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together in dementia everyday
MANCHESTER 1824
The University of Manchester
The Justice Hub
MakingSpace
Health & Social Care Services
1. EARLY DIAGNOSIS FOR A CARED-FOR PERSON
Caring during Covid
4. RESIDENTIAL AND END OF LIFE CARE
2. THE CARING ROLE
3. BEST INTEREST DECISIONS

What is "mental incapacity"?

A person lacks capacity if they are unable to make a decision because of, for example, dementia. But first we must apply the principles:

1. A person is assumed to have capacity unless proven otherwise.

2. All practicable steps must be taken to help them make the decision.

3. An unwise decision does not necessarily mean they lack capacity to make it.

What is "mental incapacity"?

What is the decision?

- What information is relevant to that decision?

- Is the person unable to:
  understand
  retain
  use/weigh that information or
  communicate their views?

Deprivation of Assets

- This is where a person tries to deliberately avoid paying for care and support costs by depriving themselves of assets – either capital or income.
- By depriving themselves of assets, they fall below the £23,250 threshold and become eligible for local authority funded care.
- If a local authority shows deprivation of assets, it can either charge the person as if they still had the assets or seek to recover the lost income (para 8.27 Care and Support statutory guidance).
- When deciding if deprivation was 'deliberate' the local authority may look at:
  - The motive/intention behind the disposal, i.e. was the main reason to avoid care charges?
  - Timing of the disposal
  - Amount given away

It is therefore important for a person with early signs of dementia to address their financial situation as early as possible.

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Lasting Powers of Attorney

This involves appointing someone to make decisions on your behalf if you become too unwell to do so yourself.

You might choose to appoint more than one attorney, and you can have LPAs for Welfare and/or Finances.

If there is more than one attorney, you should decide whether they need to agree on everything or make decisions separately.

You must register a Lasting Power of Attorney at the Office of Public Guardian. This costs £82 per application.

You don't need a solicitor to apply (although sometimes it is wise), and can download the forms online and fill them in.

You will need to get witness signatures, and registration takes 8-10 weeks.

If you need to register an LPA urgently and need advice, you can call the Office for Public Guardian on
0300 456 0300

Deputyship

If you don't make an LPA and later become unable to make decisions yourself, nobody will legally be able to make decisions for you.

When this happens, someone may need to apply to the Court of Protection to become a deputy. This gives similar powers to that of an attorney. But it's a time-consuming and expensive process.

Deputies are different to LPAs. Personal Welfare Deputyships can be hard to obtain as a court may not think they are necessary. They cannot make life and death decisions, and they must make yearly reports on their decision-making to Office Public Guardian.

Assessing Someone's Care Needs

Local authorities must assess those who appear to require care and support, regardless of their eligibility for State-funded care.

They assess whether the person's needs are eligible for services.

Unless the easements have been activated....

Local authorities still owe a duty to assess needs during COVID-19. This can be done by telephone or remotely (eg Skype, Zoom etc).

Local authorities also owe a duty to conduct carers assessments which is unchanged during the pandemic.

Needs assessment

- You may be offered a telephone or online assessment for your safety. Local authorities delivering assessment remotely should take into consideration people's cognitive and communication needs and mental capacity.
- They can be carried out using online/ telephone, a third party or allied professional, self assessment with family.

Carers assessment

The benefits of this include:

- someone to take over caring so you can take a break
- gym membership and exercise classes to relieve stress
- help with taxi fares if you don't drive
- help with gardening and housework
- training how to lift safely
- putting you in touch with local support groups so you have people to talk to
- advice about benefits for carers

Direct Payments

If you, or the person you are looking after, have been assessed as needing social services support from your local council or trust, you have the option of asking for a direct payment instead of receiving the support arranged by the local council.

You will need to have an assessment with your local authority before receiving a direct payment.

The direct payment will then be used on what you have been assessed as needing support on. .

