

**From:** Andrew Ireland, Corporate Director of Social Care, Health and Wellbeing

**To:** Graham Gibbens, Cabinet Member for Adult Social Care and Public Health

**Subject:** **FINANCIAL ARRANGEMENT TO PLACE A LEGAL CHARGE ON A PROPERTY OF A SERVICE USER ACCESSING DOMICILIARY CARE**

**Classification:** Unrestricted

**Summary:** A decision is required to allow Kent County Council to place a legal charge, at the request of the service user's Court of Protection-appointed Deputy, on the property that this individual currently resides in. The reason for doing so is that a Best Interests Review meeting has determined that it is in this individual's best interest for her current preferred provider to continue to provide her care and support, in her own home rather than in a care home. Currently the universal Deferred Payment scheme does not allow discretion to apply the scheme to someone receiving care and support at home, therefore an individual decision is required.

**Recommendation:** The Cabinet Member for Adult Social Care and Public Health is asked to **AGREE** to the request to place a legal charge on this service user's property on the basis that this is an individual decision and is in no way regarded as setting any precedent.

## 1. Introduction

- 1.1 The request is to allow an elderly lady in her 90s who suffers from dementia and lacks mental capacity to be looked after in her own home, even though her assets put her well above the capital threshold for financial support from the public purse. The Court of Protection-appointed Deputy confirmed on 3 July 2014 that the home had recently been valued at £350,000, and that the lady had £4,500 savings, as at the same date. The property is not currently subject to any mortgage or legal charge. The equity in the property could not be released at the moment.
- 1.2 This lady has been receiving care and support from a provider which is no longer on the Kent County Council's contractor framework, following the implementation of the new domiciliary care contract re-let. It is the view of the best interest decision makers that, for reasons of continuity of care, and in the lady's general best interests, it is preferable for her to remain at home with the current provider and the level of care package.
- 1.3 The outcome of the recent assessment/review concluded that a care home placement will meet her assessed needs, however, the best interest decision making process considered that her preference, as an expressed choice via the Deputy appointed to look after her affairs, is to continue to live at home.
- 1.4 The assessed needs of this service user can be met in a care home at the Kent County Council guide price of £487.42 per week, although, in practice, the typical

cost of a nursing home place in West Kent is about £603 per week. However, the best interest decision makers have agreed that it is preferable for the service user to be cared for at home at a cost of £1,000 per week. This is £512.58 per week above the Kent County Council guide price for care homes. The service user does not have the liquid assets to fund the extra £512.58 per week and so her Deputy has asked the Council in writing to fund this on a temporary basis and place a legal charge on the service user's property as a security for the loan, to cover the shortfall in the cost of care at home. As a result, Kent County Council would be able to recoup the amount owed to the Council when the property is later sold. A financial assessment carried out in April 2015 determined her assessed contribution to be £149.44 per week. Thus the amount being loaned will be £512.58 per week, as KCC is liable to pay the remaining £337.98.

## **2. Policy context**

- 2.1 The Care Act 2014 does not expressly prohibit or permit this arrangement. However, alternative types of financial arrangement that are similar to deferred payments for non-residential care are envisaged within section 36 of the Care Act 2014, regarding 'alternative financial arrangements'. Furthermore, Kent County Council has a general power of competence under section 1 of the Localism Act 2011 and this arrangement could be exercised under that provision.
- 2.2 The policy position is that the value of a person's home is not taken into account in the financial assessment for non-residential services, in other words it is disregarded. However, the request, if approved, will result in Kent County Council placing a legal charge on the service user's property, as a security for the loan to cover the shortfall in the cost of care at home. Kent County Council would subsequently recoup the amount owed to the Council when the property is later sold.
- 2.3 Kent County Council's Legal Services have confirmed that, with the agreement of the Court of Protection-appointed Deputy, acting on behalf of this service user, Kent County Council can enter into this agreement by way of a legal charge to be placed on the property of the service user. The Legal Department has also confirmed that this arrangement does not expose Kent County Council to any risk under the consumer credit legislation.
- 2.4 The property has been valued at £350,000 and we understand that there are no mortgages or other outstanding charges secured on the property. It is understood that, as at 19<sup>th</sup> May 2014, there was sufficient equity in the property to fund the amount of top-up for just under 13 years. That is subject to any decrease or increase in the value of the property as a result of property market fluctuation or damage to the property, and subject to any other charge being placed on the property prior to this present legal charge being placed. Kent Legal Services will confirm the detailed information before the agreement is signed.
- 2.5 It is likely that, if the request for the temporary 'financial arrangement' is not approved, the service user may have to go into a care home.
- 2.6 This decision does not meet the County Council's criteria for a key decision and is not appropriate for consideration or comment by a Cabinet Committee as it follows on from a recommendation made by a social care review panel regarding the care arrangements for an individual service user. The decision need only be published for

period of five clear working days before being taken, and then for a further five clear working days to allow for the call-in process, as set out in the County Council's published decision making procedure rules.

### **3. Recommendation**

**3.1 Recommendation:** The Cabinet Member for Adult Social Care and Public Health is asked to **AGREE** to the request to place a legal charge on this service user's property on the basis that this is an individual decision and is in no way regarded as setting any precedent.

### **4. Relevant Officers**

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