

## Scottish Parliament Region: South of Scotland

### Case 200603087: East Lothian Council

#### Summary of Investigation

##### **Category**

Local government: Financial assessment of eligibility for Council funding of care home costs; Complaint handling

##### **Overview**

The complainant (Mrs C) raised a number of concerns about the assessment of her mother's (Mrs A) financial assets by East Lothian Council (the Council). Mrs C considered the Council had acted improperly in including the nominal value of her mother's home which she had transferred ownership of, for 'love, favour and affection', to her family 11 years prior to entering the care home. Mrs C also argued that the Council's complaint process was flawed to the extent that the legal advice it offered to the Social Work Complaints Review Committee (SWCRC) was deficient.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council's decision to include the value of the property in their calculation of Mrs C's financial assessment was administratively flawed (*upheld*); and
- (b) the Council failed to provide adequate legal advice to the SWCRC who upheld Mrs C's complaint (*not upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council undertake a new financial assessment of Mrs A's assets, disregarding the nominal value of the property disposed of in 1994.

The Council have accepted this recommendation and will act on it accordingly.

##### **Further Action**

There is a considerable overlap in the issues raised in this case with one previously reported on by this office in December 2006 (Report No 200503530). That report and this raise issues about the scope for different interpretations of

a number of aspects of the relevant Scottish Guidance throughout Scotland and the potentially inequitable outcome of this varied interpretation. The reports both also highlight the lack of an appropriate independent appeal mechanism to deal with financial assessments. This report also raises the question of how the value of an asset is calculated as it appears that again there is no specific guidance on this and the potential for uncertainty and geographical variation. The previous report was forwarded to the Scottish Executive Health Department<sup>1</sup> by the Ombudsman's office to highlight our concerns. This case (and a number of others currently with this office) illustrate that these concerns persist and once again the Ombudsman's office will forward a copy of this report to the Scottish Government Health Directorates to draw the matter to their attention and seek their views on how best to resolve the difficulties being encountered.

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<sup>1</sup> On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

## **Main Investigation Report**

### **Introduction**

1. On 11 January 2007 the Ombudsman received a complaint from the complainant (Mrs C) that East Lothian Council (the Council) had failed to properly administer their calculation of her mother (Mrs A)'s assets and accordingly were wrong to include the value of Mrs A's former home (the Property) in their calculation. Mrs C also complained that the Council's Social Work Complaints Review Committee (SWCRC) had agreed with her complaint but had been overruled by a committee of the Council on the grounds that the SWCRC had not applied the correct legal test. Mrs C noted that the SWCRC legal advice was provided by a Council solicitor.

2. The complaints from Mrs C which I have investigated are that:

- (a) the Council's decision to include the value of the property in their calculation of Mrs C's financial assessment was administratively flawed; and
- (b) the Council failed to provide adequate legal advice to the SWComplaints Review Committee who upheld Mrs C's complaint.

3. There is a considerable overlap in the issues raised in this case with one previously reported on by the Ombudsman's office in December 2006 (Report No 200503530). That report and this raise issues about the scope for different interpretations of a number of aspects of the relevant Scottish Guidance throughout Scotland and the potentially inequitable outcome of this varied interpretation. The reports both also highlight the lack of an appropriate independent appeal mechanism to deal with financial assessments. This report also raises the question of how the value of an asset is calculated as it appears that again there is no specific guidance on this and the potential for uncertainty and geographical variation. The previous report was forwarded to the Scottish Executive Health Department by the Ombudsman's office to highlight our concerns. This case (and a number of others currently with this office) illustrate that these concerns persist and once again the Ombudsman's office will forward a copy of this report to the Scottish Government Health Directorates to draw the matter to their attention and seek their views on how best to resolve the difficulties being encountered.

## **Investigation**

4. Investigation of this complaint involved obtaining and reviewing the complaints and correspondence file from the Council and records supplied by Mrs C. I also sought the Council's comments on the issues raised in light of our previously published report. I have discussed the matter directly with Mrs C and sought her further comments. I have reviewed relevant legislation and guidance issued by the Scottish Executive. I have considered a number of legal decisions of relevance to this complaint. As part of the work on the previous report I had informal discussions with a number of parties with regard to the general problem of local variations in practice throughout Scotland – these included Council Social Services Departments, Age Concern Scotland and representatives of care home owners. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report. Annex 4 contains a chronological summary of the events of this case.

