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MONEY BOX LIVE

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TRANSMISSION: 18th MAY 2011 3.00-3.30 RADIO 4

LEWIS: Hello. If you or a relative needs care, who pays for it and how much? Well if you're confused about the answer, it's no surprise. A report out this month from the Law Commission said some of the rules in England and Wales date back to the Poor Law and has been described by judges as "tortuous" and "labyrinthine" and worse. And anyone who's tried to understand how it all works will have some sympathy with those views from the Law Commission. So today Money Box Live is here to answer your questions on this tortuous and labyrinthine system of paying for care - not just in England and Wales but also in Scotland. Who does pay? What do you have to contribute? What happens to the value of the house you own? Is it easier to get care in your own home than go to stay in a residential home? Whatever your question, call Money Box Live now: 03700 100 444. With me today to answer your questions about paying for care are Caroline Bielanska, Chief Executive of Solicitors for the Elderly; Jean French who's Head of Advice and Information at Carers UK; and Philip Spiers, who's Director of FirstStop Advice. Our first question this afternoon is from Tess in Hampshire. Tess, your question?

TESS: My son has got a debilitating disease and he might need to go into care, I would think some this year or maybe early next year. I'm not quite sure how we go about paying for it and how much we are expected to find.

LEWIS: May I ask how old he is, Tess?

TESS: 36.

LEWIS: He's 36, okay. Well let's start with Philip Spiers.

SPIERS: Good afternoon Tess.

TESS: Hi.

SPIERS: Does your son have any savings in his own right, any capital at all?

TESS: He has about £6,000. But he's also got an interest in a house, but at the moment he can't access any of that.

SPIERS: Okay. I mean it depends on the arrangement with the house, but the local authority may look at that. But the rules state that if he has capital above the value of £23,250, then he would have to pay the full cost himself. If it's below that, then the local authority would assist with the care home fees.

LEWIS: And obviously crucial in this is whether the value of the house is taken into account. Tess, can I ask what's the circumstance with the house? Is someone else living there?

TESS: Yes, it's his ex-partner.

LEWIS: Right, so he has an ex-partner in the house, and they own it?

TESS: With two children.

LEWIS: With two children and they own it between them. So it's what they'd count. Caroline Bielanska?

BIELANSKA: Well the house would be disregarded. If the ex-partner and the

children are in the house, thankfully it will be disregarded, so the local authority will assist. It does mean that he needs to get an assessment from social services for this.

LEWIS: So he has to get the assessment first and then they will decide what he needs. But they will pay for it. Because I think you said ... Did you say £6,000 Tess? That's ignored completely.

TESS: Yes.

LEWIS: Jean French?

FRENCH: I'd also suggest that you check that your son's getting all the benefits that he's entitled to. It sounds like disability living allowance could well be payable. And depending on ...

TESS: *(over)* Yes, he does get that.

FRENCH: He does get that already?

TESS: Yes.

FRENCH: That's excellent. And are you car...

TESS: At the higher rate.

FRENCH: At the higher rate. And are you helping with his caring at the moment?

TESS: Yes-ish. I try not to interfere too much, but the drugs are really strong and frying his brain, I'm afraid.

FRENCH: I'm very sorry to hear that. I suppose what I was trying to suggest was, depending on whether you or other family members are working or not, there may

also be an entitlement to carer's allowance if care is being provided for more than 35 hours a week and some other rules. But you should check that out, I think.

TESS: Right.

LEWIS: And what happens to the disability living allowance, Jean, when Tess's son goes into a care home? Does that stop then because he won't be paying for himself, will he?

FRENCH: No. So the care component will stop, but if mobility is in payment that will continue as the law is at the moment.

LEWIS: Yes because of course there have been discussions about ending that for people in care homes ...

FRENCH: Indeed.

LEWIS: ... but I think the government might be backing down on that one, but we don't quite know at the moment. Tess, has that been helpful? Is that all you needed to know?

TESS: Yes. I was just going to say it's actually what I thought, unfortunately. *(laughs)* Yeah, it's just a nightmare. But also going through these things, I think it has been a help to a certain degree. It's just confirmed what I thought.

