



LEAD MEMBER FOR ADULT SOCIAL CARE

DECISIONS to be made by the Lead Member for Adult Social Care,
Councillor Bill Bentley

THURSDAY, 23 FEBRUARY 2017 AT 2.00 PM

COMMITTEE ROOM, COUNTY HALL, LEWES

AGENDA

- 1 Decisions made by the Lead Member on 24 November 2016 (*Pages 3 - 4*)
- 2 Disclosure of interests
Disclosure by all Members present of personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- 3 Urgent items
Notification of any items which the Lead Member considers urgent and proposes to take at the appropriate part of the agenda.
- 4 Adult Social Care Protection of Property & Deputyship Clients - Charging Arrangements
(*Pages 5 - 42*)
Report by the Director of Adult Social Care and Health
- 5 Any urgent items previously notified under agenda item 3

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15 February 2017

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LEAD MEMBER FOR ADULT SOCIAL CARE

DECISIONS made by the Lead Member for Adult Social Care, Councillor Bill Bentley, on 24 November 2016 at County Hall, Lewes

Councillors Davies, Pursglove and Ungar spoke on items 4 & 5 (see minutes 9 & 10)

6 DECISIONS MADE BY THE LEAD MEMBER ON 9 JUNE

6.1 The Lead Member for Adult Social Care approved as a correct record the minutes of the meeting held on 9 June 2016.

7 DISCLOSURE OF INTERESTS

7.1 There were no declarations of interest.

8 URGENT ITEMS

8.1 There were no urgent items.

9 ANNUAL REPORT OF THE SAFEGUARDING ADULTS BOARD FOR 2015- 2016

9.1 The Lead Member for Adult Social Care considered a report by the Director of Adult Social Care and Health on the Annual Report of the Safeguarding Adults Board for 2015-16.

9.2 The Lead Member for Adult Social Care RESOLVED to note the report.

Reason

The annual report shows significant progress in adult safeguarding activity from all organisations and has demonstrated the Making Safeguarding Personal (MSP) principles are starting to embed into practice to put adults and their representatives at the centre of decisions and interventions made. The Care Act 2014 has brought many changes to safeguarding practice, representing a fundamental shift from being process driven to a more person centred approach.

10 ADULT SOCIAL CARE COMPLAINTS AND FEEDBACK ANNUAL REPORT 2015-2016

10.1 The Lead Member for Adult Social Care considered a report by the Director of Adult Social Care and Health on the Adult Social Care Complaints and Feedback Annual Report 2015-16.

10.2 The Lead Member for Adult Social Care RESOLVED to note:

- 1) the number and nature of complaints made to Adult Social Care;
- 2) the nature and outcome of complaints to the Local Government Ombudsman; and

3) the learning from complaints and progress in the development of improving complaints handling for clients, carers and their representatives

Reason

The complaints process provides an opportunity for clients and carers' comments and complaints to be heard in an effective, accessible and fair manner, and resolved wherever possible; and is integral to the statutory function of the Adult Social Care Department.

Report to: Lead Member for Adult Social Care

Date of meeting: 23 February 2017

By: Director of Adult Social Care & Health

Title: Adult Social Care Protection of Property & Deputyship Clients - Charging Arrangements

Purpose: To enable the Lead Member to approve the implementation of appropriate charges for Protection of Property services and Deputyship visits

RECOMMENDATIONS

The Lead Member for Adult Social Care is recommended to:

1. Note the contents of the report and agree the proposals for charging;
 2. Approve the draft Protection of Property Policy (Appendix 1); and
 3. Approve the draft Appointee and Deputyship Policy (Appendix 2)
-

1 Background

1.1 The Appointee & Deputyship Team and Protection of Property Team within Adult Social Care (ASC) have recently merged to become the Client Affairs Team within ASC Financial Services.

1.2 New Guidance within the Care Act 2014 relating to the Protection of Property, the implementation of national Professional Standards for local authority deputies and recommendations from the Office of the Public Guardian (OPG) for these services has led to a review of the way the local authority provides these services to clients in East Sussex.