If the person being assessed does not have mental capacity, or does have mental capacity but would be unable to manage a direct payment, then someone can be appointed to manage the direct payment on their behalf.

Easements

Easements to The Care Act were introduced as part of the governments response to Covid-19

If a local authority has not activated the easements, it must carry out its care assessments.

As at 23 June 2020, only Solihull Council have activated the easements.

These are temporary changes

Easements mean that a local authority does not have to:

- Carry out detailed assessments of people's care and support needs
- Carry out financial assessments
- Prepare or review care and support plans
- Meet eligible needs and can prioritise services to avoid human rights violations.

All local authorities (except currently Solihull) MUST continue to fulfil their duty of care to vulnerable people in the local area. This includes conducting (remote) needs and carer assessments.

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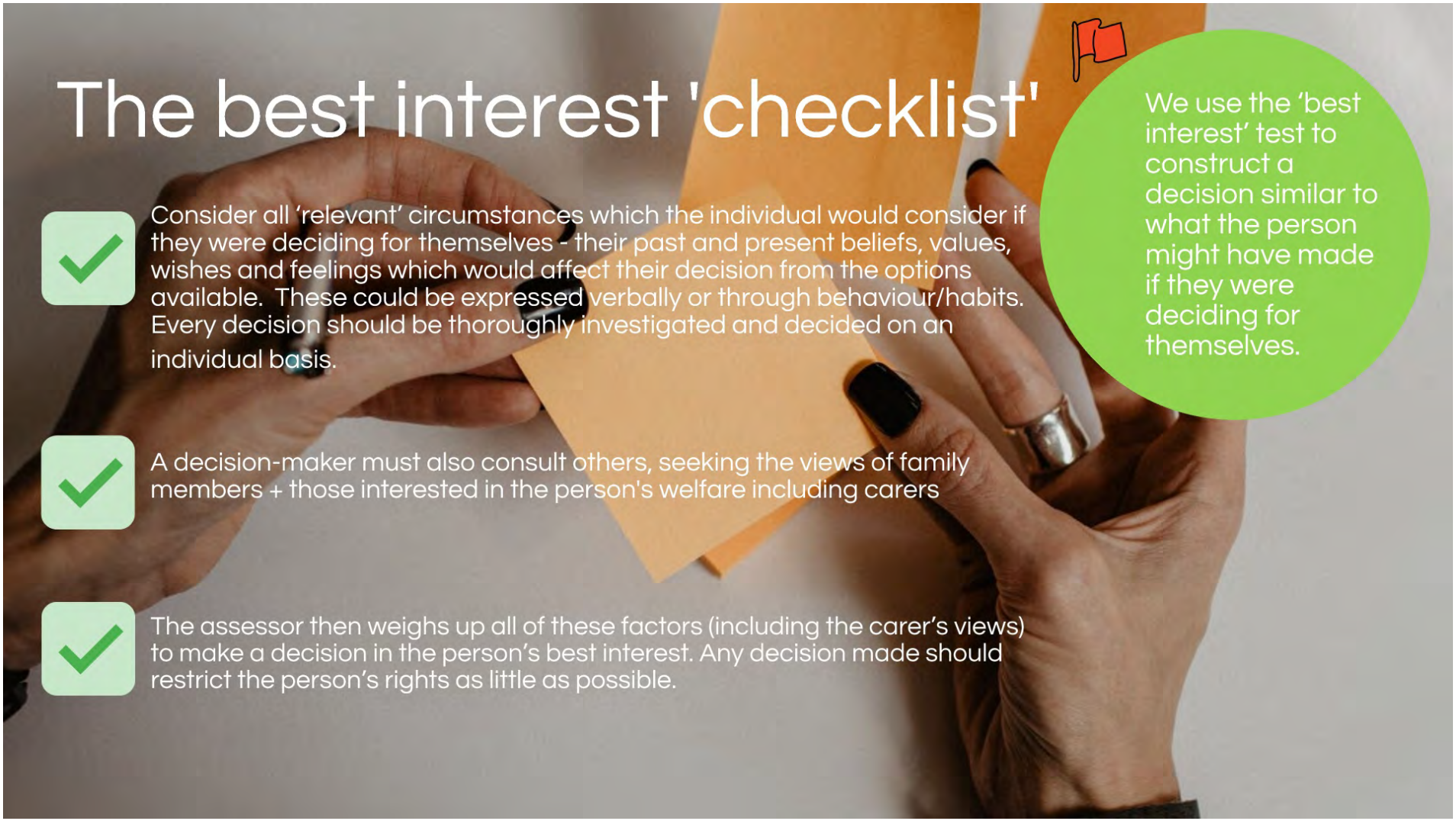
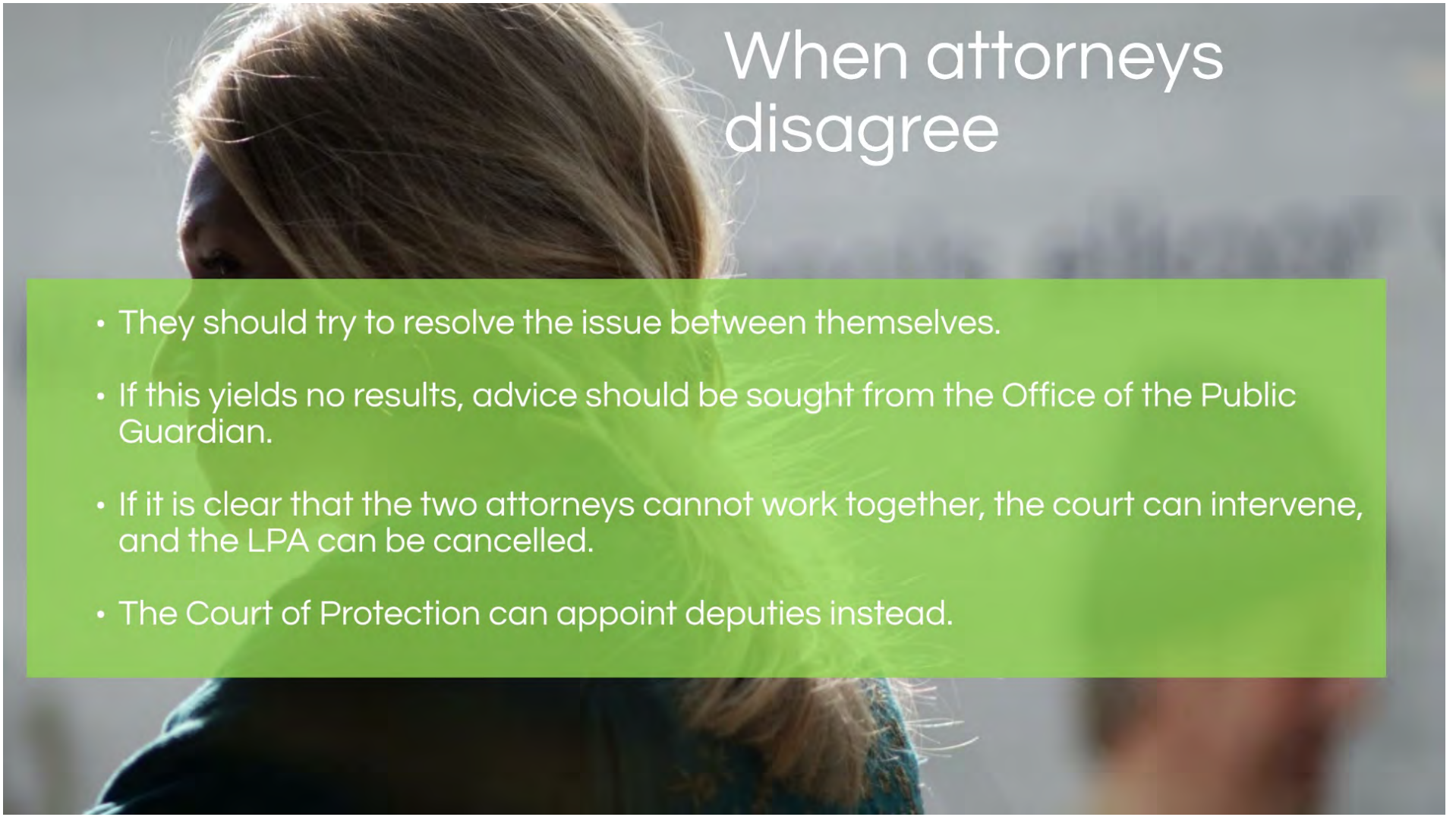