### *Legislation and Legal Background*

5. The following information does not cover all relevant legislation, guidance or case law but summarises the legislative and legal background to this complaint.

6. The assessment of an individual's financial assets and consequent ability to fund care home costs is carried out in accordance with regulations set out in The National Assistance (Assessment of Resources) Regulations. These are subject to change over time. The Scottish Executive issues annual guidance to local authorities with respect to these regulations – Charging for Residential Accommodation Guidance (CRAG). There has been no substantial change in the regulations or guidance since the events of this complaint.

7. The Scottish Executive produce a guide in 2005 called 'Thinking about moving into a care home?' aimed at members of the public considering moving to a care home which is based on the regulations and the CRAG.

8. The relevant sections of the CRAG are set out in Annex 3 but I would note the following here as of particular significance:

'6.056 The local authority may feel that a resident has deprived himself of a capital asset in order to reduce his accommodation charge. If this is the

case the local authority may treat the resident as still possessing the asset. The following factors will need to be considered.

*Purpose of disposing of an asset*

6.061 There may be more than one purpose for disposing of a capital asset only one of which is to avoid a charge for accommodation. Avoiding the charge need not be the resident's main motive but it must be a significant one.

*Timing of the disposal*

6.063 The timing of the disposal should be taken into account when considering the purpose of the disposal. It would be unreasonable to decide that a resident had disposed of an asset in order to reduce his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for a move to residential accommodation. The local authority should bear in mind, however, that deprivation can be considered for resources disposed of at any time.

*Deprivation decided*

6.066 If the local authority decides that the resident has disposed of capital in order to avoid a charge or to reduce the charge payable, the local authority will need to decide whether to treat the resident as having the capital (notional capital) and assess the charge payable accordingly; and then whether:

a. it is realistic to recover the assessed charge from the resident (bearing in mind that they may not have the means to pay the debt which will be accruing) ...'

9. The document 'Thinking about moving into a care home?' states:  
'What if I dispose of my 'capital' before entering a home? (Notional Capital)

If you dispose of capital, for example, if you transfer the title to your property to someone else when you know that you will soon be entering a care home, the social work service may consider that you have done so to avoid contributing towards the cost of your care. It may then assess your finances as if you still possess that capital. Capital which is treated in this way within the financial assessment is known as 'notional capital'.

When deciding if a person who needs care has disposed of capital to avoid meeting the care costs, the social work service will consider when the capital was either given away or disposed of. It would not, however, be reasonable to assume that a person who had been fit and well and could not have foreseen the need to move into a care home at the time when an asset was given away or disposed of had done so to avoid paying for care.

Ultimately, the social work service will decide whether a person has deliberately disposed of capital to avoid paying for care based on the care charging regulations and guidance. If you do not agree with the service's decision, you can complain through its formal complaints procedure.'

10. There have been a number of court cases on this subject but of most relevance is *Yule v South Lanarkshire Council* 1998 SLT 490 (Yule). This case was referred to by Mrs C and the Council. The case concerned determination of notional capital being possessed by the petitioner who, aged 78, had transferred her property for 'love, favour and affection' to her granddaughter and who, within 12 months, had required care home accommodation. The decision of the court was that the Council were entitled to regard the property as notional capital.

11. In reaching his conclusion the judge in *Yule* noted several factors concerning the petitioner's health and financial arrangements and concluded that there was material entitling the Council to decide that Mrs Yule had intended to reduce her liability to pay care home costs and that the Council's decision was not so unreasonable that no reasonable authority could have come to it. The judge noted that as there was conflicting information as to Mrs Yule's health at the time of the transfer of the property, the Council were justified in reaching an adverse conclusion about this. The Council were entitled to make such an inference from the facts and this decision was not open to challenge. The judge went on to state that: '(Mrs Yule was 78 when she transferred the property). It is a fact of life, which [the Council] were entitled to take into account, that persons in their late seventies are increasingly likely to require nursing home accommodation'. The judge noted that Mrs Yule's stated intention was to transfer the benefit to her granddaughter but that she could have achieved the same outcome through a will. The judge ruled that the Council were entitled to reject any motive or explanations that had been offered and that no satisfactory explanation for the transfer had been offered.