2 Supporting information

Protection of Property

2.1. Local authorities must take all reasonable steps to protect the moveable property of an adult with care and support needs who is being cared for away from home, in a hospital or in accommodation such as a care home, and who cannot arrange to protect their property themselves; this could include their pets as well as their personal property (e.g. private possessions and furniture). Local authorities must act where it believes that if it does not take action there is a risk of moveable property being lost or damaged.

2.2. This is a statutory duty placed on local authorities. The Care Act 2014 states that local authorities can charge reasonable costs for providing this service. In order to provide a consistent and responsive service, protection of property work is undertaken by a dedicated officer, with shared office support.

2.3. The local authority has reviewed the offer provided to clients taking into account actual costs incurred for time and trouble and where additional costs are incurred. These include, but are not limited to boarding pets, locksmiths and the long term storage of goods.

2.4. The highest actual cost to the local authority is the arrangement and provision of these services to individuals. The most cost effective way for the local authority to charge clients for this service is to recharge for actual additional costs incurred. An Equalities Impact Assessment has been undertaken (Appendix 3).

2.5. This choice also ensures clients are not financially disadvantaged by being required to pay someone to help them but means they will still be responsible for the actual cost for the service.

2.6. However, in some circumstances clients who are being hospitalised may not have capacity to make a decision regarding their possessions/property at the time assistance is required i.e. where they are detained under the Mental Health Act.

2.7. In these circumstances the initial protection of property intervention will not be charged, for a maximum period of 28 days, to allow time for the person to consider their options and for care management staff to work with clients to ascertain their wishes.

2.8. Cases and interventions will be reviewed at regular intervals to ensure costs to individuals and the authority do not escalate to high values with a view to placing time limits on our intervention.

Appointee & Deputyship Team

2.9. This team provides a support service for those who have care and support needs and have been deemed to lack capacity to deal with their own finances and where no other suitable person is able to assist. The team currently supports 478 individuals, 89 under Appointeeship – for whom the local authority manages the receipt of their benefits from the Department for Work and Pensions – and 389 for whom the local authority holds Deputyship and manage all capital, income and assets on their behalf.

2.10. Deputyship is awarded by The Court of Protection and the Office of the Public Guardian (OPG) monitors the support provided to clients. The Court of Protection sets down the Practice Directions which state the charges that professional deputies can apply.

2.11. The local authority currently charges clients the costs of Deputyship applications, annual charges for the support we provide and the fees for providing annual reports to the OPG. These costs are considerably lower than those which can be applied by solicitors but are in place to provide support to local authorities for the cost of running the service.

2.12. It is of note that the local authority is increasingly required to manage properties on behalf of those living in long term care and the local authority supports increasing numbers of clients living in the community in their own homes.

Property support

2.13. The recent structural changes within the service have enabled a review of the level of support that can be provided to those living in the community and those in long term care in respect of their homes, including monitoring property and ensuring appropriate maintenance is completed to ensure homes remain in a good state of repair.

2.14. Local authorities are able to charge a set fee per year for this function which currently stands at £270.

2.15. Under the OPG Practice Directions the local authority is able to charge travel costs at £40 per hour for visits, irrespective of where the client lives. Monthly visits are required for empty properties for insurance purposes and it is therefore proposed that the local authority applies these travel costs to Protection of Property Officer time. Where clients are in the community, living in their own homes or renting, it is proposed to undertake quarterly visits to ensure any essential maintenance work is identified at the earliest stage to ensure that costs for these clients are reasonable.

2.16. The OPG requires annual reports which should include any charges made.

Visiting Support

2.17. The OPG service standards require that clients are visited as part of the service offered. The Client Affairs service is now in a position to be able to fully implement this requirement.

2.18. The OPG inspected Adult Social Care in 2016 and made a recommendation to implement a visiting function; a review of the service identified a separate visiting role as the best way to fulfil this requirement.

2.19. In recognition that the current fee guidance does not support the cost of visiting clients, the revised Practice Directions from the Court of Protection includes provision to charge travel costs incurred by anyone visiting a client or their property at a flat rate of £40.00 per hour.

