Nursing Home/Care Fees Planning.

There is one aspect of financial planning that causes concern and wrangling along with affecting our most vulnerable - and one that I want to tackle with some truths.

An entire industry has been created to flog products and services, trusts and schemes all designed to reduce or limit a person's liability to cover the costs of care. These schemes are unlikely to work with the legislation as it is currently, and I believe are being sold fraudulently with no real downside for the seller.

"Without a doubt there are some issues with planning for the avoidance of Care Fees with a number of providers selling worthless planning tools and exercises in avoidance, unfortunately for people using these plans they will never work, quite simply the law - within the 2014 Care Act has seen to that." **Richard Smith - Dying to Know events, Sussex 2017.**

Richard Smith - has been providing financial planning consultancy and guidance for the last thirty years and now provides a Money Training service www.moneytrainers.co.uk for which this report has been prepared. *If all you had to do in order to become financially independent, was sit down in front of an Independent Financial Adviser for an hour; we'd all do that and there would be line of people outside offices up and down the country. Reality is - understanding money is just another learned skill.*

There are a number of solutions that will help with the issues of care home fees and of course for those that are seriously ill with the costs of Nursing Homes. Please get in touch either via moneytrainers.co.uk or thefinancezone.co.uk and I'll be pleased to help you further.

Care cost lottery: how some councils will pay more if you push

http://www.telegraph.co.uk/money/consumer-affairs/care-cost-lottery-councils-will-pay-push/

Winter social care pressures: ‘Crisis was here before the snow, and is still here after it’

http://www.communitycare.co.uk

Summary

1. There is no guarantee that **any** plans put in place today will prevent your home being sold to fund your care costs in later life.

2. There is very limited case law on instances where funding has been referred back to the Local Authority and these tend to be very specific instances.

3. Giving assets away will automatically allow the Local Authority responsible for your care to recover the costs of your care from your estate (deprivation).

4. There is no time limit as to how far back a Local Authority can look.

I know that some of my comments will upset and possibly inflame those that feel a sense of entitlement to paid for care and I sympathise with those who think their care should be funded but that doesn’t change the reality.

It’s the reality that interests me in these matters and if you feel it’s unfair then you should take up the matter with your MP.

The 2014 Care Act finally puts in place a little respite in relation to the costs of care, via a Care Cap of £72,000 this was going to be in place by 2020 but seems to have been under reconsideration (2017 General Election).

Mrs May has offered a discussion document outlining whether or not this cap will be put in place. At the moment there is no cap on Care Fees.

UK government is facing a real problem. It's expenditure is more than its income.

Of course they could increase taxes to suit, but with over 47% of gross income being taken in tax and other mandatory spending (ask for my article about Alison Average) increasing taxes is not an answer. Spending less may well be the only answer.

You should understand that the government is not like you and I. If it needs to increase spending it needs to raise taxes, whereas you and I would do some overtime in order to increase income or take another job.

The government is not meeting is spending obligations at the moment, and it's hoping taxation income is going to go up. I remind you of my most used saying "hope is not a plan".

Government spending in many areas is reducing. Fact.

The outlook for further funding of care costs is not good at the moment and even if there is a change in Government we can expect a further few years of malaise and stumbling before a longer term plan is put in place.

At the moment we are seeing a massive reduction in spending on benefits and pensions.

- State pensions ages have been creeping upwards and look likely to increase even further, reducing the total cost to taxpayer.
- Government has given Pension Flexibility in order to sweeten the reduction in state pension provision, it has collected more taxes as result.
- Auto enrolment pensions that have been slowly rolled out over recent years, increasing the burden on employers as they are forced to make payments for staff.
- Tuition fees being passed back to students thus reducing further reductions in state spending.
- Benefit reductions and caps.
- Reduction in funding from central government to local government forcing up local Taxes.

- Reduced spending on infrastructure projects overall.

- Public sector pension liabilities are increase massively and the burden of these unfunded schemes means any shortfall is picked up by the taxpayer. These shortfalls have been increasing.[2]

Looking forward, the question you need to ask yourself is this does it look likely that the UK Government will be spending more money in the future or less? And is it likely that some changes to legislation will be made; either/or/all policy is more effectively policed in order to ensure that the correct amounts due are paid?

