By: Graham Gibbens, Cabinet Member, Adult Social Care & Public Health

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To: Adult Social Care and Health Cabinet Committee – 11 July 2014

Decision: 14/00015

Subject: **TEMPORARY FINANCIAL ASSISTANCE FOR RESIDENTIAL CARE - CHANGE TO THE ELIGIBILITY CRITERIA**

Classification: Unrestricted

Summary: The report is seeking a formal change to the rule whereby residents are only eligible for KCC Temporary Financial Assistance (TFA) for residential care (providing they do not qualify for Deferred Payments) if their liquid capital has decreased to £3,000. It is recommended that this rule be substituted by one which states that a resident will only be eligible for TFA once their liquid capital and income can only support their care costs for three months.

Recommendation: The Adult Social Care Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Adult Social Care and Public Health on the decision to:

Change the policy on Temporary Financial Assistance (TFA) to state that a resident will (providing they meet the other criteria) be eligible for TFA once their liquid capital and income can only support their care costs for three months.

Introduction

1. (1) Kent County Council currently operates a Temporary Financial Assistance scheme for Residential Care for people who have capital over the capital limit (currently £23,250) but whose liquid capital has reduced to £3,000. This is normally because their other capital is tied up in their former home. There are (as at June 2013) currently 64 people being provided with assistance via this scheme.

(2) When the scheme was initially set up (over ten years ago) £3,000 would usually last long enough for KCC to make the necessary arrangements and take over the contract with the care home. This is no longer the case, although this will depend on the resident's weekly income.

Policy Context

2. (1) **The National Assistance Act 1948** is the primary Act of Parliament governing residential placements. The main relevant sections for this issue are:

Section 21 (1) – this imposes a duty to provide or arrange accommodation for people aged 18 or above who “by reason of age, illness, disability or any other circumstance are in need of care and attention which is not otherwise available to them”.
Section 21 (2A) – this states that in determining whether care and attention are “otherwise available” the local authority shall disregard “so much of the person’s resources as may be specified (i.e. the capital threshold, currently £23,250).
Section 22 – this enables the local authority to charge for most residential placements arranged by the local authority.

(2) **The National Assistance (Assessment of Resources) Regulations 1992** contains the detailed rules governing how a person’s contribution to their charge is worked out. Detailed guidance on the application of these regulations is laid out in the Charging for Residential Accommodation Guide (CRAG) which is issued by the Department of Health and updated every April.

The above legislation allows for people who have in excess of the upper capital limit (currently £23,250) to be charged the full cost if the placement is arranged by the local authority.

(3) **The Health and Social Care Act 2001** (sections 53 - 55) gave local authorities the power to enter into a Deferred Payment arrangement with a resident whereby the value of their main home is disregarded from the financial assessment on a temporary basis, either because they don’t want to sell it or cannot sell it quickly enough. However local authorities are allowed to develop their own criteria for these schemes and do not have to offer the arrangement to all residents who do not have access to the capital tied up in their house. In Kent the eligibility criteria for Deferred Payments is as follows:

- There must be no outstanding mortgage or loan already secured on the property.

- The cost of the residential/nursing home must be no more than our current guidelines for Deferred Payments (exceptions have to be agreed with the Assistant Director for the relevant locality)

- The resident must not have more than £23,250 in capital (e.g. savings), other than the value of their home.

- The resident must either not wish to sell their home or not be able to sell it quickly enough.

- The resident must solely own their former home

- The former home must have sufficient equity in it to fund the required care. We expect there to be enough equity to fund a minimum of 5 years in a residential home and a minimum of 3 years in a nursing home.

(4) Currently if a resident with over the capital threshold (but who has no immediate access to this capital) does not qualify for Deferred Payments, they will have to find the funds from some other source and can only expect KCC to help financially once their liquid assets have reduced to £3,000. Once this point has been reached (or is likely to be reached soon) they can apply for Temporary Financial Assistance (TFA) pending the sale of their property. This is a discretionary scheme, although it is arguable that we could not leave a person totally unable to fund the cost of residential care because of our obligations under section 21(1) of the National Assistance Act (see point 2 (1) above).

(5) The decision by KCC to offer, on a discretionary basis, temporary funding for people unable to access funds (usually because they are tied up in property) is directly compatible with Kent's Bold Step to "tackle disadvantage".

Policy change required

3. (1) As indicated above, in line with the legislative framework, and in order to protect vulnerable individuals in residential care, Kent operates a Temporary Financial Assistance scheme. This scheme has recently been reviewed and put on a firmer legal footing, with a proper application process and legal agreement.

(2) A decision is sought on just one aspect of the scheme, that is, the level to which a person's liquid capital must have reduced in order for them to qualify for assistance. This is currently £3,000 and is felt to be too low, particularly for people whose weekly income is low. For such people there may not be enough time for KCC to process the necessary agreement and to take over the contract with the home. This is even more likely now that we have introduced a formal application process and new legal agreement concerning the legal charge that needs to be arranged over the resident's former home.

(3) The issue can be illustrated with an example: if an individual is in a care home costing £500 per week and they are only able to contribute £120 per week from their weekly income, £3000 savings will only last about 7 weeks. If the home costs £800 per week the same capital will only last about 4 weeks. Clearly if an individual has a higher weekly income, the £3,000 will last for longer.

(4) In view of the fact that weekly income and costs of care homes vary so much, it is recommended that individuals be offered Temporary Financial Assistance when their liquid capital can fund a certain number of weeks care rather then basing the decision on the actual amount of liquid capital they possess. This position is supported by Finance colleagues in the Assessment Teams and by the Finance Management Group.

(5) Consultation with Finance colleagues has led to the conclusion that the policy be changed to state that Temporary Financial Assistance can be applied for when an individual/their representative can demonstrate that they only

possess sufficient liquid capital and income to fund their own care for three months. It must be stressed that this is only one of the criteria necessary for TFA to be granted. Others include the agreement to having a legal charge placed on the former home. If this is jointly –owned, all co-owners must agree to this charge, although the accruing debt will only ever be repaid from the resident's portion.

Financial Implications

4. (1) There are currently about 64 people being provided with assistance via the Temporary Financial Assistance scheme according to a report run by Finance in June 2013.

(2) It is not possible to predict accurately the financial implications of the proposed change to the policy. Finance believe it will provide a longer period to arrange for a charge to be placed on the resident's property before KCC begins funding. This is a good thing as it ensures our debt is secure.

Legal Implications

5. (1) The legal position is outlined in section 2 above.

(2) Legal services have not been consulted on this specific issue. However they were heavily involved in drawing up the new procedures for Temporary Financial Assistance. They are aware of our current policy in relation to the £3,000 and were made aware of our concerns and the fact that we would be seeking a change to the policy if possible.

Recommendations

6. (1) The Adult Social Care Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Adult Social Care and Public Health on the decision to:

Change the policy on Temporary Financial Assistance (TFA) to state that a resident will (providing they meet the other criteria) be eligible for TFA once their liquid capital and income can only support their care costs for three months.

Background Documents

Appendix 1 - Proposed Record of Decision, 14/00015 – Temporary Financial Assistance

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