2.20. These charges will be calculated in the same way as property visits to ensure a consistent approach. The team will visit clients once to establish arrangements and then re-visit on an annual basis, dependent upon the needs of the clients. For those who may need more frequent visits costs and numbers of visits will be proportionate to their needs and will only be charged when clients have sufficient funds to maintain the costs.

2.21. It is envisaged that those for whom the local authority acts only as an appointee, and who are in receipt of benefits, will not be charged for this service.

Policy Updates

2.22. Appendices 1 and 2 are included for information and set out the policy framework within which charges for Protection of Property and Appointee and Deputyship will be implemented, if agreed by the Lead Member.

3. Conclusion and reasons for recommendations

3.1 The service changes to be implemented and charged for are for the benefit of the most vulnerable clients who have no other suitable person to provide the necessary support to them.

3.2 Implementing the charges provides East Sussex County Council with the ability to provide this support at a lesser or no cost to the authority.

3.3 The Lead Member is recommended to:

3.3.1 Note the contents of the report and agree the proposals for charging set out in detail below:

- Recharge to clients the actual additional costs incurred through the protection of property
- Implementation of an annual charge for property maintenance
- Implementation of charging travel costs for visiting Deputyship clients or their properties.

3.3.2 Approve the draft Protection of Property Policy (Appendix 1).

3.3.3 Approve the draft Appointee and Deputyship Policy (Appendix 2)

Keith Hinkley

Director of Adult Social Care and Health

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BACKGROUND DOCUMENTS

None

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Protection of property policy

Draft

Version control	v1.0
Date	February 2017
Review date	February 2018

Document control sheet

Title of the policy	Protection of property policy
This policy supersedes	N/A
This policy should be read alongside	Care & Support Statutory Guidance
Lead director	Mark Stainton, Assistant Director – Operations
Policy lead / author	Zena Boniface, Operations Manager – ASC Financial Services
Produced by	ASC Information & Guidance Team
Implementation date	February 2017
Review date	February 2018
Reference number (for Information & Guidance Team)	POP0217JL
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Introduction

The Care Act 2014 places a statutory duty on local authorities to protect the property of adults with care and support needs who are unable to do so for themselves.

Policy aims and principles

To ensure ESCC provides appropriate support to clients where protection of property duties are identified.

To ensure that support provided meets the requirements of the Care Act.

To ensure protection of property interventions are proportionate and that costs to ESCC and the person are minimal.

Scope

ESCC must take all reasonable steps to protect the moveable property of an adult with care and support needs in the following circumstances:

- The adult is being cared for away from home, ie. in hospital or accommodation such as a care home.
- The adult cannot arrange to protect their property themselves, and there is no other individual who can assist them ie. a Deputy, Appointee, family, friend or neighbour.

Property includes furniture, private possessions and pets.

- ESCC believes that if we do not take action there is a risk of the adult's moveable property being lost or damaged.

Exclusions

Where a person has family support or formal support with a Lasting/Enduring Power of Attorney or Deputy there is no statutory duty for local authorities to assist.

Consent

The adult must consent to protection of property intervention, where they are able. If they lack capacity, a person with the authority to act for them, under the Mental Capacity Act 2005, must give their consent.

Where the client is not able to consent and no one has authority to do so on their behalf, ESCC must, under Section 4 of the Mental Capacity Act 2005, act in the person's best interests.

In such cases, a detailed recording of the client's lack of capacity to make decisions or issue instructions about the protection of their property will be made, and a record of the best interest decision kept on their file.

If a person does not wish us to intervene, mental capacity will be considered, and the best interests of the person, property or any animal living in the property will be taken into account when considering what actions we may or may not take.

Charging for costs incurred in protecting property

Local authorities can recover reasonable costs incurred in protecting property under the Care Act duty.

ESCC will recharge clients for the cost of actions taken on their behalf.

ESCC will make the person aware, before any action is agreed, that costs will be recharged to them. An estimate of the cost of works can be provided, should this be required.

