related to, a physical or mental impairment or illness
2. Where the adult is unable to achieve two or more of specified outcomes from the list below:
    a. Maintaining and managing nutrition
    b. Maintaining personal hygiene
    c. Managing toilet needs
    d. Being appropriately clothed
    e. Being able to make use of the adult's home safely
    f. Maintaining a habitable home environment
    g. Developing and maintaining family or other personal relationships
    h. Accessing and engaging in work, training, education or volunteering
    i. Making use of necessary facilities or services; and
    j. Carrying out any caring responsibilities the adult has for the child
3. As a consequence, there is, or is likely to be, a significant impact on the adult's well-being

Once the assessment is completed a Care and Support Plan will be produced.

The Care and Support plan will set out:
- The needs which have been identified by the assessment
- Whether you meet the eligibility criteria and to what extent
- The needs the Local Authority are going to meet and how it proposes to do this
- The personal budget, and advice about reducing your needs and preventing or delaying the development of your needs in the future

The Local Authority must take 'reasonable steps' to reach agreement with you about how your needs are met.

Following receipt of the Care and Support Plan it is necessary to decide how your care needs will be met - Will the Local Authority provide these or will you arrange it yourself through direct payments (see below)?

If you do not agree with your Local Authority's assessment then you can ask them to give you a full explanation as to their decision. If you are still not happy then you can contact the Local Authority and explain why you think the assessment was unfair and challenge their decision.

Our Staff have experience of challenging care funding decisions and can assist you throughout the process should it be necessary

DIRECT PAYMENTS

It may be possible for you to stay in your own home and have help at home to assist you and meet your care needs. Direct payments are a way of helping to fund this.

WHAT IF YOU NEED TO GO INTO A CARE HOME?

Once the Care and Support Plan is completed it will be necessary for the Local Authority to carry out a financial assessment to see how much you will have to pay towards the cost of the care required.

The financial assessment should not normally be carried out until after the needs assessment has taken place showing that you have care needs. The financial assessment will be very detailed and will take into account your capital and income and should be based on accurate figures and not estimates.

As outlined above, if you have capital above the upper threshold of £23,250 then you will pay for your own care fees in full.

If the Local Authority are funding your care you still have a choice in which care home you go to and are free to choose any care home you want to go to, provided that a) it is within your budget b) the home can meet your care needs and c) there is available space in the care home.

When the Local Authority are funding your care they will tell you the maximum amount that they will contribute towards the costs of care each week. They should provide you with information about different care homes in your area which will be able to meet your care needs. These care home don't necessarily have to be Local Authority care homes and could be independent homes that are either happy to provide care at the rate the Local Authority have agreed to pay, or they will accept top-up payments from third parties.

If you want to go to a home that is more expensive than the Local Authority have assessed your needs as requiring then they can agree to this if, either the care home will agree to the Local Authority's agreed rate, or if a third party is happy to top-up the fees.

If the care home is deemed to be too expensive by the Local Authority then they must show that your needs can be met at a less expensive care home.

METHODS OF PAYMENT

Once you are happy with your choice of home then it is necessary to see how it will be funded. You need to consider:

- If the Local Authority are paying for your care, are the care fees covered in full?
- If not then who pays the difference?
- If you are paying for your own care then can you afford your chosen home in the long term?
- If your capital will reduce in the future meaning you would become eligible for Local Authority funding you may wish to check whether they would pay for your chosen care home.

THIRD PARTY TOP-UP'S

When you want to go to a more expensive care home but your care is funded by the Local Authority then someone else can agree to pay the difference for you.

If a third party is willing to pay the extra then they would have to enter into an agreement with the care home agreeing to the additional payments and will probably have to prove that they can keep up with these payments.

DEFERRED PAYMENTS ARRANGEMENTS

One of the changes brought in by the Care Act 2014 was to allow the Local Authority to enter into a Deferred Payment Arrangement.

When, excluding your property, you have insufficient capital and income to pay for your care needs the Local Authority can agree to defer the payment of your fees until such a time as the property is sold.

The Local Authority essentially lends you the money to pay the care home fees. The amount which it will lend will depend on the value of your property. The Local Authority then puts a charge over your property for the amount it is owed. On the sale of the property (or on your death) the Local Authority debt is repaid.

WHAT NEXT?

When you have chosen the care home you want to go to you will be given a contract. This is like any other legal document and it is essential to ensure that you take advice on the implications of entering into this contract before signing anything.

Before you agree to anything you should know the answers to the following questions;

- The costs of the care
- What is included in the costs?
- How often the fees are reviewed?
- Whether there are annual increases
- If you wanted to leave how much notice you have to give?
- What would happen if you temporarily left (i.e. went into hospital) – do you still have to pay?
- Do you need to get contents insurance for your possessions?
- What happens if you die – how long do your relatives have to clear your room?

DELIBERATE DEPRIVATION

One common thing that we are asked at Taylor Bracewell is how to reduce your liability for care fees. Many clients are concerned that they will lose all their assets in care fees and there will be no inheritance to pass on to the next generation.

It is essential that you always take professional advice on this matter as there are rules in place to prevent certain gifts.

If you knowingly give away your assets, or sell them at value lower than their actual value, with the intention that you will then obtain means tested benefits or care funding then this is deemed to be a deliberate deprivation of assets.

If the Local Authority believes that you have deliberately deprived yourself of assets then they can look into this. The Local Authority has the power to ignore any gifts you make within 6 months of entering care. If more than 6 months have passed, the Local Authority must prove that you made a gift to avoiding paying for your care. The Local Authority may try to prove this regardless of how long it is since you made a gift. There is a common misconception that gifts made more than 7 years ago are ‘safe’. This is not the case.

If they believe you deliberately deprived yourself of an asset they can assess you as if you still owned the asset you gave away and charge you care fees based upon the assets you had before the deprivation occurred.

You should always take professional advice about any gifts you want to make to ensure you understand all the consequences of the gift, before you enter into it.

ABOUT TAYLOR BRACEWELL

Taylor Bracewell Solicitors is a dynamic and forward thinking legal firm with offices in Doncaster and Sheffield. Established for over 100 years, and very well regarded within the legal sector, Taylor Bracewell has weathered the drastic changes in the legal landscape and has emerged as one of the most vibrant and well respected law firms in the region.

Constant evaluation of how we deliver our services and innovative ways of working has made it possible for us to offer something different to the legal market.

We are passionate about providing individual service and connecting with our clients on a one to one basis. This enables us to fully understand our clients' legal needs and to deliver exceptional value in all our services.

We are relentless in our efforts to meet and exceed your expectations.

If you require any further advice about going into a care home please contact our team on

0114 272 1884 or 01302 341414

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DISCLAIMER

The information in this Guide was correct as at April 2017 when it went to print. The information in this guide is only applicable to care homes in England. Taylor Bracewell has used all reasonable care in producing this guide but accepts no liability for any errors or omissions. The advice given in this guide is intended to give background information and does not replace the need to take professional advice about your own individual circumstances. Taylor Bracewell cannot be held responsible for any reliance you place on the information in this guide.