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Care Fees and NHS Continuing Healthcare funding

...How to separate fact from fiction

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April 2014

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Care fees and NHS Continuing Healthcare funding

...how to separate fact from fiction

Thank you for downloading this guide. We hope you'll find it a useful introduction to care fees and NHS funding – and that it will help you and your family avoid being wrongly charged for care. It will show you the important things you and your relatives need to know before you pay a penny in care fees.



About the author – Angela Sherman

When her parents went into full time care, Angela Sherman was told they would have to pay for their care because they had some savings and they had a house. Like many other families, she had no reason at the time to doubt what the health and social care authorities had told her. About a year later, however, she realised her parents should in fact not have been paying for their care at all. She began a 3½ year battle with the NHS to get back the care fees her parents had wrongly paid and to secure full NHS Continuing Healthcare funding until they died.

She succeeded – and she realised that thousands of other families are wrongly told to pay for care. They face the same battle, and that's why she set up Care To Be Different. Now as a writer and speaker, she shows other families how to fight their corner in NHS Continuing Healthcare funding assessments and how to hold assessors to account when they ignore the guidelines and the law.

Care fees fact vs. fiction

If you have an older relative who needs to go into full time care, you may have reached a crisis point. You may also be finding it difficult to know what to do and who to talk to. Plus, the whole issue of care fees – who pays what, what’s right and what’s not – is not always easy to understand.

There are many myths about care fees and long term care, and there’s a general assumption that in the UK when people get older they have to pay for care out of their own pockets if they can afford it. Politicians generally do little to change that assumption, the mainstream press often perpetuates it unknowingly and the care authorities themselves are often guilty of being less than transparent when it comes to care funding. Indeed, many families are given false information by the health and social care authorities right at the outset when a relative first needs full time care.

Not surprisingly, this can lead to huge anguish for elderly people and their families when they’re wrongly forced to sell their homes and use up their life savings. So, the more informed you are now about care funding, and particularly NHS care funding, the better. This short guide helps you find a clearer path through the maze and distinguish fact from fiction.

Health care vs. social care – and why the difference matters

One of the biggest myths about care fees is that if you have savings or assets above the [current capital threshold](#) you always have to pay for full time care. It's not necessarily true. **Whether or not you have to pay for care does not depend on what's in your bank account; it depends on your health and care needs.**

The main sticking point in most assessments for NHS care funding is [the difference between a 'health' need and a 'social' need](#). Most people in care are told they have 'social' needs and that they need social care. However, social care (help getting dressed and washed, etc.) is provided by the local authority – and the local authority will carry out a means-test for it: If you have the means, you have to pay.

However, many people in care actually have 'health' needs, and they need health care and nursing care. This is funded by the NHS and does not require a person to be means tested – **no matter how much the person has in savings and regardless of whether they own a house**. This care has already been paid for through taxation. This applies no matter how old a person is.

So, a person's savings and assets are irrelevant where healthcare/nursing care are concerned.

However, you'll probably notice that if your relative needs care, the first questions the health and social care authorities will ask you are, '*How much money does your relative have?*' and '*Do they have a house?*'

The first questions should, instead, be about their health needs.

Sadly, many people end up paying for care when [the NHS could in fact have a duty to pay](#). It's nothing short of a scandal.

[This article on our blog highlights how these 'mistakes' are often made.](#)

Many people report that NHS funding assessors often bring undue subjective interpretation into assessment outcomes, describing health needs as social care needs and ignoring a person's underlying health issues.

In news reports about care funding and paying for care and caps on care fees, what is generally discussed and reported relates to social care ONLY (means tested care) and so, again, families tend to assume that all care is the same. But healthcare/nursing is not the same as social care.

What is rarely mentioned that is that the NHS has a legal duty to pay the full cost of care (100%) when someone needs full time care *primarily* for health reasons. This is covered in more detail on in the section on NHS Continuing Healthcare.

Very often, as soon as a local authority gets to know that a person has savings or a house, they seem keen to close their files and simply tell the person to pay for care. They call this 'self-funding'.

When this happens, and yet a person *does* need care primarily for health reasons, the health and social care authorities are wrongly stripping that person of their personal assets to pay for care they have a right to receive free of charge.