LEWIS: But I suppose the good news is that after the assessment, the local authority will pay. He won't be expected to use his small savings. And the house with his ex-partner and presumably your grandchildren is safe.

TESS: Yes, exactly.

LEWIS: Okay, alright.

TESS: Thank you very much.

LEWIS: Thanks for your call, Tess.

TESS: Thank you. Bye.

LEWIS: And we'll move on now to Roger in Cheam. Roger, your question?

ROGER: Yes, my mother-in-law had a stroke 5 years ago, which affected her legs, but just recently it's got very, very bad and she actually keeps collapsing. She's collapsed twice in the last 24 hours and she's been taken into hospital because she can't get up again. She obviously will need sort of someone there 24 hours a day or whatever. Either that or into a hostel or home or whatever. She has a house which is worth approximately £250,000 and a pension I believe of about £150 a week. What sort of state aid will we get?

LEWIS: Right. And when she's left the house, the house is empty now, is it?

ROGER: Yes at the moment, yes. She was only taken in yesterday again.

LEWIS: Right, so there's no-one else living there and she owns it entirely herself?

ROGER: Yes.

LEWIS: Caroline Bielanska?

BIELANSKA: The first thing I would say is just wait a bit because the first thing that your mother-in-law needs to do is actually stabilise because it could be that she might be able to move back home with rehabilitation; and certainly, even though she's just in hospital, the hospital may provide her with intermediate care which is intensive rehabilitation for probably 6 weeks to enable her to move back home. If that's not going to happen, then she'll need an assessment to decide where she goes next. And if

she does need to go into residential care, then if she's got sufficient resources she would be expected to pay for it. So in a nutshell, yes you'd have to sell the house or have a charge placed on it.

LEWIS: And I know, Caroline, this is your particular expertise, but if she goes into hospital and has an illness and then they say she has to go into care, doesn't the NHS in some circumstances pay for that care?

BIELANSKA: They do if she has a primary healthcare need. If you can establish that she has a primary healthcare need, then the NHS remains responsible for that individual.

LEWIS: So it's worth checking that too. I mean a hospital stay is often the start of a different phase of life whether it's going into a home or going back to your own home and it's important to check all those things and just who might have to pay, isn't it?

BIELANSKA: Absolutely. I mean it is the moment in time really where people need to think about the advice that they get because you can be signposted to as much support as possible.

LEWIS: And Philip Spiers. I think, Roger, one of your questions really is what happens to the house. You know does she have to sell it? And people often believe they have to sell a home, but they don't actually have to, do they?

SPIERS: No they don't. I mean what would happen is ... Can I just ask whether your mother's got savings or mother-in-law has got savings of more than £23,250 apart from the house?

ROGER: No.

SPIERS: No, okay. Well I mean looking at her circumstances, there's what's called a 12 week property disregard where for the first 12 weeks of her needing residential

care, the local authority would actually assist with the cost. Now if she didn't want to sell the house beyond that 12 week period, then there is a scheme whereby the local authority can lend her the money. It's called a deferred payment arrangement and they will place a charge against the property for the money they're laying out on her behalf. Now this is a loan, it's interest free, and it will be repayable when the property's eventually sold.

LEWIS: So when she dies presumably?

SPIERS: Yes, when she dies. I mean if the property is not sold for 56 days after she dies, then there would be interest charged at that point.

LEWIS: And of course during that period, you can presumably rent the house out if it's an estate or an area where you can rent out, and that would help pay for the fees?

SPIERS: Yes you could. The best thing to do is to take some financial advice. I mean the trouble with letting a property of course is the rent is taxable, and you know if the tenant doesn't pay you then you've got a problem.

LEWIS: And I think Roger's other question was what about her own pension and money. Most of that would disappear, presumably?

SPIERS: Well being self-funding, then she would just be contributing that towards her care costs.

LEWIS: Oh right, if she was self-funding. Yes of course. Yes, she'd have to contribute that. Okay.