The best interest 'checklist'

We use the 'best interest' test to construct a decision similar to what the person might have made if they were deciding for themselves.

- Consider all 'relevant' circumstances which the individual would consider if they were deciding for themselves - their past and present beliefs, values, wishes and feelings which would affect their decision from the options available. These could be expressed verbally or through behaviour/habits. Every decision should be thoroughly investigated and decided on an individual basis.
- A decision-maker must also consult others, seeking the views of family members + those interested in the person's welfare including carers
- The assessor then weighs up all of these factors (including the carer's views) to make a decision in the person's best interest. Any decision made should restrict the person's rights as little as possible.



When attorneys disagree

- They should try to resolve the issue between themselves.
- If this yields no results, advice should be sought from the Office of the Public Guardian.
- If it is clear that the two attorneys cannot work together, the court can intervene, and the LPA can be cancelled.
- The Court of Protection can appoint deputies instead.

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Care Funding & Costs

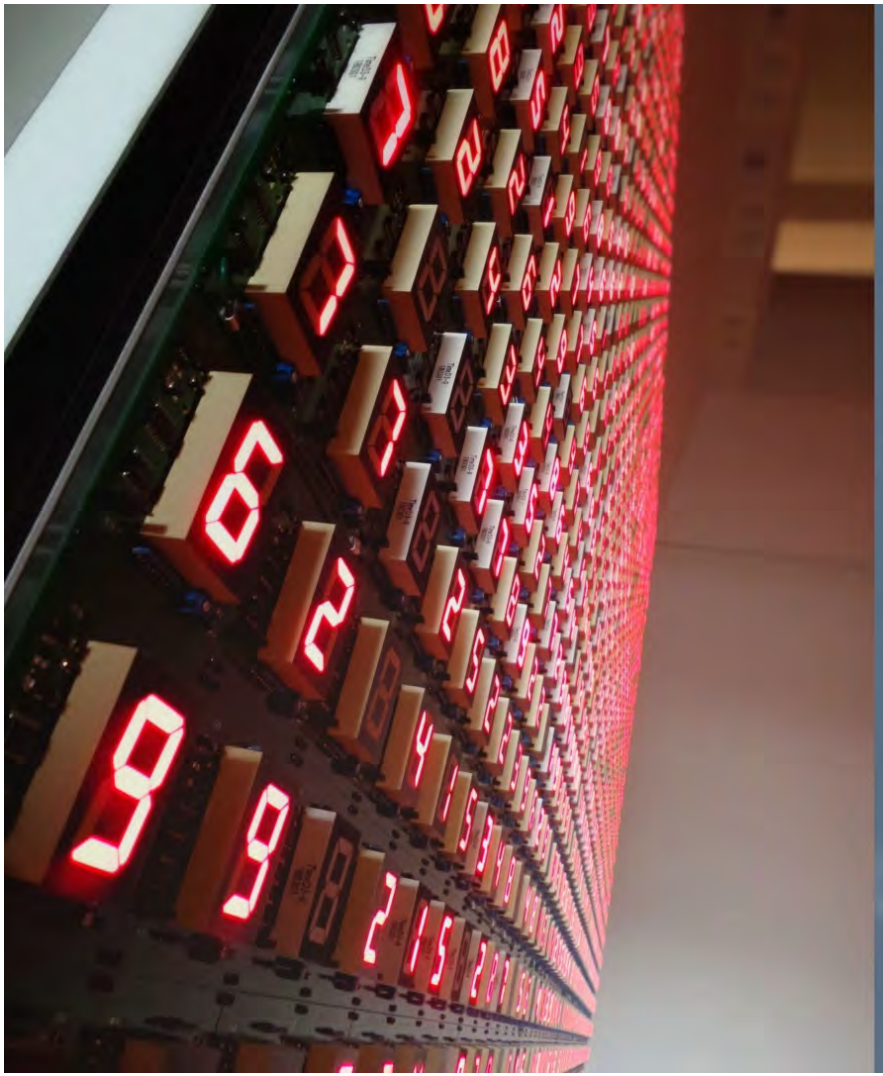
Who is a self funder?