When a local authority or the NHS does this without doing proper assessments for NHS Continuing Healthcare funding, it's not only a breach of clear NHS guidelines, but it's also an attempt to defraud the person needing care. In such cases the local authority may also be guilty of attempting to take responsibility for providing care that is outside their legal remit.

9 things you need to know before your relative pays a penny in care fees

1. Don't assume your relative has to pay for care

As we've seen, if your relative has health needs, the local authority has no business asking for personal financial information before a proper assessment has been done for NHS funding. This is called NHS Continuing Healthcare – and you'll find more details in the next section. It is incorrect to assume that just because a person has savings or other assets that they have to pay for care. It should be about *health* first and foremost, **not** money.

2. You don't necessarily have to sell your home

If your relative does genuinely have to pay for care, they still don't necessarily have to sell their home. It may be a good asset to keep or perhaps to rent it out. You can negotiate a Deferred Payment Arrangement with the local authority, and they will pay the care fees interest-free for the time being. This is a discretionary agreement on the part of the local authority, but they do have to actually tell you about it. The local authority will recoup the costs from your relative's assets/estate at a later date.

3. If someone else lives at the property, it may be protected

The value of a property can't be included in any means testing if:

- the partner/spouse still lives there
- another relative over 60 lives there
- a younger relative still lives there who is incapacitated
- a former partner (divorced or estranged) still lives there and is a lone parent
- a dependant under 16 lives there
- a relative over 60 lives there (or in some circumstances a friend who has been caring for your relative for some time and for whom the property has become their home)

Plus, the value of your relative's property cannot be included in any mean test if they are receiving care at home (as opposed to in a care home).

Also, if someone else owns part of the property, even if they don't live there, that person cannot be forced to sell their share; if the property therefore cannot be sold, its value in any means test is nil.

4. The value of the property should be disregarded for the first 12 weeks of care

This is called the '12 Week Property Disregard'. During this time the value of the property is excluded from any calculations about care fees (unless you sell the property during this time). This applies if your relative is going into a care home. However, if your relative has other savings (aside from the property) over the means test threshold during this time, the 12 Week Disregard does not apply.

5. A partner/spouse should not be charged for their partner's care

If a person has to pay for their own care, their spouse's money/assets should not be means-tested and the spouse should not be charged. This also applies to the spouse's share of any joint accounts.

6. Think twice before signing over a property to someone else

Signing a house over to children to avoid care fees is often a very bad idea – for lots of reasons! For example, if a son or daughter is married but later gets divorced, the house may have to be sold in the divorce settlement. A local authority could also view such a transfer of ownership as a 'deliberate deprivation of assets'. This could cause problems for the new owner. Always take good independent financial and legal advice – and make sure the advisers you speak to are fully versed in care fees.

7. NHS funding is available for full time care at home, as well as in a care home

Your relative can choose to have full time care at home, rather than having to make the transition into a care home. This can be funded by the NHS (if certain

criteria are met). If your relative does have to pay for care, staying at home can also protect the property from being included in the means test.

8. Keep hold of investments that contain life cover

These don't have to be cashed in to pay for care – no matter how small the element of life cover.

9. Take good financial advice

You can't predict the kind of care you or your relatives might need in later life – or whether you'll need to pay care fees. Don't make any big decisions about money or property without taking independent financial advice from someone well qualified to do so. Good financial advice is invaluable.

If you are talking to an adviser specifically about care fees, be aware that not all financial advisers specialise in this. Ask the adviser lots of questions, and do your own homework too. It's also a good idea to ask how up to date the adviser's care fees qualifications are. But, just as important as this, check their knowledge and experience of NHS funding options, including NHS Continuing Healthcare, as not all advisers are familiar with it.

And finally, many people – health and social care employees, GPs, care home workers, care providers, friends, professional advisers, are not fully aware of the rules about care fees or the funding available. Many people are also told it's 'not worth applying for NHS funding' or that 'you always have to pay for care'. Don't be put off by these people – who either lack training, who have vested financial interests in getting a person to pay for care or who simply do not know what they're talking about.