The evidence for Care Fees to be more aggressively charged to individuals already exists, therefore any plans that are put in place to avoid fees are unlikely to work given the power of the State over individuals and this is supported by the 2014 Care Act.

Why Should I Pay Why Should My Children Pay

If individuals need long term care in a residential home the costs of this needs to be met from somewhere or someone.

> The cash can either come from those that can afford it, or via general taxation paid by us all.

Based on the statistics produced yearly from Age UK and available from below [3] you will see that some 16% of adults over 85 live in some kind of home. This indicates that some 84% maintain their independence. Which is not something those selling ‘property protection’ plans will use in their marketing material *“ have this, but most of you probably won’t ever make use of it”*.

http://www.ageuk.org.uk/Documents/ENGB/Factsheets/Later_Life_UK_factsheet.pdf?dtrk=true

For the 16% of adults that need looking after, the average fees are around £30,000 per year with the average life expectancy in a home of two years. The proposed care cap is £72,000 or 2.5 years of current average care home costs. Governments, like insurance companies tend to know their numbers.

If you are not able to pay your own fee’s or don’t own a property or don’t have other assets, or have in the past owned such assets; then the Local Authority has a responsibility to fund your care look after you. The 2014 Care Act (sometimes called the 2015 Care Act wrongly) lays out in clear terms what the responsibility of the Local Authority are.

The same act also allows them to recover the costs of your care if there is evidence that you have deprived yourself of assets in order to reduce your liability. Given that there is a level of fairness required in this area; the legislation accepts that personal responsibility needs to play a part, and if you deprive yourself of an asset or an income that could be used to fund your care, then there is a good chance an attempt will be made to recover the amounts.

The state has an obligation to fund your care costs if you are not able to cover them yourself, the state only has one source of income (tax) therefore if you don't pay; the costs of your care are paid for by me and my children and possibly their children, of course along with yours. It's for these reasons the legislation is in place.

Continuing Care NHS Funded

You may qualify for this and more information is available from the link below.

http://www.nhs.uk/chq/Pages/2392.aspx?CategoryID=68

Court Cases Often Quoted By Those Selling 'Care Fees Avoidance Plans'

It's interesting that these (usually) quoted cases have very specific circumstances applying and by no means can be applied generally.

Yule v South Lanarkshire
Beeson v. Dorset County Council

If you are concerned about the effect of your Care Fee's on your assets, there are some things you can do I can cover these with you either on a one to one or in s a group workshop.

Meanwhile please be assured that most forms of trust planning, care fees planning, probate and will trusts WILL NOT WORK. No matter how much you spend on them, or how slick the person sitting in front of you is. These are not tested properly under the law.

Richard Smith CERT PFS
PS don't forget when you want some hands on advice on this matter you can contact me via richard@thefinancezone.co.uk

Appendix -- notes and links.

http://www.ageuk.org.uk/Documents/ENGB/Factsheets/FS40_deprivation_of_assets_in_the_means_test_for_care_home_provision_fcs.pdf?dtrk=true Page 11

http://www.legislation.gov.uk/ukpga/2014/23/enacted

69 Recovery of charges, interest etc.

(1)Any sum due to a local authority under this Part is recoverable by the authority as a debt due to it.

(2)But subsection (1) does not apply in a case where a deferred payment agreement could, in accordance with regulations under section 34(1), be entered into, unless—

(a)the local authority has sought to enter into such an agreement with the adult from whom the sum is due, and

(b)the adult has refused.
(3)A sum is recoverable under this section—

(a)in a case in which the sum becomes due to the local authority on or after the commencement of this section, within six years of the date the sum becomes due;

(b)in any other case, within three years of the date on which it becomes due.

(4)Where a person misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material fact in connection with the provisions of this Part, the following sums are due to the authority from the person—

(a)any expenditure incurred by the authority as a result of the misrepresentation or failure, and

(b)any sum recoverable under this section which the authority has not recovered as a result of the misrepresentation or failure.

(5)The costs incurred by a local authority in recovering or seeking to recover a sum due to it under this Part are recoverable by the authority as a debt due to it.

(6)Regulations may—

(a)make provision for determining the date on which a sum becomes due to a local authority for the purposes of this section;

(b)specify cases or circumstances in which a sum due to a local authority under this Part is not recoverable by it under this section;

Extracts From Legislative Documents

(c)specify cases or circumstances in which a local authority may charge interest on a sum due to it under this Part;

(d)where interest is chargeable, provide that it—
(i)must be charged at a rate specified in or determined in accordance with the regulations, or

(ii)may not be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations.