The person will be required to sign a form of authorisation agreeing to our assistance and to repaying costs.

ESCC will send invoices to the client where they are to be recharged.

If it appears the client may not have capacity to manage their own finances, a Mental Capacity Assessment will be completed to determine this. Where the adult has no family or network to act for them, a referral will be made for ESCC to become the client's Appointee or Deputy.

A waiver of charges will be considered in exceptional circumstances for a period of 28 days ie. where the client is formally assessed not to have capacity to make a decision in respect of their property or possessions at the

time assistance is required. Any waiver will be agreed on a case-by-case basis by the Operations Manager of ASC Financial Services and the Operations Manager of the referring service.

The maximum period for any waiver agreed will be 28 days. By the end of this period a decision will be made with the person, or a best interests decision made, as to the long-term actions regarding their property and possessions.

Protecting the person's property

Securing the property

An assessment will be completed to determine what steps need to be taken to minimise the risk of theft, loss or damage to the property.

The client's social worker will inform the client of the arrangements being made to protect their property, and request they sign the form of authorisation.

Any specific instructions given by the person regarding their property will be recorded by their social worker and passed to the Protection of Property Team.

Where keys are collected from the client, receipt of the keys and the location of their storage will be recorded.

Where a visit to the adult's property is required, the first visit will be undertaken by two members of staff. This will usually be the Protection of Property Officer and the client's social worker.

Removing items from the property

Two members of staff will always be present where belongings are to be removed from the property.

ESCC will seek specific instructions from the person, or where they lack capacity the worker responsible for the person's care, before any valuables are removed from the property. Where a decision is made in the person's best interests, an assessment of their capacity regarding the decision and the best interest decision will be recorded by the worker.

An inventory will be made of any items removed from the property

ESCC will arrange secure storage for any valuable items.

If cash is recovered, all notes and coins will be counted and verified on site and entered onto the inventory sheet. If the client wishes to keep an amount of cash in hospital or care accommodation, appropriate arrangements will be made. A receipt will be requested for any monies handed to the person. Alternatively, attempts will be made to locate the person's bank records so that the cash can be paid into the appropriate account.

ESCC will record all actions taken, and record information regarding the person's belongings eg. inventories, photographs etc.

ESCC will write to the person, and confirm the actions taken to remove and store their belongings and that they will be charged for this where a cost is incurred.

A receipt will be requested for items that are returned to the person, or to the hospital or care home, for safekeeping.

Reviewing our intervention

Protection of property interventions will be short term to ensure that costs to ESCC and the person are minimal.

The practitioner will liaise with the client regularly – and no later than 28 days after protection of property assistance is first provided – to establish whether the client can take over responsibility for their possessions, or to explore other options for safeguarding their property ie. disposal.

Where a client does not have capacity and another person is identified as applying for the legal authority to act for the client, contact will be made at the earliest opportunity with that person with a view to a decision being made for protecting the person's property during the application process.

Where another person becomes an Appointee or Deputy for the client, ESCC will let that person know of any ongoing intervention and that costs are being recharged to the client so that the Appointee / Deputy can consider if they wish to take over protection of the property.

Where a referral is made for ESCC to become Appointee or Deputy for the client, protection of property intervention will continue until Deputyship is awarded and appropriate actions can be taken in respect of the client's belongings.

Protection of property intervention will be reviewed at regular intervals to ensure cases do not continue for extended periods of time.

When a client returns to their property

When the person returns to their property, ESCC will make arrangements to return to the person any items removed for safekeeping.

ESCC will make all necessary arrangements to make the property habitable, including reconnection of services and arranging for a deep clean.

Where the client is unable to return to their property

Where it is confirmed that the care will continue for an extended period or the person is unlikely to return home, ESCC will consult the client, or their representative, regarding the long-term securing of their property and the costs incurred with a view to transferring this responsibility to them.

ESCC will only retain responsibility for ensuring the person's property is secure under exceptional circumstances.

Where the person is unable to make arrangements regarding their property, and there is no other individual who can assist them, ESCC will seek authorisation to dispose of their property, or terminate their tenancy, on their behalf.