Remember, if your relative has health needs, the **ONLY** way to know whether they have to pay for full time care is for them to have an assessment for NHS Continuing Healthcare. Don't simply accept the statement that NHS funding is 'hard to get' and therefore not worth pursuing.

NHS Continuing Healthcare funding

We've set out below some of the things you need to know about NHS Continuing Healthcare funding, to help you make sense of it...

NHS funding for full time care is called NHS Continuing Healthcare and it's possibly the NHS's best kept secret.

It's also known as 'Continuing Care' or 'Fully-Funded NHS Care' or 'CHC'.

This funding comes from the NHS and covers 100% of care fees for people who need full time care primarily for **health** reasons, either at home or in a care home. To be eligible, a person will be assessed as having what's called a 'primary health need'.

It doesn't matter whether someone is in a residential home, a nursing home or in their own home, the assessment process and eligibility criteria for NHS Continuing Care funding are the same, and the available funding is the same.

There is no legal definition of a primary health need, and this has unfortunately led to some funding assessors believing they can impose their own subjective (and almost certainly financially-motivated) bias on funding recommendations. However, there are clear guidelines setting out what should happen in assessments – what should be assessed and how – and what determines eligibility. These guidelines are called the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care. These guidelines also set out the difference between social care needs and health/nursing care needs.

Despite this, many people find obstacles put in their way by the NHS and the local authority before, during and after an assessment. Many people are 'overlooked' for funding, many assessments are carried out incorrectly and health needs are ignored, and many people are not assessed at all.

Many people are not given the right [information about NHS Continuing Healthcare](#) when they need full-time care. Many people also feel that the eligibility criteria are designed to make it difficult to qualify for this funding. In addition, as we've seen, the eligibility criteria seem to be open to undue subjective interpretation by assessors and, as a result, many people feel they are wrongly denied [care funding](#).

Many families are told that their relatives won't be eligible for Continuing Healthcare funding if they have dementia. This is quite wrong! Continuing Healthcare funding does not depend on any specific diagnoses that the person being assessed may (or may not) have. Instead, eligibility depends on the day-to-day health and care needs the person has – including the risks they are exposed to on account of their condition(s) – *whatever those conditions may be*.

The funding also does not depend on whether you have savings or property, and financial means-testing should *never* be part of the decision-making process about eligibility for NHS Continuing Care. It's about *health* needs only, not money.

[If anyone tries to put you off having an assessment](#) by telling you that 'it's not worth it' or that 'you won't qualify' or 'it's only for people with challenging behaviour' or 'it's only for people who are dying' or 'you have to be unable to swallow' – or any other such nonsense – you can respond by saying that [the only way to find out whether you qualify for this funding is to have an assessment](#).

A good rule of thumb is this:

If your relative needs full time care **AND they have any degree of health needs or nursing care needs, then they should be assessed for NHS Continuing Healthcare funding.**

The assessment process

There are two main stages to the assessment process. The first stage is called a 'Checklist assessment'. This initial Checklist does not determine eligibility, but instead determines whether a person should go through to stage two, the full assessment.

At the Checklist stage many people are simply told they 'don't qualify', and yet their needs may well have been assessed without due regard to the National Framework guidelines and the Checklist assessment criteria. This also happens at stage two. You can appeal. (Stage two is sometimes known as 'the DST', which stands for Decision Support Tool; this is the name of the form used during stage two.)

[Read more about the various stages of the assessment process here.](#)

Once the assessment process is complete, and if your relative is found eligible for NHS Continuing Healthcare after the second stage, this funding will cover all their social care needs as well as their health needs, so they will not need to pay for **any** of their care.

NHS Continuing Care assessments in hospital

If your relative is currently in hospital, it's important that they are assessed for Continuing Healthcare before they're discharged. This often gets 'overlooked' by hospital discharge teams who are keen to get people out to free up beds. Make sure the hospital realises you expect an assessment to be done before your relative is discharged. [You may find these articles on our blog helpful in this respect.](#)

The Fast Track process

If your relative only has a short time left to live and is in 'terminal decline', or if they are in a period of rapid deterioration but not necessarily at the end of their life, there's a [Fast Track assessment process for NHS Continuing Care](#) that should be used to get a funding decision made quickly. A care home manager,

district nurse, social worker, GP or other social or health care professional can initiate getting this assessment done.

