

## A Guide to Deliberate Deprivation of Assets and What They Are

A deliberate deprivation of assets is where an adult has deprived themselves of assets for the purpose of decreasing the amount that they may be liable to pay towards the cost of meeting their needs for care and support or their needs for support.

There is no mention in the Care and Support Guidance as to the time or place of such disposal of assets.

It is only relevant where an individual is relying on their care to be funded by the local authority. The local authority will ask for financial recourses going back to the time the individual first had care and support needs.

If the local authority suspects that an individual has deliberately deprived themselves of assets they must establish that:

- (i) There has been a disposal of capital (e.g. cash – shares);
- (ii) The purpose was to avoid a charge for care fees;
- (iii) The adult had a reasonable expectation of needing care and support and that those needs would come at a cost.

Having a clear reason for disposing of capital should not be considered as a deliberate deprivation of assets. It is important the local authority is told of the reason, have considered it and have either accepted or rejected that decision.

The local authority will look carefully at:

- (a) Conversions of assets into disregarded assets such as the purchase of a capital investment bond;
- (b) Gifts;
- (c) Assets settled into a trust;
- (d) Transfer of ownership;
- (e) Payments of unsecured debts or substantial expenditure;
- (f) Sudden change to living extravagantly.

The purpose and the timing of any disposal will be carefully scrutinised. If you have a valid reason, depending on your circumstances, gifts can be made and a deprivation should not be automatically presumed. The Care and Support Guidance does recognise that people should be treated with dignity and respect and be able to spend their money as they wish. Gifts made following a previous pattern with no evidence of haste, over a period of time are more likely to be accepted by the local authority.

Early advice should be sought before making gifts or otherwise to ensure all risks and consequences are considered. If the local authority claim a deliberate deprivation and valid reasons for disposal exist a challenge should be brought against such a decision. Often these can be resolved at an informal complaints level.

It is also worthy of note that an attorney or deputy is unlikely to have authority to make substantial gifts without authority from the Court of Protection and so if you are acting on behalf of someone there could be further consequences for abuse of power if you made the gift on their behalf.

Our specialist COP and care funding team have extensive experience in challenging deliberate deprivation claims and also advising on whether a gift or transfer of assets can be made.

Talk to our specialist teams for further advice.