**(a) The Council's decision to include the value of the property in their calculation of Mrs C's financial assessment was administratively flawed**

12. The chronology of events at Annex 4 highlights the key events in this case. In summary Mrs A was 80 when she purchased the Property in 1990 with money loaned to her by her family. Ownership of the property was transferred to her children 4 years later and 11 years after that (2005) Mrs A moved to live in a care home (the Care Home). On her admission to the home Mrs A's family applied for a financial assessment on their mother's assets with a view to securing Council funding for her care costs as she had no assets of significance. The Council decided that a significant reason for the transfer of ownership of the property in 1994 had been to avoid future care home costs and that they, therefore, regarded Mrs A as still being in possession of that asset. Accordingly the Council would not fund Mrs A's care home costs until such times as this nominal capital sum had been depleted. Mrs C challenged this decision and her complaint was ultimately upheld by SWCRC but that decision was in turn set aside as legally flawed by the Council's Appeals Sub-Committee (see complaint (b)). Mrs C complained that the Council were wrong in regarding avoidance of future care home costs as a significant reasons for her mother transferring the property and wrong in the advice it provided to the SWCRC who had supported her views.

13. A considerable amount of the discussions and correspondence in this case between the Council, Mrs C's solicitors (the Solicitors) and Mrs A's family has involved consideration of whether and to what extent the judgement in the Yule case applies to the circumstances of Mrs A and to what extent the Council's decision can be supported by CRAG. I will deal with each of these in turn after summarising the key arguments.

*Key Arguments*

14. The basis of the Council's reasons (with further comments on these in brackets) for their decision as stated in their submission to the SWCRC:

- Mrs A needed a care service at the time of the transfer (and was, therefore, not in perfect health);
- Mrs A was 85 at the time of the transfer (an age when 19% of people are in care);
- there was no reasonable alternative explanation;
- family interest was protected by a Standard Security;
- Mrs A didn't have to pay rent before the purchase of her home so the purchase couldn't have been to avoid future rent payments;

- a will could achieve the same end; and
  - the Yule case says a Council can reasonably assume a transfer of property for no value is to avoid payment of fees unless there is a reasonable alternative explanation.
15. The family countered each of these arguments:
- Mrs A enjoyed very robust health and only required the care service because of a hysterectomy operation and the Council had never revisited the original assessment (in response to a draft of this report the Council advised me that the care package was in fact reviewed on an annual basis). The family provided a report from Mrs A's GP to the effect that she enjoyed good health and would not have been considered as suitable for her subsequent knee operations had she not been in general good health;
  - Mrs A did not enter the Care Home until she was 95 and could not reasonably be said to have anticipated this for the previous 11 years. Mrs A was 80 when she bought the house - already older than Mrs Yule when she disposed of her home and would not have bought it at that age if she had been contemplating care home costs;
  - Mrs A wanted the immediate satisfaction and comfort of knowing she had gifted her home to her children and in particular to know that she had provided them with financial security;
  - the family had provided Mrs A with all the money to buy the house, Mrs A never had any substantial capital of her own contributing only her discount to the purchase price. Mrs A had always intended to transfer the home to her family as soon as it was legally possible to do so without penalty;
  - the family never suggested the transfer was to avoid rent;
  - Mrs A does have (and has had throughout this time) a will in which she leaves all her assets to her children – Mrs A wanted to know that they had ownership of the Property while she was alive and a will would not achieve this; and
  - there is a reasonable alternative explanation (Mrs A's desire to know her family were financially secure).

#### *Yule Case*

16. Many of these arguments arise from the facts in the Yule Case. The Council's solicitor who advised the SWCRC made the distinction between following the facts of the Yule case and following the legal rationale of that case. The Council must follow the rationale but are not bound by the facts. The Council set out the legal rationale as being: that they could reasonably assume



a transfer of property for no value was to avoid payment of fees unless there was a reasonable alternative explanation. The Council did not believe there was such an explanation.

#### *CRAG*

17. CRAG 6.061 states that avoiding care home costs need not be the only motive for the disposal but it has to be a SIGNIFICANT one. CRAG 6.063 states that the timing of a disposal should be taken into account and that it would be unreasonable to take account of a disposal that occurred at a time when the individual was fit and healthy and couldn't have foreseen the need for a move into a care home (see competing arguments in paragraphs 14 and 15).

18. It also states that a Council is entitled to take account of a disposal made at any time. I am aware that a number of Councils in Scotland would not generally have regard to an asset disposed of 11 years prior to the need for residential care arising but that as the Ombudsman's office pointed out in the previous report referred to (see paragraph 3) there is no universal rule on this and the lack of clarity in the guidance does give rise to differential treatment by Councils across Scotland.