Funding withdrawn

We're hearing increasing accounts of people who have been given NHS Continuing Healthcare, but then have their funding taken away again – often, it would seem, as the result of flawed reviews by assessors who seem to ignore and/or play down health needs, or decide that the health of the person under review has 'improved'. Needless to say, assessors can only do this with the evidence to back up their actions, and yet there seems to be an increasing trend for funding to be arbitrarily withdrawn – almost certainly motivated by protecting budgets. It's hugely frustrating and distressing for families. If this happens to your relative, you can appeal.

Funded Nursing Care (FNC)

If your relative is found ineligible for NHS Continuing Healthcare, and yet they do have some nursing needs, they may be given [Funded Nursing Care](#).

This is a weekly non-means tested payment, which is paid directly to a nursing home. Depending on the way the resident's contract with the care home is set up, the FNC payment may reduce the fees for the resident by the amount of the payment.

An assessment for Continuing Healthcare should always be carried out **before** any decision about FNC.

It is not unusual for people with nursing needs to simply be told they will receive the FNC payment, and yet they will not have had a proper Continuing Healthcare assessment. This is almost certainly an attempt by the local NHS to avoid paying for 100% of their care.

Mental health

If your relative is sectioned under the Mental Health Act, the NHS may be responsible for paying for all of their care afterwards for the duration of the section. This may be funded through NHS Continuing Healthcare or from other sources, but your relative should not have to pay.

Remember...

Remember that you can challenge the outcome of any Continuing Healthcare assessment if you have reason to think it wasn't done properly and/or the funding decision is wrong.

The importance of having a power of attorney and an up-to-date Will

This is relevant to everyone – whether you currently need care or not

Setting up a Lasting Power of Attorney is possibly the single most important thing you can do right now – whether you think you'll need it or not. It's impossible to overstate the importance of this.

It's not a nice thought, but a stroke can happen overnight and, if you wait until you need someone to act for you, it may be too late to set up a power of attorney. This doesn't just apply to older people; accidents and illness can happen to anyone at any time.

Once you lose mental capacity and can no longer make decisions about your care or your money, it's too late to set up a power of attorney, and your family will have to apply to the Court of Protection for a Deputyship order, to allow someone to manage your affairs. This can take months and is costly. In the meantime your family cannot make decisions on your behalf or act in your best interests. It's much better all round – including to yourself – to take action now.

A power of attorney is also vital for the NHS Continuing Care application and appeal process – so that someone can act on your behalf. (An existing Enduring Power of Attorney is also fine for this.)

Read some suggestions about [starting the conversation about powers of attorney](#) with your relative.

Also, make sure your Will is up to date. (Remember: a Will and a power of attorney are two completely different things. Don't assume that just because you have a Will you are somehow protected by a power of attorney as well while you're still alive. You need to do both.) The same thing applies to Wills about not waiting until it's too late. If you start to lose mental capacity to make decisions, you can no longer make or change your Will.

Final thoughts from the author, Angela Sherman...

I hope you've found this guide helpful, and that it has helped dispel some of the myths that surround care fees and NHS Continuing Healthcare funding.

If your relative is going into care – or is already in care – you'll know how stressful and distressing that can be. Having to deal with care funding matters at the same time can make it that much harder, too.

It's my mission to help families become well-informed about the ins and outs of care fees and NHS funding – what's right and what's not. I hope it will empower people to challenge the health and social care authorities – and win – when care funding maladministration occurs.

This free e-guide may be the first step for you in accessing the wealth of information on the Care To Be Different website. Your feedback is very welcome.

Angela Sherman

Director, Care To Be Different

www.caretobedifferent.co.uk

Your guide through the Continuing Healthcare assessment process

- For more useful information about NHS Continuing Healthcare and related matters, visit www.caretobedifferent.co.uk. Also, [browse our blog](#), leave your comments and share the experience you've had in getting your relative assessed for NHS Continuing Healthcare.
- We also have a practical step-by-step e-guide, [How To Get The NHS To Pay for Care](#). It takes you through the Continuing Healthcare assessment process and shows you how to fight your corner.
- [Find out more about all our services.](#)