Someone who pays the full cost for their own (social) care and support.

Local authorities must do a financial assessment.

Those assessed has having a primary health need can qualify for free NHS continuing healthcare

Some care homes have increased costs to pay for Covid care



Doing the Maths

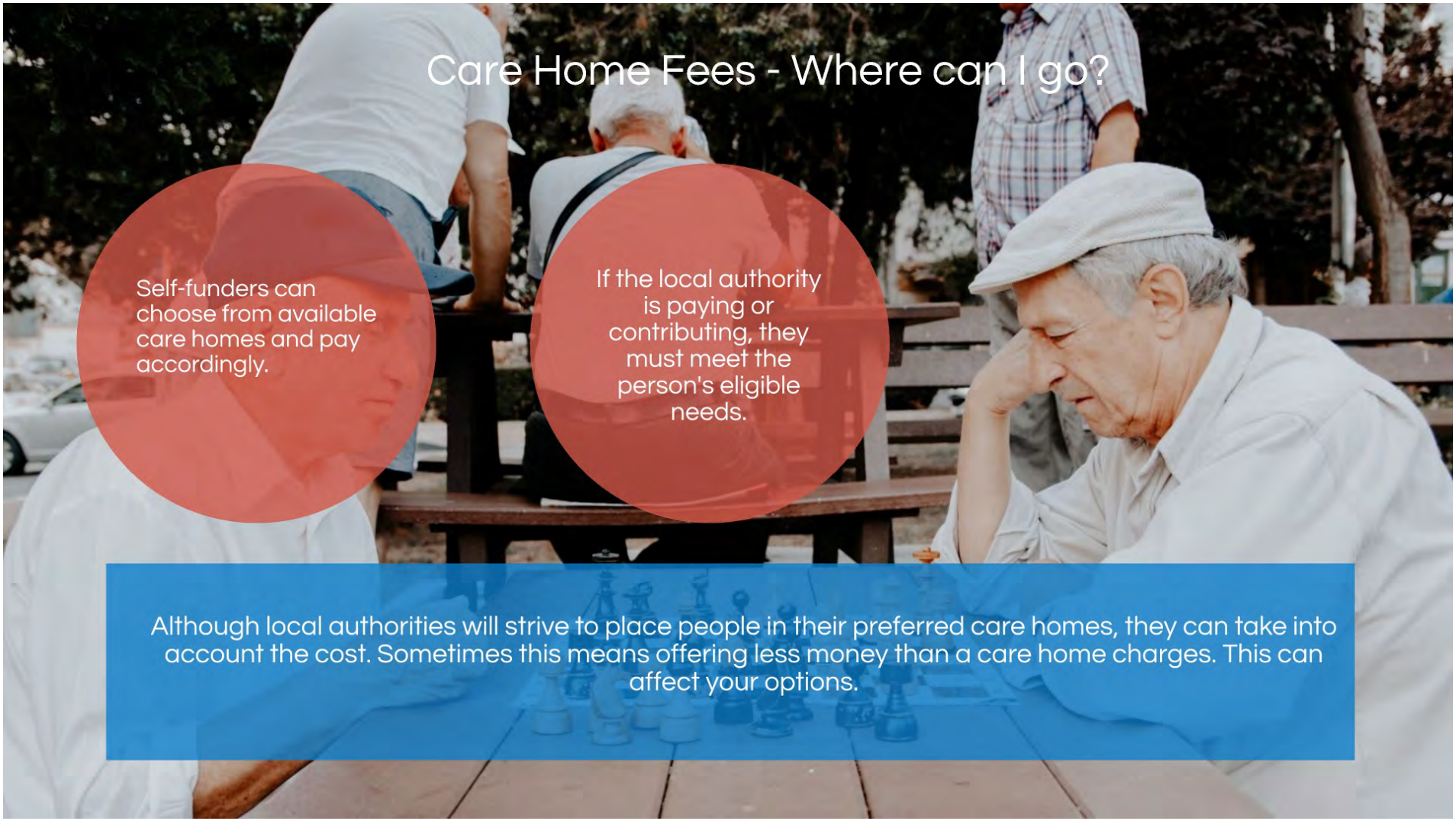
The upper capital limit is £23,250

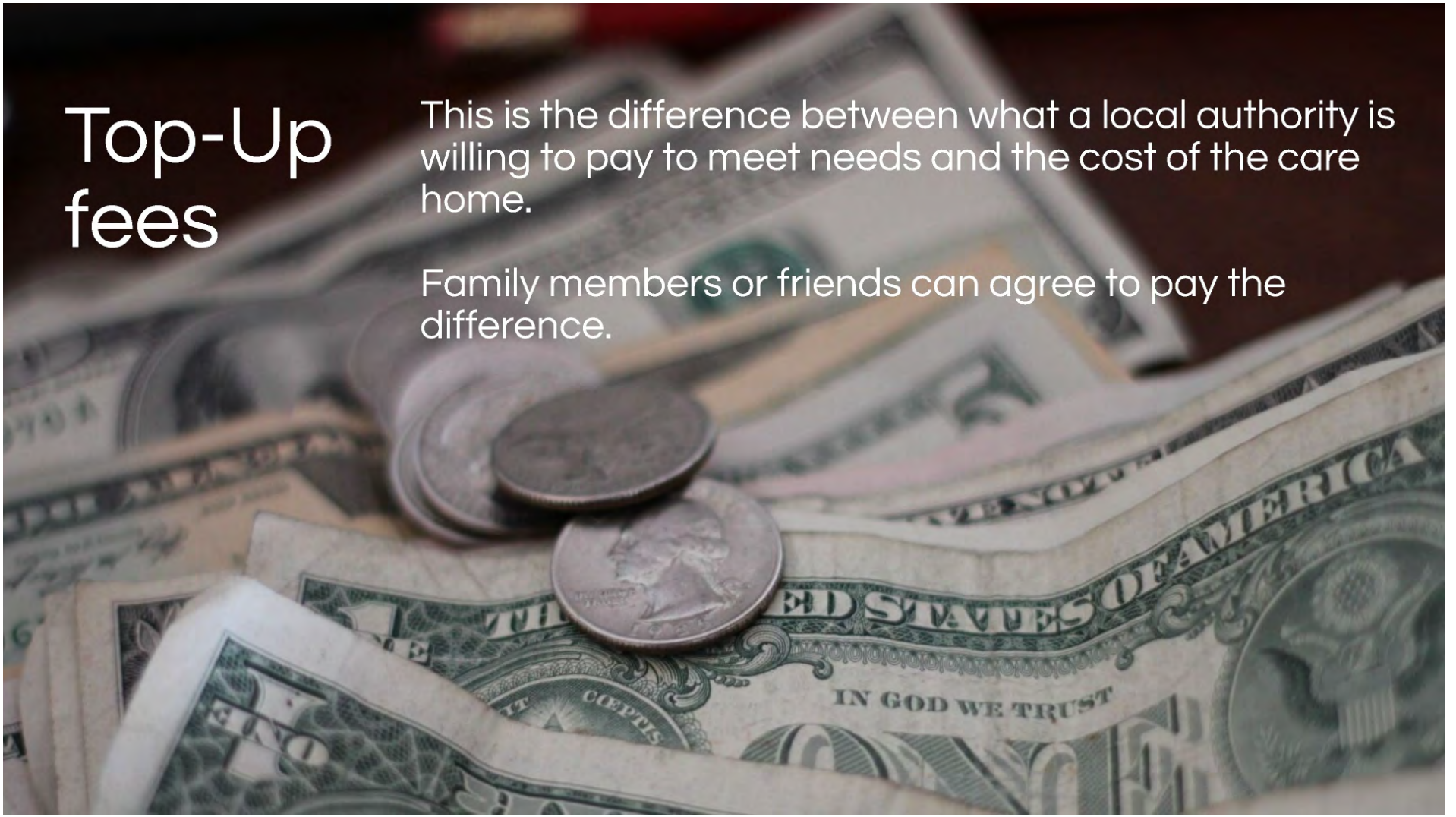
If a person's wealth is above this amount, they self -fund

