

By: Oliver Mills, Managing Director, Kent Adult Social Services

To: Graham Gibbens, Cabinet Member, Adult Social Services

Subject: **TREATMENT OF JOINTLY-OWNED PROPERTY IN THE RESIDENTIAL CHARGING ASSESSMENT**

Classification: Unrestricted

Summary: This paper seeks the Cabinet Member's decision on the treatment of jointly-owned property in the residential charging assessment. At the moment, jointly-owned property is effectively disregarded in the charging assessment. This results in a loss of potential income to the Directorate and is a position we seek to change. The report discusses various options to deal with the situation. The favoured option is that in future the resident is assessed on their percentage ownership of the property in question. It is proposed that this should be worked out by taking the full market value and calculating whatever the resident's share of that is (less costs) unless the resident can show that this is not an accurate reflection of the value of their share. In disputed cases it is proposed KCC makes use of a specialist property valuation firm, commissioned via KCC's Property Group.

FOR DECISION

Introduction

1. (1) This report seeks a decision to change the way jointly-owned property is treated in the residential charging assessment. This should enable the Directorate to raise significantly more money from residential charging. At the moment approximately £0.5 to £1 million is lost each year due to the current disregard of jointly-owned property. We currently have about 70 cases (going back to 2004 in some cases) that potentially could have been assessed as full-cost because of a jointly-owned property.

Policy Context

2. (1) When a person is placed in residential care under section 21 of the National Assistance Act the value of their former home (if they own or part own it) can be taken into account in the residential charging assessment. For the first 12 weeks of such a stay this property is disregarded. It must then be further disregarded if it is occupied by certain persons. These people are: a spouse, partner (opposite or same sex), a relative who is aged over 60 or incapacitated or a child (under 18) of the resident, or a lone parent who is the resident's ex partner. A local authority also has the added discretion to disregard the property in other circumstances, for example if it is lived in by a long term carer who has given up their own home to care for the resident. If it cannot be further disregarded (by these mandatory disregards or via the discretion available) the value of the resident's

interest must be taken into account in accordance with the rules laid down in the Charging for Residential Accommodation Guide (CRAG). If the resident solely owns the property there is usually no problem in arriving at a value for their interest. This will be the market value, less any mortgages, secured loans and 10% for the costs of sale. The difficulty arises when the property is jointly owned.

(2) For properties that are jointly owned CRAG states the following:

Paragraph 7.019: Where an interest in a property is beneficially shared between relatives, the value of the resident's interest will be heavily influenced by the possibility of a market amongst his fellow beneficiaries. If no other relative is willing to buy the resident's interest, it is highly unlikely that any "outsider" would be willing to buy into the property unless the financial advantages far outweighed the risks and limitations involved. The value of the interest, even to a willing buyer, could in such circumstances effectively be nil. If the local authority is unsure about the resident's share, or their valuation is disputed by the resident, again a professional valuation should be obtained.

(3) Kent Adult Social Services (KASS) has been researching and canvassing opinion on this issue since 2009. Data has been collected from KASS Finance on the number and details of current permanent residents that own a share in a jointly-owned property and meetings have taken place with KCC's Property Group and two independent Chartered Surveyors. Approximately 30 other local authorities have been consulted on their approach to this issue. Legal opinion has been obtained from KCC's Legal Services and the detailed opinion of two other barristers has been obtained. Age Concern and Counsel and Care publications have been studied. Whilst there is not a single approach to this issue, we have concluded that it should be possible to take these properties into account, providing we can obtain an expert valuation in cases that are disputed.

(4) Current advice from KCC's own Legal Services is that we should be taking these properties into account and in disputed cases using an expert valuer to determine the actual value. The advice is also that KCC should pay for these valuations.

Options for the treatment of jointly-owned property

3. (1) Maintain status quo

If the current situation is maintained this will cost KASS approximately £0.5 to £1million each year. This figure is likely to increase as more people become aware that we currently disregard jointly owned property in the charging assessment. With more recent and obvious transfers of property into joint names it is possible to apply the deprivation rules. However deprivation can be difficult to prove, time consuming and costly.

(2) Assume the resident's share is their share of the full sale value and only obtain a specialist valuation in disputed cases

Under this system we would look at the full market value of the whole property, calculate whatever the resident's share of that is and then deduct 10% for the costs associated with the sale (as outlined in CRAG).

Example: a resident jointly owns their former home (50:50 as joint tenants) with their daughter who lives elsewhere. Its value is £200,000. We would assume the resident has £90,000, that is £100,000 minus 10% for costs. This would put them well above the capital threshold and they would self-fund.