19. CRAG 6.066 states that where a Council does decide the asset has been disposed of to avoid costs and to treat the resident as having the notional capital then the Council must decide whether it is realistic to recover the assessed charge from the resident who may not have the means to pay the debt accruing. In Mrs A's case she has never had significant assets – her contribution to the original purchase was her 60% discount, a purely theoretical sum. As Mrs A has no assets the notional capital cannot be recovered from her. Even if Mrs A was subject to sequestration, as the asset had been passed to her family more than five years ago, it is, therefore, legally exempt from the relevant legislation - Bankruptcy (Scotland) Act 1985 (sec 34). This situation should it arise would cause a direct difficulty for the Care Home rather than the Council as Mrs A's family have not signed a contract with the Care Home because they regard the Council as responsible for the payments. At 5 November 2006 the amount owed to the Care Home by Mrs A if Mrs A is self-funding was £24,985.30 (the equivalent debt to the Council if Mrs A is Council funded would be £9,701.70).

20. I would also note a further concern raised in this case about a lack of clarity in the guidance with reference to the nominal value placed on the

property by the Council. In my review of the documents three different sums have been put forward for this. Firstly the Council considered Mrs A to own 60% of the estimated total value at transfer in 1994. Secondly the value was determined as 60% of the estimated value at the time Mrs A entered the Care Home on 2005 and finally a value was suggested to be 60% of the actual value received by Mrs A's family when they sold the Property in December 2005. The notification given to the family refers to the second of these values which gives Mrs A nominal capital of £30,539. Given the overall rise in property values in the past 15 to 20 years the different methods of calculation could make a considerable difference to the putative assets of Mrs A. The lack of a clear formula for calculating the nominal sum increases the likelihood of discrepancies arising between the practices adopted by different local authorities throughout Scotland.

*(a) Conclusion*

21. The Council set out the legal rationale as being: that they could reasonably assume a transfer of property for no value was to avoid payment of fees unless there was a reasonable alternative explanation. The Council did not believe there was such an explanation. The arguments between the two parties then can be condensed to one of 'reasonableness'. Was the family's view that Mrs A wanted to pass the Property on to her family within her own lifetime, giving her the comfort of knowing that the transfer had happened, a reasonable explanation? The Council argued that as Mrs A retained life-rent in the property no actual value or financial security passed to the family at the time of the transfer. However, the fact that Mrs A's family could not benefit immediately from her gift does not preclude Mrs A's wish to knowingly secure their future benefit being considered a reasonable explanation. While I consider that there was an alternative explanation this does not preclude the Council's decision to the contrary being reasonable as there can be more than one reason for the disposal and a Council is entitled to infer reasons from the facts before it. Thus I conclude that the Yule test has been met as the Council were entitled to reach their view that it did not consider there was a reasonable alternative explanation.

22. The next issue to be determined is then whether the Council's actions, having decided that avoiding care home costs was a reason for the disposal, can meet the test of CRAG 6.061 namely that it was a SIGNIFICANT reason. I am of the view that the alternative reason offered by the family was in fact the significant one - albeit that it is not a financially or legally sophisticated one. Of

crucial importance here is Mrs A's original purpose in purchasing her home with money provided by her family and at the age of 80. Had Mrs A been contemplating a move to a care home, as the Council imply is the case for persons of her age, it is not likely that she would have been motivated to buy her own home or that her family would have loaned her the money for this purpose. That Mrs A bought the home always intending to pass on the benefit of her 60% discount to her family is entirely logical and her disposal of it to them four years later was the fulfilment of that intention. At the time of transfer Mrs A's long-term intention was to remain in the Property (there would be no other reason for the life-rent provision) and while there may have been an awareness that some day in the future care home accommodation might be necessary I have seen no evidence to suggest that this was a significant issue at the time. I conclude that the Council have not shown the avoidance of care home costs to be a significant reason and accordingly have not properly applied 6.061.

23. I also conclude that the Council did not give sufficient consideration to CRAG 6.066 regarding a resident's means to pay a debt, and whether they should alter their decision in light of the known actual financial circumstances of Mrs A. I acknowledge that this step may have been taken at a later stage. However, the Council have not indicated to me that they are intending to consider this issue and given Mrs A's known lack of actual funds and the likely outcome of action to reclaim such non-existent funds, I consider this to be unreasonable.

