

## KEY FEATURES AND BENEFITS 19

# Planning Which Can Assist Clients Entering Care

## THE CARE ACT

The relevant legislation is called 'The Care Act 2014'. This Key Features and Benefits focuses on capital assets that are jointly owned, such as the family home.

### ! The Problem: Valuing joint assets without CRAG

The Charging for Residential Accommodation Guide ('CRAG') has effectively been replaced by The Care and Support Statutory Guidance ('Guidance'). The purpose of the Guidance is to help Local Authorities to interpret and apply the new Act.

Annex B of the Guidance is dedicated to the treatment of capital. For example, it states that an investment bond including a Life Insurance Policy with cashing in rights, should be disregarded.

The Care and Support (Charging and Assessment of Resources) Regulations 2014 ('Regulations') should be read alongside the Guidance: they deal with joint ownership of capital assets except land<sup>2</sup>. Where does that leave us?

### ✓ The Solution: Case Law

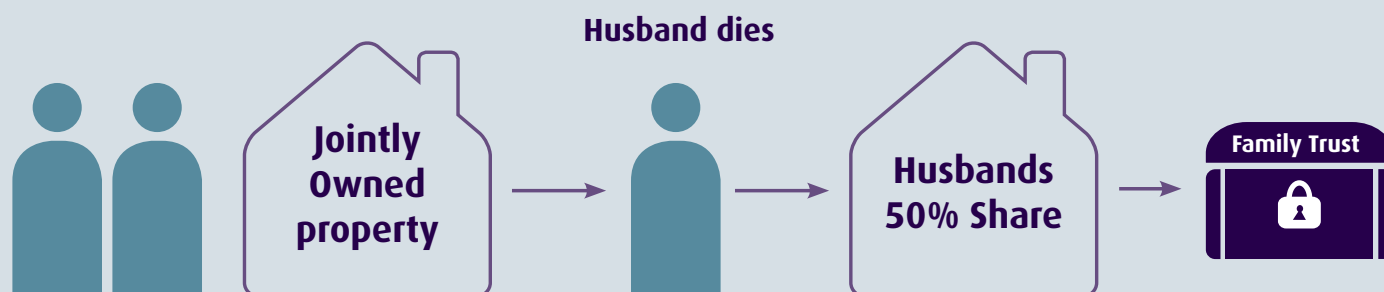
The position in certain circumstances has been to value an interest in the family home, at nominal or nil value. This is on the basis that there is no willing buyer to purchase that interest in the property. The legal authority for this did not come from CRAG; it in fact comes from case law<sup>3</sup>. This means that, despite CRAG no longer applying, the argument is still valid. Equally it is clear from the Regulations that a half interest in the family home should not simply be calculated by dividing the total value of the property by two.

1. Part 5, Regulation 24.
2. Chief Adjudication Officer v Palfrey [1995] 11LS Gaz R39 and Wilkinson v Chief Adjudication Order [2000] EWCA civ 88.

## EXAMPLE

### THE TRUST AND THE WIDOW

A husband and wife own a property jointly together. The husband passes away, and under the terms of his Will, his half share in the family home passes into a Family Trust. The Widow then requires residential care.