It is argued that KCC would be entitled, at least initially, to put the onus on the resident/their family to demonstrate that this method of valuation had not provided a correct valuation. This is because section 26(3) of the National Assistance Act 1948 states that it is for the resident to satisfy the local authority that they cannot pay the full rate. KCC's Legal Services has stated, however, that the cost of any valuation should be borne by KCC. This view is partly supported by CRAG (paragraph 7.019) which states that, "If the local authority is unsure about the resident's share, or their valuation is disputed by the resident, again a professional valuation should be obtained". This is considered to be the appropriate approach as the expense of securing a professional valuation will, overall, be offset by the increased income received.

In cases where an expert valuation is needed this would be obtained via KCC Property Group. Following discussions with Legal Services, DTZ (a firm recommended by Legal Services), two local firms and KCC Property Group, KASS Senior Management Team has concluded that the best way to proceed is as follows:

- (i) In conjunction with KASS, the Estates Team in the Property Group to draw up a specification for the work required.
- (ii) All the chartered surveyors on the existing Property Group framework (these already meet our general criteria and have had the appropriate vetting etc) be invited to tender for this work (referred to as a "mini competitive process").
- (iii) One or two firms to be chosen to carry out the work in future.
- (iv) All referrals to be passed via the Estates Group.

(3) Obtain specialist valuations of jointly-owned property at KCC's expense for all jointly-owned properties

We would use the procedure for obtaining valuations outlined above but arrange for an expert valuation in all cases, not just those where KASS is in dispute with the resident or their family.

(4) Kent County Council becomes the "willing buyer"

We would use the procedure as in option 3 above and back this up by KCC becoming the "willing buyer", i.e., offering to purchase the resident's interest in the property if necessary. Whilst it is unlikely the resident would choose to sell to KCC, the real value of this approach is that it establishes a minimum value for the purposes of charging. KCC must, however, be willing and able to purchase the interest if its valuation is to survive a challenge.

KCC's internal legal advice is that this would not be a sensible way forward, particularly if we ended up having to purchase the resident's share. The problems this would entail include:

- Paying out large sums to purchase the interest
- Being then encumbered with an interest that is difficult to dispose of
- Difficulties of forcing a sale

- Responsibility for insurance and maintenance issues
- Having to negotiate with the other co-owner(s)

It is clear that this policy is only worthwhile considering on the assumption that KCC would never have to actually purchase the interest in the property. This position may prove difficult to sustain given that we would have to be willing to purchase the share if necessary.

Temporary Financial Assistance

4. (1) It is recognised that, if KASS begins to take into account jointly-owned property, it may take some time for the resident to realise their interest and thus have the funds to pay for their residential care. Residents in this situation whose former property is in their sole name are sometimes eligible for the Deferred Payments Scheme or Temporary Financial Assistance. In both cases a charge is placed on the property so that the accruing debt is secured.

(2) It is understood that it is not possible to place a legal charge on a part interest in a property, unless all the owners agree to this (and therefore also become liable for the debt). Without this agreement only a “restriction” can be placed on the property so that KASS would at least be informed when the property was sold.

(3) It is recommended that Temporary Financial Assistance (TFA) should be offered to residents in this situation but, in line with current practice, only once their available assets have reduced to £3,000. In addition, it should be a condition that the other co-owners agree to a charge being placed on the property and also that the debt should be settled within one year of the death of the resident, if the property is not sold by then. If TFA is not offered the resident/their family would have to find the funds to pay for the residential care in some other way, for example through equity release.

Backdating of assessments

5. (1) If a decision is taken to include jointly-owned properties in the financial assessment, then a decision is needed on whether this should only apply to new cases or whether existing cases should be reassessed.

(2) If existing cases were to be reassessed, it is estimated that this would raise approximately £0.5 to £1 million per year for the Directorate. It is recommended, however, that the proposed change should only apply to new cases as, prior to applying any change, individuals will have made significant life choices based on practice at that time; retrospectively applying this change could have a significant adverse impact.

Personnel and Training Implications

6. (1) Finance teams (both the Financial Assessment Officers and the Finance and Benefit Officers) will require a detailed briefing if this proposed change is implemented.

(2) Case Management will require awareness training so that they can provide service users with the correct information at an early stage.

Financial Implications

7. (1) It is estimated that a decision to include jointly-owned properties in the financial assessment would save the Directorate approximately £0.25 to £0.5 million per year. If existing cases are included this could increase to approximately £1 million per year. It is not possible to more accurately state savings due to the unpredictability of either the rate of attrition or depletion of capital.

