# Can local authorities force sale of property in trust to pay for elder care?



In an increasingly complex landscape of elder care financing, families grapple with critical questions about the protection of their loved ones' assets. A poignant example involves a Port Talbot resident whose mother is currently in an elderly mental health ward, suffering from depression and anxiety. Her property, a bungalow valued at £150,000, has been placed in a trust since 2015, ostensibly ensuring that it could be safeguarded. However, the looming question raised by the concerned family member is whether the local authority could compel the sale of this property to fund future care costs.

As healthcare needs among the elderly rise, many individuals find themselves unprepared for the significant expense of care services. Data from Carehome.co.uk reveals that a staggering 66% of care seekers are self-funding, with only 16% receiving support from local authorities. The risk of means testing for those living alone often leads to harsh financial realities, as the value of their homes can be factored into care costs.

The arrangement of placing property into trust, like in this case, carries its own complexities. While well-intentioned, the placement of the bungalow in trust might not unequivocally exempt it from being assessed as an asset by the local authority. Financial adviser Natalie Donnell emphasises the importance of intent behind such decisions. If the local authority perceives that the trust was established specifically to avoid the financial burden of future care, they may classify this as 'deliberate asset deprivation.' This classification could have serious implications, allowing authorities to treat the property as if it still belongs to the individual, potentially complicating eligibility for care funding.

The nuances extend further, as Adam Johnson, another financial expert, highlights the distinction between care funded by the NHS versus that which is subject to means testing by local authorities. If the care is deemed primarily health-related, particularly under circumstances such as involuntary admission under the Mental Health Act, the property’s value would typically be disregarded. Nonetheless, for means-tested care, the local authority could assess the mother’s income, savings, and property assets. The £23,250 threshold for asset consideration varies across the UK and poses additional challenges for families already navigating the emotional and logistical burdens of care.

Importantly, the ownership structure of the trust plays a crucial role in how the property may be treated. If the trust was designed so that the mother has no capital rights—merely a right to reside—she might escape the classification of ownership for assessment purposes. This complexity is compounded by concerns regarding the local authority's perspective on the timing and reasons for the trust's creation. A lack of clarity around the financial motivations might lead to undesirable scrutiny, resulting in potentially prolonged disputes over funding.

In cases like these, the importance of seeking professional advice cannot be overstated. As the law surrounding asset protection and elder care financing evolves, not all transfers will withstand the scrutiny of local authorities. As noted by several commentators, including solicitors and financial advisers, the concept of 'deprivation of assets' requires careful consideration, and families need to be apprised of the potential legal intricacies involved.

Ultimately, while the intent behind establishing a trust for property may have been to preserve family assets, the evolving circumstances of elder care demand a proactive approach. An informed understanding of local authority assessments and the implications of asset declarations can provide invaluable guidance and peace of mind. Engaging with financial planners who specialise in elder care can illuminate the best pathways for navigating these challenging terrains, while ensuring that the original aims of asset protection remain intact amidst shifting realities.

## Reference Map:

* Paragraph 1 – [[1]](https://www.dailymail.co.uk/money/financial-planning/article-14731251/Can-council-make-sell-mothers-bungalow-pay-care.html?ns_mchannel=rss&ns_campaign=1490&ito=1490), [[2]](https://www.ukinsurancenet.com/knowledge-base/insurance-advice/can-i-put-my-property-in-trust-to-avoid-care-home-fees/)
* Paragraph 2 – [[1]](https://www.dailymail.co.uk/money/financial-planning/article-14731251/Can-council-make-sell-mothers-bungalow-pay-care.html?ns_mchannel=rss&ns_campaign=1490&ito=1490), [[4]](https://www.alzheimers.org.uk/get-support/legal-financial/paying-for-care/do-you-have-sell-your-house), [[5]](https://www.ageuk.org.uk/information-advice/care/paying-for-care/paying-for-a-care-home/do-i-have-to-sell-my-home-to-pay-for-care/)
* Paragraph 3 – [[3]](https://www.hcrlaw.com/news-and-insights/care-home-funding-and-property-transfers-dont-get-caught-out/), [[6]](https://www.courtiers.co.uk/news-and-insights/long-term-care-funding-and-protecting-your-property/)

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## Bibliography

1. <https://www.dailymail.co.uk/money/financial-planning/article-14731251/Can-council-make-sell-mothers-bungalow-pay-care.html?ns_mchannel=rss&ns_campaign=1490&ito=1490> - Please view link - unable to able to access data
2. <https://www.ukinsurancenet.com/knowledge-base/insurance-advice/can-i-put-my-property-in-trust-to-avoid-care-home-fees/> - This article discusses the implications of placing property into a trust to avoid care home fees in the UK. It highlights that while trusts can be used for estate planning, transferring property to a trust with the intention to avoid care fees may be considered 'deliberate deprivation of assets' by local authorities. The article also notes that proposed reforms to care home fees, including a cap of £86,000, have been delayed, leaving uncertainty about their implementation.
3. <https://www.hcrlaw.com/news-and-insights/care-home-funding-and-property-transfers-dont-get-caught-out/> - This article from HCR Law examines the risks associated with transferring property to relatives to avoid care home fees. It explains that such transfers can be scrutinised by local authorities and may be deemed as deliberate deprivation of assets, leading to the inclusion of the property's value in financial assessments. The article provides examples of cases where property transfers resulted in disputes over care funding, emphasising the importance of understanding the legal implications before making such decisions.
4. <https://www.alzheimers.org.uk/get-support/legal-financial/paying-for-care/do-you-have-sell-your-house> - The Alzheimer's Society provides guidance on the necessity of selling one's home to pay for care in England. It clarifies that while individuals cannot be forced to sell their home, the property's value is considered in financial assessments if the person is in a care home. The article outlines circumstances under which the home may be disregarded, such as if a partner or dependent relative continues to live there, and discusses the financial thresholds that determine personal contributions to care costs.
5. <https://www.ageuk.org.uk/information-advice/care/paying-for-care/paying-for-a-care-home/do-i-have-to-sell-my-home-to-pay-for-care/> - Age UK addresses the question of whether individuals must sell their home to pay for care. The article explains that during a financial assessment, the value of the home is considered, and in certain situations, the home may be disregarded. It also discusses the concept of 'deprivation of assets,' where transferring assets to avoid care fees can lead to those assets being included in the assessment. The article provides information on how local authorities assess assets and the potential consequences of asset transfers.
6. <https://www.courtiers.co.uk/news-and-insights/long-term-care-funding-and-protecting-your-property/> - Courtiers Wealth Management discusses the complexities of long-term care funding and the protection of property. The article explains that local authorities have the right to sell a person's property to fund care costs if no other assets are available. It also covers scenarios where property transfers to relatives may be considered deliberate deprivation of assets, leading to the property's value being included in financial assessments. The article advises seeking professional advice before making decisions about property transfers to protect assets.
7. <https://www.carehome.co.uk/advice/can-i-put-a-property-into-a-trust-to-avoid-care-home-fees> - Carehome.co.uk explores the use of property trusts as a means to avoid care home fees. The article defines a property trust and discusses how it operates, including the management and potential sale of the property. It also outlines the disadvantages of using trusts for this purpose, such as the risk of being considered deliberate deprivation of assets by local authorities. The article provides insights into the legal and financial implications of setting up a property trust to avoid care fees.