

# Adult Social Care and Health Directorate

## Non-Discretionary Funding Practice Guidance

(Temporary care home funding for a self-funder pending a deputy appointment)

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# Non-Discretionary Funding Practice Guidance–Adult Social Care and Health

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2	17/11/2023	Format and style changed to align to ASCH generic practice guidance template. Some wording changed for clarity.	Jean Wells

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## PRACTICE GUIDANCE

### 1. Introduction

- 1.1 This practice guidance seeks to ensure Kent County Council (KCC) Adult Social Care understand it's statutory duty and the application of the Care and Support Statutory Guidance, when a person with eligible needs, who has assets above the upper capital limit, requires temporary funding of a care home placement, pending a deputy appointment.
- 1.2 Its purpose is to provide further guidance to the Charging Policy and Procedures for Residential and Nursing Care Home Placements.
- 1.3 The duty will apply until a deputy is appointed.
- 1.4 When meeting eligible needs, KCC will charge the full cost of their care and support.
- 1.5 KCC must **temporarily** fully fund care and support in a care home or a nursing home placement for a person with eligible needs who has assets above the upper capital limit when the person:
  - is an ordinary resident of Kent
  - lacks capacity to manage their own money, **and**
  - does not have a deputy to manage their property and affairs
- 1.6 When an appointment of a deputy is needed, one of the following actions is required:
  - a family member or friend of the person applies to the Court of Protection to manage the property and affairs or
  - alternatively the family member or friend of the person may appoint a solicitor to apply to be a [professional deputy](#)

**or**

  - if there isn't a family member or friend who is willing to take on this role, Operational Support Service will make the arrangements to appoint a professional [Panel deputy](#).

### 2. Definitions

- 2.1 There are four different categories of deputies that may be appointed by the [Court of Protection](#):
  1. lay deputies – friends and family of the person who lacks mental capacity
  2. professional deputies – individuals who are paid for their role as deputy (for example, accountants or solicitors)
  3. public authority deputies – when the court appoints a local authority or health body as the deputy
  4. panel deputies –a deputy appointed by the court when there is no one else suitable to take on the role. The panel deputy is chosen from Office of Public Guardian list of approved [panel deputies](#)

### **3. Legislation and National Guidance**

- 3.1 Under the Care Act (2014), people with eligible needs and financial assets above the upper capital limit are not entitled to receive any financial assistance from a local authority and should pay the full cost of their care and support until their capital falls below the upper capital limit.
- 3.2 Generally, a local authority is not required to meet eligible needs of people with financial assets above the upper capital limit where needs are to be met in a care home. (Note, if asked, a local authority has a statutory duty to meet eligible needs if needs require care and support in non-residential settings-regardless of the person's mental capacity or have above the upper capital limit).
- 3.3 People who lack capacity to give consent to a financial assessment and who do not have a person with legal authority to be involved in their financial affairs to make the arrangements in a care home, will require the appointment of a property and affairs deputyship.

### **4. Practice Guidance –What, How, Who and When?**

#### **When to start and end funding**

- 4.1 Adult Social Care will start funding when the temporary contractual arrangement begins. The person will be charged the full cost of their care and support and will be invoiced for this via a Kentcare Invoice every 4 weeks. The person will accrue a debt.
- 4.2 Operational Support Service (OSS) Case Officers (as the additional worker on Mosaic) will be responsible for approaching the Head of Service (OSS) for a funding extension should this be required and for notifying the Placement Team) via MOSAIC of an extension of the funding placement
- 4.3 OSS Case Officers will be responsible for the recording on the person's *case notes* their intervention in accordance with the Recording with Care Policy and Practice Guidance.
- 4.4 When the deputy is appointed and has legal authority to manage the property and affairs of the person, they will be required to make their own contractual arrangements with the care home. KCC will cease funding and seek reimbursement from the person's capital for the amount outstanding on the Kentcare Invoice.
- 4.5 If the intention is to apply for a deferred payment from KCC once deputyship is in place, if the person meets the criteria for a deferred payment and it is subsequently agreed, assistance with funding will continue under a deferred payment arrangement.

#### **Monitoring the progress of the application**

- 4.6 When a family member or friend of the person is making the application or making arrangements to appoint a solicitor to apply for a professional deputy, it is important OSS check the application progress every three months with the family.

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- 4.7 During the application process, unrelated questions or concerns raised must be escalated back to relevant team/function.

### **What happens if the person receiving services dies pending a deputy appointment?**

- 4.8 All costs incurred by Adult Social Care by the provision of care and support, are recoverable from the deceased estate following the Debt Management Policy.
- 4.9 If there is a Will and executors are named in the Will, they can apply to the probate registry for a “Grant of Probate” or may prefer to pay a probate professional/specialist (usually a solicitor or accountant) to apply for probate.
- 4.10 If no executors named in the Will or none of the executors are prepared to act, a beneficiary of the Will can apply to the probate registry.
- 4.11 When there is no Will, the spouse (husband or wife) - even if you were separated; civil partner; child can apply to become the estate’s administrator, following the same steps as applying for probate.
- 4.12 If the deceased has died intestate (without a Will), without known kin (entitled blood relatives) and the net value of the estate is over £500, OSS will make arrangements to refer the deceased person's estate to the Crown. HM Treasury is then responsible for dealing with the estate. The Treasury Solicitor acts for the Crown to administer the estate.
- 4.13 Whoever is appointed to deal the estate<sup>1</sup>, KCC Financial Assessment and Income Unit Income Recovery Team will contact the executor/administrator to arrange repayment of the outstanding social care debt.

## **5. Monitoring**

- 5.1 This practice guidance seeks to ensure that Adult Social Care practitioners and the Operational Support Service:
- Are fully aware of their roles and responsibilities when a person with eligible needs and financial assets above the upper capital limit requires temporary funding from KCC pending a deputy appointment.
  - Understand when the temporary funding will start and end, importance to monitor the progress of the deputy application and what will happen if the person receiving services dies pending a deputy appointment.

## **6. Review of Practice Guidance**

- 6.1 A member of the Policy and Quality Assurance Team will review the guidance two years from the publication.

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<sup>1</sup> Where a debtor has died the Debt Recovery team undertake regular probate checks to ascertain details of the estate’s executor/administrator.

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- 6.2 They will check that all contents are still relevant, engage with key stakeholders to look at practice issues, incorporate recommendations and rewrite or amend contents as appropriate.
- 6.3 The amended guidance will be presented to the Senior Management Team for approval if the amendments warrant this step.