(2) Whilst there may be some increase in correspondence between the various parties, this will not significantly increase demand on staff time. Neither will there be an increase in the costs associated with land registry searches to identify properties that are jointly owned as this work is routinely carried out as part of the assessment process .

(3) The detailed valuation work will be done by an external party, the expert valuer. Our current information is that the cost of this would be approximately £300-£400 plus VAT for each valuation. The tendering process described in paragraph 3(2) may alter this estimation. In some cases there may also be legal costs involved if the resident or their family wishes to take the case further including to the Ombudsman. In these cases the cost is likely to be substantially higher.

(4) A change in policy will result, most probably, in extra work for KCC Legal Services who carry out the work involved in registering legal charges. Each charge will attract a cost. The average cost of applying a section 22 (HASSASSAA) charge (which is the one Legal will be using where a charge is necessary) is £281.83.

The Effect on Debt

8. (1) Whilst this proposal will result in more people funding their own care, it is possible that the amount of debt may increase as more residents approach KASS for Temporary Financial Assistance (TFA) whilst they are waiting for their property to be sold (see above section on TFA). An individual offered TFA will have a legal charge placed on their property, thus securing the debt. However, whilst the legal charge is being actioned, any accruing debt would be reported as unsecured in the short term. There is a current proposal to implement a debt category of "Forwarded for Section 22 Legal Charge"; this would identify the debt allowing it to be considered "secured pending". The debt would eventually transfer as "Secured Section 22 Legal Charge" until paid and discharged. 'Section 22 Legal Charge' refers to section 22 of the Health and Social Services and Social Security Adjudications Act 1983 (known as HASSASSAA).

Customer Impact Assessment

9. (1) An impact assessment has been done on this proposed change which is available if required. The main points from this that are relevant for consideration are as follows:

(a) It is important to stress that this change will not affect the treatment of property that is jointly owned with certain people who still live in the property including a spouse, partner (opposite or same sex), a relative who is aged over 60 or incapacitated or a child (under 18) of the resident, or a lone parent who is the resident's ex partner. Such properties are ignored whether they are solely or jointly owned and nothing in the proposed change will affect this situation. In addition discretion is available to disregard the property if it is occupied by a carer of the resident. This will also remain unchanged.

(b) It is not possible to list all the scenarios to which the proposed change will apply but some examples are:

- (i) Property jointly owned with resident's adult son who lives elsewhere
- (ii) Property jointly owned with resident's brother and sister, both of whom live elsewhere
- (iii) Property jointly owned with resident's daughter who has only recently moved into the property and works full-time (ie not been a long term carer)

(c) It is recognised that this proposed change may adversely impact on some carers. Our current policy already allows for discretion to be exercised (and a property ignored completely) if it is occupied by the former carer. Each case is considered on its merits and it is proposed that the ability to use discretion should continue. However, there will be some carers who will not be able to benefit from this discretion and will therefore be affected. This is illustrated by 9 (b)(iii) above. Under the current policy the value of the property would be taken into account in full if solely owned by the resident and completely ignored if jointly owned with the daughter. The proposed change would mean that if the property was jointly owned with the daughter, the resident's share would be taken into account and one of the following 3 options applied:

- (i) The resident and daughter could sell the property releasing the resident's share to be used to fund the required care.
- (ii) The money to fund the resident's care could be found from some other source of income (this could include letting out a room in the property).
- (iii) The resident and their daughter could agree to a voluntary charge being placed on the property, so that KASS could fund the required care in the knowledge that they had secured this debt on the property. When the resident died, the amount spent by KASS would be recouped from the resident's share of the equity.

It is important to note that a resident carer is at risk of losing their home, not just with the proposed change, but also with the current practice.

(d) It is considered possible that the proposed change may impact more on communities who tend to live with other members of their extended family.

(2) If this proposed change is agreed, its operation will be closely monitored and reviewed after the first year. The review will include an Equality Impact Assessment to determine if any of the points raised above require further consideration.

Recommendations

10. (1) The Cabinet Member is asked to decide whether there should be a change to the treatment of jointly-owned property in order for KASS to raise significantly more money from residential charging.

(2) If so, the Cabinet Member is asked to decide which of the options in section 3 should be implemented, noting that the KASS SMT recommend option 2 i.e. assume the resident's share is their % share of the full market value and only obtain an expert valuation in disputed cases.

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Background documents: None