Where the person dies whilst in care

The council's responsibilities under Section 47 of the Care Act to protect a client's property cease on the death of the person.

On the death of a client, ESCC will make appropriate arrangements with the person's executors or representatives for the disposal of their property.

Legislation

Care Act 2014

Mental Capacity Act 2005

Policy

Appointee & Deputyship policy

Version control	V1.0
Date	October 2015
Review date	October 2016

Document control sheet

Title of the guidance	Client affairs policy
Target audience	Adult Social Care operational staff
Purpose of the guidance	To provide guidance and standards for staff administering client's financial affairs.
Action required	To use the guidance to support working practice
This guidance supersedes	N/A
This guidance should be read alongside	Client affairs – operational instructions
Lead director	Mark Stainton, Assistant Director – Operations
Policy lead / Author	Zena Boniface, Operations Manager, ASC Financial Services
Produced by	ASC Information & Guidance Team
Implementation date	April 2017
Review date	October 201 2018
Reference number (for Staff Information Team)	CAPOL-CH-0815
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1. Introduction

Sometimes people need East Sussex County Council (ESCC) to manage their money on their behalf, as they are unable to engage family members or close friends to undertake the role. There may also be incidents where an individual is being, or is at risk of being, financially abused.

Local authorities may take on these activities in the role of Appointee or Deputy if the person meets the eligibility criteria in this policy.

2. Principles of the policy

We recognise that anything we do on behalf of an individual must be done in their best interests. This includes:

- handling people's finances appropriately, consistently and confidentially in accordance with legislation, regulations and ESCC's financial policy and procedures
- minimising the risk of abuse or criminal activity
- ensuring transparency in the recording of financial transactions.

3. Eligibility criteria

Before ESCC can assume responsibility for an individual's financial affairs, we must maximise the support of friends and family, associates and organisations, where appropriate.

If this support is unavailable and the person meets the eligibility criteria below, then we will consider managing their financial affairs in the most appropriate way.

To be eligible for our support, the following criteria need to be met:

- The individual is eligible for care and support needs provided by East Sussex County Council
- They have no appropriate family, friends and associates or access to organisations who will be able to help them with their finances
- The individual lacks the mental capacity to manage their financial affairs

- The person has less than £30,000. If they have more than this amount, we will consider managing their affairs on a case-by-case basis.
- The individual does not already have an Appointee or did not appoint a Lasting Power of Attorney (LPA) before becoming unable to manage their finances; or
- The existing Appointee, Power of Attorney or Deputy has been removed by the DWP/Office of the Public Guardian, or is relinquishing their role.

4. Relevant legislation and responsibilities

The roles of Appointee and Deputy are discretionary roles and there is no legal requirement on ESCC to provide either service. However, when these services are provided, the following Acts and statutory responsibilities apply:

- Mental Capacity Act 2005 and its Code of Practice
- [Office of the Public Guardian \(OPG\) public authority deputy standards](#)
- Court of Protection Rules 2007
- Social Security (Claims and Payments) Regulations 1987
- Care Act 2014
- Care and Support Statutory Guidance

Mental Capacity Act 2005 and its Code of Practice

The Mental Capacity Act (MCA) empowers and protects people who lack capacity to make certain decisions for themselves because of illness, a learning disability, or mental health problems.

For Deputies it governs:

- what you should take into account when you make decisions on behalf of someone
- who you may need to consult when you are making decisions on behalf of someone

the protection that is in place for those people for whom decisions are being made

The MCA contains five statutory principles:

- A person must be assumed to have capacity unless it is established that he or she lacks capacity.
- A person is not to be treated as unable to make a decision unless **all practicable steps to help him or her** do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he or she makes an **unwise decision**.
- An act done, or decision made, on or on behalf of a person who lacks capacity must be done, or made, in his or her **best interests**.
- Before the act is done, or the decision is made, care must be taken to avoid restricting the person's rights and freedom of action.