24. In summary, I conclude that the Council have failed to act properly in not having due regard to CRAG 6.061 and have not demonstrated that the avoidance of care home fees was a significant motive. The Council have also failed to demonstrate any consideration of CRAG 6.066. For both these reasons I uphold this aspect of the complaint.

*(a) Recommendation*

25. The Ombudsman recommends that the Council undertake a new financial assessment of Mrs A's assets, disregarding the nominal value of the property disposed of in 1994.

**(b) The Council failed to provide adequate legal advice to the SWCRC who upheld Mrs C's complaint**

26. Mrs C complained that the SWCRC had reached a decision in support of her mother's case but that their decision was overturned by the Council's Appeals Sub-Committee. Mrs C understood that the SWCRC is only an advisory committee whose decisions can be overturned by the Council but objected to the reason given for overturning the decision namely that the SWCRC had applied the wrong legal test from Yule. Mrs C pointed out that the legal advice to the SWCRC was provided by the Council and if this had been flawed then the SWCRC had been misguided by the Council. Mrs C also questioned the impartiality of the Council's Appeals Sub-Committee as this is a committee of the same Council who had decided to have regard to the nominal capital and was advised by the same legal team.

27. I have reviewed the minutes of the meeting and in particular the advice provided by the Council's solicitor to the SWCRC. The advice provided by the solicitor was correct in that it stated that Yule entitled the Council to reasonably assume a transfer of property for no value was to avoid payment of fees unless there was a reasonable alternative explanation. The conclusion of the SWCRC was that 'it had not been established to the satisfaction of the panel that one of the motives (for the disposal) was for the purpose of avoiding the future care home fee payments'. The Council's Appeals Sub-Committee in turn rejected this as the decision in Yule meant it was not necessary for the Council to establish (prove) the motive it relied on.

28. Mrs C provided me with a letter to her from the chair of the SWCRC (Mrs D) written after Mrs C had notified her of the Council's decision to overturn the decision of the SWCRC (Mrs D had not been notified of this action by the Council). Mrs D noted that she considered Mrs A's sole motive was to repay her family's loan and that in her view Mrs A was not considering care home costs at the time of the transfer. Mrs D also noted that she felt there must be some limit in time to how far back the Council could consider a transfer and noted that for all other purposes seven years would have been sufficient time for a 'gift' to be taken out of any financial reckoning. Mrs D noted that the SWCRC were not provided with full detail on the Yule case in the papers before the meeting and that she considered this an omission.

*(b) Conclusion*

29. The legal advice provided to the SWCRC was correct and the Council's Appeals Sub-Committee were correct in saying that motive could be inferred and need not be proved. In this respect the Council acted properly and I cannot uphold this aspect of the complaint. I do, however, consider that the sub-text of the SWCRC decision was that they considered that Mrs A's explanations of her motives were reasonable and thus met the test in Yule of being a reasonable alternative explanation – the fact that the SWCRC chose to summarise their views in a particular way should not have precluded the Council's Appeal Sub-Committee looking at the context of their conclusions.

*(b) Recommendation*

30. The Ombudsman has no specific recommendation to make but notes Mrs C's concern at the lack of an impartial appeals process and in that respect returns to a point noted in the Investigation Report referred to in paragraph 3 that '... the current system is confused and inconsistent throughout Scotland and in particular there is no recognised, independent, appeals process for such financial assessments and decisions.

21 November 2007

**Explanation of abbreviations used**

Mrs C	The complainant
The Council	East Lothian Council
Mrs A	The aggrieved – Mrs C's mother
The Property	Mrs A's former home, transferred in 1994 to Mrs A's family (Mrs C and siblings)
SWCRC	The Council's Social Work Complaints Review Committee
CRAG	Charging for Residential Accommodation Guidance
Yule	Yule v South Lanarkshire Council 1998 SLT 490
The Care Home	The care home where Mrs A currently resides
The Solicitors	Solicitors acting on behalf of Mrs C
Mrs D	The chair of the SWCRC panel

**Glossary of terms**

Love, favour and affection	The transfer of a property from one party to another for no cost - usually as a gift
Petitioner	The person making a formal, written application to the court for review of a matter
Power of Attorney	A legal instrument authorizing one to act as another's attorney or agent
Sequestration	A writ authorising a law-enforcement official to take into custody the property of a defendant in order to enforce a judgement (that monies are owed)
Standard Security	A method of creating a security over property or land (equivalent in operation to a mortgage deed)

## List of legislation, guidance and case law

The National Assistance (Assessment of Resources) Regulations

Charging for Residential Accommodation Guidance

*Extracts from Charging for Residential Accommodation Guidance - Issued April 2006 by the Scottish Executive Health Department*  
*Deprivation of Capital*

### *General*

6.056 The local authority may feel that a resident has deprived himself of a capital asset in order to reduce his accommodation charge. If this is the case the local authority may treat the resident as still possessing the asset. The following factors will need to be considered.