ROGER: Can I ask one quick question, please?

LEWIS: Roger, yes of course.

ROGER: The lady said about the primary care. Can I ask exactly what it entails?

LEWIS: If she has a primary healthcare need, yes.

ROGER: It might help me, yes.

LEWIS: A technical term here, Caroline. Explain it to us.

BIELANSKA: Oh my goodness, yes. Primary healthcare need is not easy to explain because it needs to be assessed following a number of assessments. A judgement call is made as to whether or not someone's total care needs amount to a primary healthcare need.

LEWIS: And by that you mean primarily it's a healthcare need rather than just social care?

BIELANSKA: *(over)* Yes, than social care. And it's looked at in the relation of how intensive the care is, whether it's complex, just the general nature, and the unpredictability of the care that the person has. And you have to access this through your primary care trust - or in Wales the local health board will assist you with this - and an assessment will be done, and you can find out then whether or not your relative is entitled to this.

ROGER: Sorry, you said primary health ...

BIELANSKA: Primary care trust, yes.

ROGER: Care trust.

BIELANSKA: PCT, yeah.

ROGER: Right, okay, lovely. That sounds like the doctor's actually. Is it?

BIELANSKA: Through the hospital. Through the hospital you'll be able to get the information.

ROGER: Lovely. Thank you very much.

LEWIS: Okay, thanks for your call. Let's just take a quick email. Barbara has emailed and she says, 'I'm in the midst of finding a care home' - I presume for a relative. 'I've been offered £370 a week that they can pay' - that must be the local authority - 'and every care home needs a top up, which I can't afford. I've been phoning charities. I can't understand it. My mother's in hospital and I've got one and a half weeks to find a home and they'll only pay £370 and I need more than that'.

What's the answer, Philip?

SPIERS: Well the local authority does have a duty to accommodate your mother. This is a common problem I'm afraid with the cutbacks, etcetera. The local authority has a legal duty to provide accommodation in the area at a price, and if you can't purchase the accommodation at the price it's offering, then you must challenge that because it has to make it available to you.

LEWIS: So it has to make it available at a price that is available in that area? They can't say we pay so much and that's it?

SPIERS: That's correct.

LEWIS: I must say we've had a couple of emails along similar lines from people who say they're self-funding. We've had one here from David, self-funding in a home - his wife is - but she pays a lot more than someone who's supported by the local authority, Caroline. I mean is that how it works because that seems desperately unfair for the self-funder who's paying out £200 or £300 a week more?

BIELANSKA: It's dreadfully unfair. It is the case the local authority are funding large numbers of beds and therefore are able to negotiate contracts where they pay a

significantly lesser amount and essentially self-funders are subsidising the state funders. And that is going to increase, unfortunately. Some local authorities are going back to care homes and saying we're not going to pay you this amount anymore; we're going to pay you even less.

LEWIS: So it's not just that they're negotiating a lower fee? They're basically saying we're going to pay you less than it costs? I mean Edward used exactly that phrase of subsidy that you did: 'my long repeated complaint: I can afford to pay for my care, but the care homes overcharge me to subsidise the lower fees they get from the council'.

BIELANSKA: That's exactly the situation. Yes, absolutely.

LEWIS: And so we just have to think that's how the world works; there's nothing we can do about it?

BIELANSKA: Well, I mean one of the ...

LEWIS: *(laughs)* Philip's shaking his head, so presumably not.

BIELANSKA: I mean one of the things that the Law Commission's report proposes is to make direct payments available for the purchase of care beds, and that will mean that the cost of care should be equalised.

LEWIS: Right, okay. But that's long-term because they're reporting the legislation will be next year and then it will come into force in 2013 or something.

BIELANSKA: Yes. And of course the government don't have to follow up ...

LEWIS: *(over)* Only the things in it that they decide to do, which we don't know what they're going to do yet.

SPIERS: I mean the problem with that is it's almost going back to how the care beds were funded on the old income support system back in 1993. People had an amount of income support and went and purchased a place themselves. But then the homes still demanded top ups above those amounts, so I can't see much change unfortunately.

