

## Frequently Asked Questions

### 1 Can an individual make an additional payment to enable him to stay in a more expensive home?

No, not normally. The outcome of the financial assessment is deemed to be the maximum that an individual can pay. There are however two exceptions; the first is where a person would normally be paying the full cost of their accommodation, but they are taking advantage of the twelve week property disregard rule. The second is where the client would normally be paying the full cost of their accommodation, but they have entered into a Deferred Payment Agreement with the Council.

### 2 Can the spouse of a resident make a third party contribution to enable him to stay in a more expensive home?

Yes, unless they have agreed to make a 'liable relative' contribution. The liable relative contribution is voluntary and if a third party contribution is required it would be sensible for the spouse to make that contribution rather than one as a 'liable relative'. NB. Only married couples are regarded as being liable relatives. Of course, the normal third party arrangements would apply and the resident may have to move to other accommodation if the third party payment cannot be sustained.

### 3 Can an individual give any capital to another person to allow them to make a contribution on their behalf?

Yes, Mr Justice Moses in the case of *R v East Sussex County Council* expressed the view that an individual could **dispose of his capital disregarded in the financial assessment process as he saw fit**. This included giving funds to a third party who would be willing to make a payment on his behalf. The normal arrangements for a third party contribution would apply including the possibility of the resident having to move to other accommodation if the transferred funds were exhausted. Of course in such a case, if the client was assessed to pay a tariff income because his capital exceeded £12,500 (April 2005 rates), even if he disposed of any or all of the disregarded capital, the tariff income would continue to be calculated as if he still had it, *e.g. A client has capital of £14,000, which is deemed to produce tariff income of £6.00 per week (£1 for every £250 or part over £12,500). If he then gives away £12,500 to enable someone else to make a third party payment on his behalf and his capital drops to £1,500, he would be deemed to still have £14,000 and be liable for the tariff income contribution.*

Please note that any such arrangement would be voluntary and be between the client and the recipient of the capital sum. Although it is acceptable to make this information available, staff should not offer any advice as to the suitability of such an arrangement and clients should be encouraged to seek independent legal advice before proceeding with such an arrangement.

### 4 Can a third party contribution apply when the placement is being made as part of an after-care package under section 117 of the Mental Health Act 1983?

The present view is that the answer is no. The accommodation is to be provided free of charge and the choice of accommodation rules do not apply.

### 5 Who is eligible to benefit from the 12 week property disregard?

The 12 week property disregard was introduced in 2001, to provide a limited subsidy for people entering permanent residential care, who still had to sell their former home. It is applicable to everyone who satisfies the conditions irrespective of whether they have made their own arrangements or have come via Devon County Council.

The conditions are:

- The disregard is for 12 weeks from the moment that permanent admission to residential care commences. This may follow a temporary stay.
- The individual meets the local authority criteria for residential or nursing care
- The property to be disregarded must have been their normal place of residence.

- That the total of other capital assets must be less than £20,500 (the level at April 2005).
- It can be claimed from the Council up to 12 weeks following permanent admission to residential care. If the claim is successful, the 12 week disregard applies from the date of permanent admission and not the date of the claim. This is to allow for delays in local authority decision making processes.
- If the home is sold within the twelve week period, the disregard ceases to have effect from the date of the sale.
- If the person leaves residential care (where they have been living on a permanent basis), before the end of the 12 weeks and then re-enters on a permanent basis within 52 weeks they will be entitled to the remaining balance of the 12 week disregard. If a resident leaves permanent care and re-enters more than 52 weeks later, they will qualify for the disregard again.

**6 What happens when a formerly disregarded house is included in a financial assessment?**

Where a former home once disregarded from a financial assessment because a spouse was living there, becomes due to be included because e.g. the former spouse dies, the 12 week property disregard rules do not apply unless the spouse dies within 12 weeks of the resident's admission date. In those circumstances, the remainder of the 12 week period would be allowed.

**7 Where the spouse of a resident also enters residential care, are they both entitled to the 12 week property disregard?**

Subject to them both having other assets of less than £20,500, only the spouse would be entitled to benefit from the 12 week property disregard. If of course the other spouse had not been resident for 12 weeks, he / she would be entitled to have the property value disregarded from a financial assessment for the remainder of the 12 week period.

**8 What about a resident who has been funding their own care but now wants some assistance because they only have their property remaining?**

The advice of the County Solicitor is that such an individual would be entitled to the 12 week property disregard from the date they applied for financial assistance and therefore became eligible for Pt III accommodation, subject of course to satisfying the other conditions set out in '5' above.

**9 Does an individual entering residential care have to sell their former home?**

The straightforward answer is no. An individual entering permanent residential care who owns their former home is likely to have to pay the full cost of their accommodation because their assets would be worth more than £20,500 (April 2005 rate). However if their **other available assets** are less than £20,500, they can ask to enter into a Deferred Payment Agreement (see FAQ 10) with the Council under section 55 of the Health & Social Care Act 2001.

**10 If a couple enter residential care together, do they have to sell their former home?**

If a couple are both in permanent residential care after the 12 week property disregard (referred to in FAQ 7) above and do not wish to sell their house, it will be necessary to ascertain full details of the basis on which the house is owned so that the County Solicitor can advise as to whether in their circumstances a Deferred Payment Agreement is possible, or whether the Council will need to secure its debt in another way.

**10 What is a Deferred Payment Agreement (DPA)?**

A DPA allows a client to defer part of their contribution to residential care. The agreement is registered with the deeds of the property. The deferred amount becomes payable when either the client dies or the house is sold whichever is the soonest.

**11 How is the Deferred Payment Calculated?**

The Client Finance Services Team will complete a financial assessment ignoring the value of the client's property, although any net rental income from the property will be included. The

resulting contribution will be payable to the Council, whilst the balance up to the full cost being paid by the Council or the Standard Charge if in a Council Home will be deferred.

*For example, a person who has entered permanent residential accommodation has a house valued at £100,000, other capital resources worth £14,000, and income, net of the personal expense allowance, of £150. He chooses to enter a residential care home where the actual cost is £354. In view of his capital assets, he would normally have to meet the full cost of accommodation. He does not wish to sell his former home and enters into a DPA with the Council. The unsold property is rented out and generates income (after expenses) of £100 per week. The resident contributes income of £150, a tariff income of £6 per week and £100 rental income to the costs of care. The council pays the difference between the cost (£354) and the income contributed by the resident (£256) of £98 and it is this sum that accrues against the DPA each week and becomes payable to the Council in the circumstances described above i.e. when the resident dies or when the house is sold.*

**12 Is interest payable on the arrears that accrue against the DPA?**

The arrears that accrue against a DPA are interest free for a period of up to 56 days after the deferred amount becomes due. From day 57 interest is added at a variable rate notified by Government.

**13 Is a DPA appropriate where a property is for sale?**

The Council would not normally agree to a DPA if the house was for sale and other alternatives for securing the debt would be considered.

**14 Can a DPA be applied to any property owned by the client?**

No, the legislation is quite clear that the only property to which a DPA can be applied is the person's former place of residence immediately prior to entering long term residential care.