Reg 25(1)

### *Forms of capital to be considered*

6.57.1 The local authority should only consider questions of deprivation of capital when the resident ceases to possess capital which would otherwise have been taken into account.

### *Has deprivation occurred?*

6.059 It is up to the resident to prove that he no longer has a resource. Failure to do so will result in the local authority treating the resident as if he still possesses the actual capital. Examples of acceptable evidence of the disposal of capital would include

- a trust deed
- deed of gift
- receipts for expenditure
- proof that debts had been repaid.

6.060 Examples of where a person has deprived themselves of capital (although not necessarily for the purposes of avoiding a charge for accommodation)

- A lump-sum payment has been made to someone else (eg as a gift or to repay a debt)
- Substantial expenditure has been incurred (eg on an expensive holiday)



- The title deeds of a property have been transferred to someone else
- Money has been put into a trust which cannot be revoked
- Money has been converted into another form which would fall to be disregarded (eg personal possessions)
- Capital has been reduced by living extravagantly (eg gambling or following a much higher standard of living than the resident could normally afford)
- Capital has been used to purchase an investment bond with life insurance. Local authorities will wish to give consideration, in respect of each case, to whether deprivation of assets has occurred ie did the individual place his capital in such an investment bond so that it would be disregarded for the purposes of the Assessment of Resources Regulations.

#### *Purpose of disposing of an asset*

6.061 There may be more than one purpose for disposing of a capital asset only one of which is to avoid a charge for accommodation. Avoiding the charge need not be the resident's main motive but it must be a significant one.

6.062 If, for example, a person has used capital to repay a debt, careful consideration should be given to whether there was a need for the debt to be repaid at that time. If it seems unreasonable for the resident to have repaid that debt at that time, it may be that the purpose was to avoid a charge for accommodation.

#### *Timing of the disposal*

6.063 The timing of the disposal should be taken into account when considering the purpose of the disposal. It would be unreasonable to decide that a resident had disposed of an asset in order to reduce his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for a move to residential accommodation. The local authority should bear in mind, however, that deprivation can be considered for resources disposed of at any time. The 6 month restriction only applies to using the provisions of Section 21 of the Health and Social Services and Social.

#### *Deprivation decided*

6.066 If the local authority decides that the resident has disposed of capital in order to avoid a charge or to reduce the charge payable, the local authority will need to decide whether to treat the resident as having the capital (notional capital) and assess the charge payable accordingly; and then whether:

- a. it is realistic to recover the assessed charge from the resident (bearing in mind that they may not have the means to pay the debt which will be accruing);  
or
- b. if the asset was transferred not more than 6 months before the date the resident begins to live in residential accommodation, or while the resident is living in the accommodation, to use the provisions of Section 21 of the Health and Social Services and Social Security Adjudication Act 1983 to transfer the liability to the recipient of the asset for that part of the charges assessed as a result of the notional capital (see Circular SWSG15/93).

*'Thinking about moving into a care home?' - Published by the Scottish Executive, January, 2005.*

Yule v South Lanarkshire Council 1998 SLT 490

Bankruptcy (Scotland) Act 1985 (sec 34)

## Chronology of Events

Date	Event
August 1988	Mrs A (aged 79) is referred to homecare services following an operation on the grounds of physical illness and frailty. As a consequence she received 2 x 1 hour per week of home care services for cleaning, shopping and client monitoring
January 1990	Mrs A (aged 80) purchases her former Council home (the property) using the then maximum 60% discount. The money used is loaned to Mrs A by her family with a Standard Security over the property for the amount of the loan
May 1994	Mrs A (aged 83) transfers the Property to her children (including Mrs C) for no value ('love, favour and affection') but retains a life-rent interest in the property which cannot be sold without her consent
May 2005	Mrs A (aged 95) enters the Care Home
December 2005	The Property is sold