LEWIS: No. It's great that we have people here who can remember back as far as I can. Thanks very much. *(laughter)*

BIELANSKA: Depressing, isn't it?

LEWIS: Yes. Well things change, but I have to say I mean it's a serious point in the way things change, but they haven't really got much better, have they?

BIELANSKA: No.

LEWIS: Now we're going to a call from Anna who's in York. Anna, your question?

ANNA: Hi, Paul, and to your two other guests. I lived in London for some time. As you know, I now live in York. Portability worries me and the ability of social workers being able to do proper assessments. Many councils flout the law regarding social care. By having no care needs now, my care needs have actually become critical. I used to be on direct payments and it used to work very, very well, and now I'm extremely worried and my life's a complete mess because I've no support.

LEWIS: Right, so you've got a disability, Anna?

ANNA: I have a disability. I don't mind telling you what it is. It's cerebral palsy. I use a wheelchair, but also I have a mental health diagnosis and I am very concerned about people with mental health problems as well as myself. They're - bear with me, I want to use an expression - you know the pecking order of how things go ...

LEWIS: Yes.

ANNA: ... at the bottom.

LEWIS: I do understand. And so you had the care you needed in the London borough where you lived ...

ANNA: Absolutely.

LEWIS: ... but now you've moved to York, you think you don't and you think obviously that that's unfair. Is that how things work? Jean?

FRENCH: I'm afraid there can be great variations throughout England. Can I just check some ...

ANNA: And yet my disability is exactly the same. In fact I've got some additional health problems, so my actual disability is actually getting worse.

FRENCH: No absolutely, Anna. Let me just check some practicalities with you. I'm assuming that you've had your assessment in York?

ANNA: Yes, I have.

FRENCH: How long ago was that?

ANNA: That was a couple of months ago.

FRENCH: Have you looked into challenging that decision?

ANNA: Yes I have, but I have a different kind of challenge to do with the courts and I want to get one thing out of the way first. I am quite clued up on legal practices, but it doesn't stop people from - or shall I dare say social workers - flouting the law, and it really, really does worry me.

FRENCH: I mean I would suggest ...

ANNA: I've only got so much energy.

FRENCH: Of course. I mean I would suggest that you keep on with trying to establish the correct level of support that you need through the assessment process.

ANNA: Because I do want to get my hours back. I'm thinking about ... Well I miss London too much. I want to get back to London. I want to get my hours back. It worked really well. And when I was an employer, even by just two people, it was such a good experience for me.

FRENCH: Well it's great to hear that direct payments really worked for you. That's excellent news. I mean there is ...

ANNA: In other words don't destroy what works. You know an awful lot of that goes on.

FRENCH: There is some new good ... sorry some good news as well. The Law Commission report that we were talking about earlier is recommending that in future non-residential care packages should be portable. So if that is adopted ...

ANNA: I would very much like to read a copy of the law report. I don't know where I can get ...

LEWIS: Well we can put a link on our website. I'm not sure if it's there now, Anna, but we'll try and put one on later this afternoon. It's quite easy to find. If you do a search for Law Commission, you'll probably find it.

ANNA: Thank you. Let's hope things will improve. I was on the march last week.

LEWIS: Were you?

FRENCH: Excellent.

LEWIS: Well I think you've made your points very clearly. Caroline, anything you want to add on the legal point of view?

BIELANSKA: Really I just want to say that many local authorities are further restricting their eligibility criteria. This is the criteria that they use to decide whether a person has eligible needs, which they will then meet. And because you moved from one area of the country to another, each local authority sets their own eligibility criteria. So it's unusual actually to move from London where care is also quite expensive to an area of the country where we can imagine in York it's slightly less expensive for the local authority and you actually get no help. So it's an unusual situation to find yourself in and I have to say you just need to keep challenging it.

