

Investment bonds and long-term care assessments (England only)

Briefing Note

Local authorities have an obligation to provide residential accommodation ‘for persons who by reason of age, illness, disability and other circumstances, are in need of care and attention which is not otherwise available to them’ under section 21 of the National Assistance Act 1948.

With effect from 1 April 2015 the provisions of the Care Act 2014 applied to local authorities in England. The Act established an entitlement to public care and support for all adults with needs for care and support. Additionally it also created entitlement to support for carers.

Local authorities have to make sure that people who live in their areas:

- Receive services that prevent their care needs from becoming more serious, or delay the impact of their needs
- Can get the information and advice they need to make good decisions about care and support
- Have a range of providers offering a choice of high quality, appropriate services

Charging for Residential Accommodation Guide

In previous years, advisers have referred to the Charging for Residential Accommodation Guide (CRAG) for information about the rules for long-term care costs.

Although the appropriate version of this still applies in Scotland, Wales and Northern Ireland, in England it was replaced by the Care and Support Statutory Guidance. This is available on the GOV.UK website: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

Capital limits

The provision of accommodation costs is means-tested and the local authority provides a contribution, based on the means testing, towards the cost of residential care.

An individual is allowed to retain a certain amount of capital, but above this they are expected to contribute to their accommodation costs. The relevant capital limits in 2023/24 are as follows:

- Upper limit: £23,250
- Lower limit: £14,250

This means that no assistance with costs would be provided where an individual has capital of more than £23,250 and reduced assistance will be provided where capital is between the upper and lower capital limits.

Examples of capital that is taken into account includes; buildings, land, National Savings, stocks and shares, building society and bank accounts, unit trusts, cash and trust funds.

Whether an individual’s own home is included depends on the stay in the care home being permanent (and not temporary) and there not being someone still living in the property who is their partner or an appropriate relative.

Investment bonds

One asset that is listed as being disregarded is the surrender value of any life insurance policy (or annuity), although paragraph 53 of Annexe B of the guidance encourages local authorities to obtain legal advice with regard to the treatment of investment bonds.

53. The treatment of investment bonds is currently complex. This is in part because of the differing products that are on offer. As such, local authorities may wish to seek advice from their legal departments.

However, the subsequent paragraph 54 says that they must be disregarded if they include one or more element of life insurance. So a capital redemption bond would not be disregarded.

54. Where an investment bond includes one or more element of life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights must be disregarded as a capital asset in the financial assessment.



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Deliberate deprivation

One matter to be very careful about is that an investment bond is not specifically taken out because of care cost concerns.

There are two reasons for this; the risk of being accused of deliberate deprivation and the regulators' view on the matter.

Anyone who places funds into investment bonds, where a motive for the investment is to avoid a care fees charge, runs the risk of triggering the deprivation rules and having the value of those bonds treated as a capital asset for the purposes of means testing.

The purchase of an investment bond in this regard is specifically mentioned in paragraph 9(g) of Annexe E of the guidance as an example of deliberate deprivation.

9. A person can deprive themselves of capital in many ways, but common approaches may be:

(g) Assets have been used to purchase an investment bond with life insurance.

However, paragraphs 11 and 12 then helpfully explain what aspects the local authority needs to consider before deciding whether deprivation for the purpose of avoiding care and support charges has occurred.

These include the motivation for the deprivation, timing and expectation of needing a contribution to the cost of their care.

Trust funds

As far as trusts are concerned, paragraph 6(h) of Annexe B of the guidance mentions trust funds as being an example of capital, without specifying what sort of trust is being referred to or even whether the claimant created the trust or is a beneficiary.

However, there are two examples in paragraph 11 on the following page and in the second one, the patient can provide evidence to show that shares were purchased on behalf of her son and although the patient is the legal owner (as trustee), the shares are disregarded because the son is the beneficial owner of them.

In addition, if a person could receive future payments from a discretionary trust, such as income rights or maturity payments, these would appear to be disregarded under paragraph 58(a).

58. In some instances a person may need to apply for access to capital assets but has not yet done so. In such circumstances this capital should be treated as already belonging to the person except in the following instances:

(a) Capital held in a discretionary trust

For personal injury trusts, where the patient may be the beneficial owner, paragraph 33(h) of Annexe B makes it clear that they are to be disregarded.

33. The following capital assets must be disregarded:

(h) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds

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