If a person's capital value is between these two limits, the local authority will fund some of your care and you'll contribute to the rest. For every £250 in capital above £14,250, you may be charged £1 per week.

The lower capital limit is £14,250

If a person's wealth is found to be below this amount, they are entitled to full local authority financial support. They do not contribute to the cost of their care.


Care Home Fees - Where can I go?
Self-funders can choose from available care homes and pay accordingly.
If the local authority is paying or contributing, they must meet the person's eligible needs.
Although local authorities will strive to place people in their preferred care homes, they can take into account the cost. Sometimes this means offering less money than a care home charges. This can affect your options.



Top-Up fees

This is the difference between what a local authority is willing to pay to meet needs and the cost of the care home.

Family members or friends can agree to pay the difference.

Contact in Care Homes

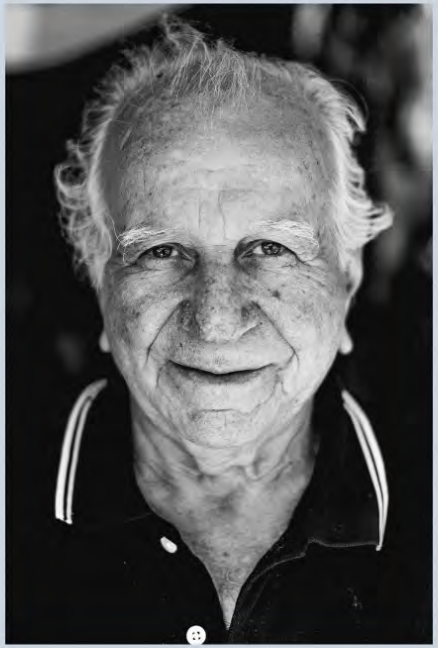
Most care homes have been restricting visits due to COVID-19.

This can be justified by the threat that would otherwise be posed to the lives of those within the care home.

However they must look to provide you with an alternative form of contact including virtual contact.

End of Life Care

- An advance decision to refuse treatment ('ADRT') is sometimes called an ‘advance directive’. It means if the person loses capacity in future, the specified treatment cannot be provided.
- A do not attempt resuscitation notice/order ('DNAR' or 'DNR') is where a doctor - after consultation!!! - advises that resuscitation would be futile.
- During COVID19 some GPs and hospitals have been encouraging blanket DNARs. This is not lawful. A DNAR decision must be made on an individual basis and consultation (eg with carer) is necessary.



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