LEWIS: Yes, I think Anna's challenging it very well. But I just read some figures that 15% of authorities will fund your care at what they call moderate needs. 78% now require you to have substantial needs. So obviously if you move from one to another area, you can very well lose that funding. Well thanks very much for making those points, Anna, and talking to us and good luck with your problems. I'm just going to take one more email now because I wanted to get this one in. This is from Martin who says he's a full time carer for his mother and he's heard it might be possible to have respite care to let him have a holiday, which is obviously a big problem for full time carers, and he wants to know if that respite care is means tested. Jean?

FRENCH: Yes what you're going to need to do is get an assessment for your mum because although it's you that needs a break, the alternative care that needs to be provided has to be arranged through an assessment for her.

LEWIS: This is from local social services?

FRENCH: Absolutely, to your local social services. Then there will be a means test attached to that, but it'll be in relation to his mum's resources.

LEWIS: Oh right, so he gets the holiday or the respite care. But it's relating to her resources, so ...

FRENCH: So the alternative care that will be provided so he can go on holiday, that will be charged on the basis of his mum. He can also and I would recommend that he also gets an assessment for himself as a carer. And depending on where he lives in the country, I'm afraid, it may be possible for them to provide some support maybe with, for instance, the cost of taking a break.

LEWIS: And are you finding, Jean, that with the cuts that we've already seen and we know are coming down the track that local authorities are being tougher on things they don't actually have to do? They have to give you an assessment, but they don't have to provide you with anything as a result?

FRENCH: Absolutely. And again another very good piece of news from the Law Commission report is that in the future they are recommending that carers assessments would be given and then there would be a duty. So you would have to provide something providing you were high enough need.

LEWIS: Sure. I must stress that's a report to the government with recommendations. The government haven't accepted any of it yet, and when they do they'll have to then pass laws, so it's going to be a little while before anything happens. Thanks for your email, Martin, and I hope you can go ahead with that and I hope you get some respite. I'm sure you desperately need it. A call now from Ann who's calling us from somewhere called the South of England for some reason. Ann, what's your question?

ANN: Good afternoon. My relative was 87 when he moved into residential care self-funding. Once his capital had gone down to the £23,000 threshold (as it then was) the local authority agreed to make a contribution towards the care home fees, thus assuming responsibility and duty of care. My relative's needs were assessed. The social worker's report was very clear that all his assessed needs were best met in the residential care home where he was living and it would not be in his interest to move to another home. Boosted by that report, I had an exchange of several letters with the

local authority eventually deciding to meet the full cost of the care home fees - a figure significantly above what they would usually expect to pay and with no top up from anyone. That was the good news. My question: having made an exception in this case, is it lawful for a local authority in subsequent years to apply their so-called standard terms and conditions whereby it's the local authority that determines whether they increase or even decrease what they pay regardless of whether the home's fees have increased for all its residents? And that's obviously what the home needed to do.

LEWIS: Yes and this relates back partly to the question we had earlier about the different rates that care homes charge local authorities from what they charge people who pay for themselves.

ANN: Yes.

LEWIS: Caroline Bielanska?

BIELANSKA: Well the local authority in your relative's case have undertaken an assessment and the assessment has concluded. So although it seems like an exception, the care needs can only be met in this particular care home and therefore they have to contract to whatever the cost of that care is. So it's unusual. It's unique to your relative, but it could apply to anyone else if they had an assessment and it concluded the same. The issue about top ups always sort of crops up and the important thing is whenever anyone is applying for an assessment to find out whether the care home that they want to go in, whether that care home is the only care home that will provide ... be able to meet their needs; and if it is, then that's possibly what the local authority have to fund.

ANN: That would be paragraph 4.1 of local authority circular (2004)20?

BIELANSKA: That's right, that's exactly it. Well done. I don't remember the exact paragraph, but I know the circular.

LEWIS: Ann, you've obviously done your research into this ...

ANN: I have indeed.

LEWIS: ... and I think the answer seems to be - if I can summarise it - that they probably have to carry on paying, but they could move him to another home.

ANN: Yes, the home are not going to kick him out, of course.

LEWIS: No, no.

ANN: Just a supplementary.

LEWIS: Quickly if you would because we're near the end of our time.