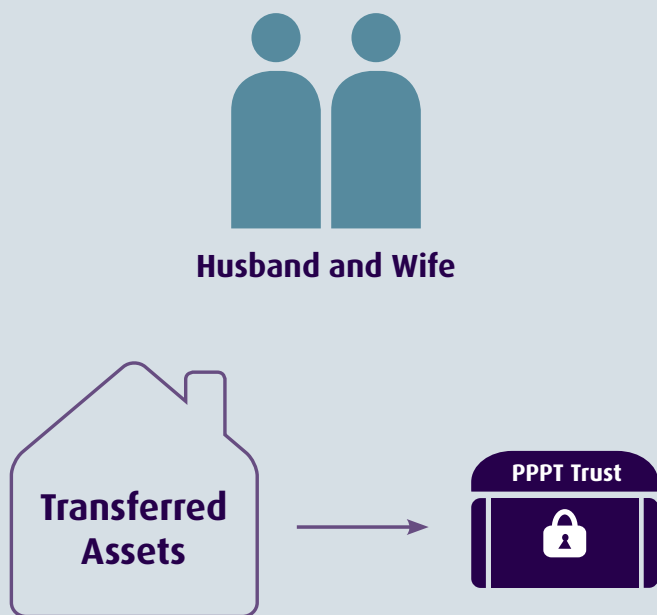


After carrying out an assessment on the care and support needs of the widow, the Local Authority review her capital assets and decide half her share in the family home should be valued at 50% of the total value of the property. An argument could be put forward on the basis that there is no willing buyer who would want to purchase a share in a property where the other half is owned by a Trust that could potentially run for 125 years. The house can therefore be disregarded in the assessment of the capital.

## TRANSFERRING ASSETS

### TRANSFERRING RECENTLY INHERITED ASSETS DURING LIFETIME

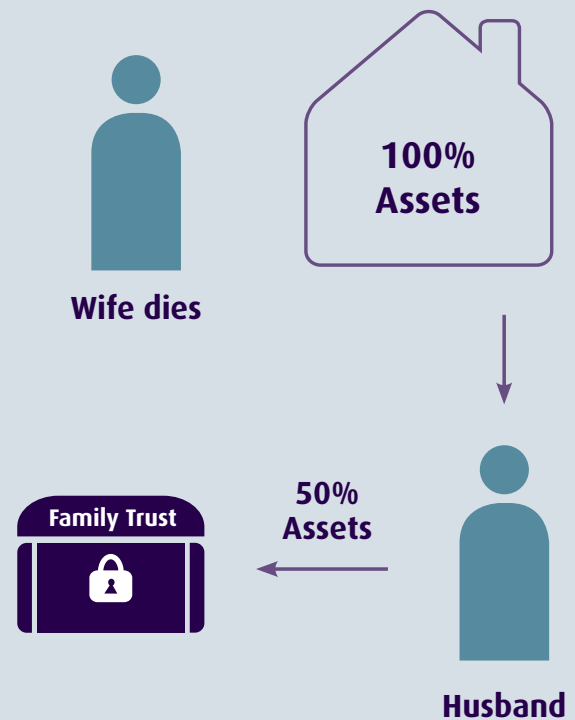
A husband and wife transferred assets into a PPPT Trust during their lifetimes. The professional acting for the client here needs to give serious consideration as to the reason for this transfer and the circumstances at the time. Were the clients in good health? Are assets being transferred into Trust for Tax purposes or to avoid delay with estate administration (by allowing the assets to be available without the need for a Grant of Probate)? If the client fails to demonstrate that the assets were transferred into Trust for reasons other than potential creditor claims, then the creditor may take the family home into account when assessing available capital.



### TRANSFERRING ASSETS DURING LIFETIME

A Deed of Variation is a document that can vary the way an estate was left on death. It has to be executed within two years from the date of death.

A wife passes away and under the terms of her Will, leaves everything to her surviving husband. The widower then decides to vary the Will so that his late wife's share passes into a Trust. As per the previous example, we would need to consider the reasons as to why this variation was made (e.g. Inheritance Tax advantages) and how it may be viewed by a creditor.



### SERVICES OFFERED:

It is important that we are involved in the process as early as possible.

#### Our services include:

- **Reviewing a Financial Assessment Form** before it is submitted to the Local Authority.
- **Liaising with the Local Authority** on behalf of the client provided £500 plus VAT is paid on account. This will cover an initial review of correspondence to date and liaising with the Local Authority.

Please consider the information in Key Features and Benefits Sheet 22 to understand whether using Multiple Trusts may be applicable to your circumstances.

This sheet contains only general planning and is not to be construed as advice for any personal planning. Each strategy recommended is based on individual circumstances.