70 Transfer of assets to avoid charges

(1)This section applies in a case where an adult's needs have been or are being met by a local authority under sections 18 to 20 and where—

(a)the adult has transferred an asset to another person (a "transferee"),

(b)the transfer was undertaken with the intention of avoiding charges for having the adult's needs met, and

(c)either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer.

(2)The transferee is liable to pay to the local authority an amount equal to the difference between—

(a)the amount the authority would have charged the adult were it not for the transfer of the asset, and

(b)the amount it did in fact charge the adult.

(3)But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer.

(4)Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer.

(5)“Asset” means anything which may be taken into account for the purposes of a financial assessment.

(6)The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for—

(a)the amount of any incumbrance on the asset, and
(b)a reasonable amount in respect of the expenses of the sale.

(7)Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.

71 Five yearly review by Secretary of State

(1)The Secretary of State must review—

(a)the level at which the cap on care costs is for the time being set under regulations under section 15(4),

(b)the level at which the amount attributable to an adult’s daily living costs is for the time being set under regulations under section 15(8), and

(c)the level at which the financial limit is for the time being set under regulations under section 17(8).

(2)In carrying out the review, the Secretary of State must have regard to—
(a)the financial burden on the state of each of those matters being at the level in question,

(b)the financial burden on local authorities of each of those matters being at the level in question, (c)the financial burden on adults who have needs for care and support of each of those matters being at the level in question,

(d)the length of time for which people can reasonably be expected to live in good health,

(e)changes in the ways or circumstances in which adults' needs for care and support are being or are likely to be met,

(f)changes in the prevalence of conditions for which the provision of care and support is or is likely to be required, and

(g)such other factors as the Secretary of State considers relevant.
(3)The Secretary of State must prepare and publish a report on the outcome of the review.

(4)The first report must be published before the end of the period of five years beginning with the day on which section 15 comes into force.

(5)Each subsequent report must be published before the end of the period of five years beginning with the day on which the previous report was published.

(6)The Secretary of State may arrange for some other person to carry out the whole or part of a review under this section on the Secretary of State's behalf.

(7)The Secretary of State must lay before Parliament a report prepared under this section.

http://www.ageuk.org.uk/Documents/ENGB/Factsheets/FS40_deprivation_of_assets_in_the_means_test_for_care_home_provision_fcs.pdf?dtrk=true

http://www.ageuk.org.uk/Documents/ENGB/Factsheets/Later_Life_UK_factsheet.pdf?dtrk=true

Residential care There are an estimated 5,153 nursing homes and 12,525 residential homes in the UK.238 According to the latest Laing and Buisson survey, there are 426,000 elderly and disabled people in residential care (including nursing), approximately 405,000 of whom are aged 65+.239 93 per cent of nursing home residents and 99 per cent of people in residential homes are aged 65+240.

Only 16% of people aged 85+ in the UK live in care homes.241 The care home resident population for those aged 65 and over has remained almost stable since 2001 with an increase of 0.3%, despite growth of 11.0% in the overall population at this age.242 Last updated January 2016 15 The gender gap in the older resident care home population has narrowed since 2001. In 2011 there were around 2.8 women for each man aged 65 and over compared to a ratio of 3.3 women for each man in 2001.243 The resident care home population is ageing: in 2011, people aged 85 and over represented 59.2% of the older care home population compared to 56.5% in 2001.244 Most supported housing for older people is 'sheltered' housing (for social rent) and owner occupied retirement housing (mainly for sale).

Across the UK there are nearly 18,000 developments and around 550,000 dwellings (480,000 in England), housing around 5% of the older population. 245 The median period from admission to the care home to death is 462 days. (15 months).246 Around 27% of people lived in care homes for more than three years.247 People had a 55% chance of living for the first year after admission, which increased to nearly 70% for the second year before falling back over subsequent years.248

Supporting

http://www.ageuk.org.uk/Documents/ENGB/Factsheets/FS40_deprivation_of_assets_in_the_means_test_for_care_home_provision_fcs.pdf?dtrk=true

My notes
https://www.aprilking.co.uk/2017/01/30/deprivation-of-assets-guide/