ANN: Can a home accidentally sign away the right to set its own level of fees - for instance by signing a contract with the local authority which talks about standard terms?

LEWIS: Philip Spiers?

SPIERS: Well the local authorities will negotiate the amount it will pay with each care home, so the contract is between the care home and the local authority.

LEWIS: Right and they can still charge other people more if they want to?

SPIERS: Yes, absolutely.

LEWIS: Ann, thanks very much for your call and good luck with that. And we'll go now to Richard in Durham who's got a question. Richard?

RICHARD: Hello, good afternoon. Yes my wife and I - my wife who isn't very well really - are thinking of putting our home into a trust between ourselves, a firm of solicitors and our daughter, so that the house could be passed onto our daughter if one of us had to go into long-term care in a local home. I worry about it with my wife because she's like had bipolar disorder and something else and I have to do a lot for her, so I do worry about her. I'm 72 and she's 68. If I die first, then you know she'll be left ... I don't think she'd be able to fend herself really.

LEWIS: No. So you're trying to avoid the local authority getting its hands on the value of the home?

RICHARD: *(over)* Yes. The firm of solicitors said oh well it's a good idea and that they've had no complaints in the past.

LEWIS: Right. Well okay ...

RICAHRD: ... too good to be true, especially in the present economic climate.

LEWIS: Yes, there's a certain scepticism around the table, I must say. Caroline?

BIELANSKA: Yes well placing a house into trust in itself doesn't protect the house from being taken into account at a later stage. The local authority could decide that the transfer into a trust is a deliberate deprivation: you've deliberately deprived yourself of an asset that would be taken into account to meet the cost of needs. Now they have to decide this based on what your intentions are and the timing. So if someone was fit and well when they transferred the house, then it would be unreasonable for the local authority to treat it as a deliberate deprivation and they can make this decision at any time. So there's no time limit. Often people quote six months, seven years, so forth. There is no time limit. They can apply under the insolvency provisions for the trust to be set aside. So what I would say, it is about getting good quality rounded advice. And just to check. Are these actually solicitors or are they someone else because sometimes people are called lawyers and they may not be solicitors? So just double check that they are who they are.

LEWIS: Philip Spiers?

SPIERS: Yes, I mean the local authority when it conducts its means test would normally ask have you ever owned a property? And if the answer is yes, they would want to know what happened to it. But the other thing you can consider is if the home is owned as a joint tenancy converting it to tenants in common. That way if one of you were to die, then you could leave your share of the property to your children and that part of the property would then be protected of course.

LEWIS: Okay, thanks very much, Richard. Good advice and it may not be as simple as your lawyer has been saying. Stella in Bradford, very quickly if you would, Stella, as we're running out of time desperately now.

STELLA: Yes, okay. My mother is 96 years old. She's been in a private care home for 3 years. We sold her house and we are funding the costs of the care home. However there are various websites from private companies that say if you are paying care home fees for a relative who has Alzheimer's or dementia, we can get your money back.

LEWIS: Okay.

STELLA: My question is, is government funding available? And, if so, what is the criteria for dementia?

LEWIS: Okay, it'll have to be a very speedy answer from Caroline.

BIELANSKA: We're talking really about NHS continuing healthcare. This is if you can establish that someone has a primary healthcare need. I've already mentioned about it. Having a diagnosis unfortunately doesn't determine whether you're entitled, but certainly there are indicating factors you need to consider.

LEWIS: And who can she get advice from rather than somebody who's advertising

on an internet site?

BIELANSKA: Well what I would suggest is Age UK have some very useful information and so does FirstStop on this. I'd use that as a starting point.

LEWIS: Age UK and there are links to FirstStop on our website. We've got to stop there because we're going to be thrown out of the studio. That's all we have time for. My thanks to Caroline Bielanska from Solicitors for the Elderly; Jean French of Carers UK; Philip Spiers from FirstStop. Thanks for all your calls. More on our website: bbc.co.uk/moneybox. More on Saturday with Money Box and I'm back next Wednesday afternoon with Money Box Live.