ESCC has a statutory duty to adhere to the Mental Capacity Act 2005 and its Code of Practice. Refer to: [Mental Capacity Act 2005 and its Code of Practice](#)

All financial decisions made on behalf of the client must be made in their best interests and involve the client, where possible.

The Office of the Public Guardian (OPG)

The Office of the Public Guardian is an agency that registers Lasting Powers of Attorney and supervises Deputies appointed by the Court of Protection. Its responsibilities extend across England and Wales; separate arrangements exist for Scotland and Northern Ireland.

The Court of Protection (CoP)

The Court of Protection is a specialist court for all issues relating to people who lack the capacity to make their own decisions. The CoP is responsible for appointing Deputies to make decisions in the best interests of those who lack capacity.

The Treasury Solicitor (Bona Vacantia division)

The Treasury Solicitor provides legal services to government departments and other publicly funded bodies in England and Wales.

5. Appointeeship and Deputyship

Appointee and Deputyship Team (ADT)

The Appointee and Deputyship Team (ADT) administer and manage a client's financial affairs. They help to determine if ESCC are able to take responsibility for a person's financial affairs and the most appropriate way of doing so.

Online banking facilities are used to manage individual bank accounts for clients and a financial protection system module holds the client records.

How we act can upon a client's behalf?

We can act in the role of Appointee by applying to the Department of Work and Pensions (DWP), or Deputy by applying to the Court of Protection.

Should an individual have capital and / or private income in addition to state benefits ESCC must apply for both Appointeeship and Deputyship.

Appointeeship

Appointeeship allows the ADT to act on behalf of the client in respect of claiming and receiving benefits from the DWP.

We use those benefits to provide statutory personal allowances, payment of client contributions and assistance with paying bills.

Appointeeship is not a debt management service for clients.

Duties of an Appointee

When ESCC becomes an Appointee, it will:

- use any money received on behalf of the person in their best interests
- claim benefits and sign DWP forms for the individual
- collect and receive benefits, state pensions and allowances
- ensure that the client receives the maximum amount of benefits they are entitled to
- make appropriate payments on behalf of the individual
- ensure the individual receives their personal allowance

- ensure any bills or payments are invoiced correctly and due before making payment from the client's account
- hold low levels of capital in the ADT accounts and assist clients to budget and spend this amount

An Appointee cannot:

- receive any types of income, other than those listed above
- deal with any debt, except to DWP or ESCC
- deal with debt companies / agencies
- invest or manage bank accounts for any capital level held, however low

Cost of Appointeeship

We do not levee a charge for clients whose capital is under £5,000. At the point capital level reaches £5,000 we will apply for Deputyship for the person and fees may be applied at lower values at this time.

Corporate Deputyship (property and affairs)

Corporate Deputyship applies when a person has:

- an occupational pension
- other income not received from the DWP e.g. annuities
- stocks and shares
- property
- savings in a bank account

Following the receipt of Appointeeship, ESCC will make an application to the Court of Protection in order to become Corporate Deputy. A Deputy takes full responsibility for managing all an individual's finances.

The Deputy's powers are determined by the Court of Protection and set out in a court order. A Deputy must act in accordance with the court order and the Mental Capacity Act code of practice. They can only make decisions that the court has given them authority to make, as stated in the court order.

Duties of a Deputy

The Mental Capacity Act states that a Deputy is to be treated as 'the agent' of the person who lacks capacity. Being an agent means that the Deputy has legal duties to the person they are representing.

As Deputy under the MCA Code of Practice, we will:

- apply certain standards of care and skill (duty of care)
- not take advantage of the person's situation (fiduciary duty)
- indemnify the person against liability to third parties caused by the deputy's negligence
- not delegate duties unless authorised to do so
- act in good faith
- respect the person's confidentiality
- comply with the directions of the Court of Protection

Property and Affairs Deputies also have a duty to:

- keep accounts
- keep the person's money and property separate from their own finances

Cost of Deputyship

There are a range of fees to be paid to the Court of Protection and the Office of the Public Guardian. These cover the process of application, appointment and regular supervision of the Deputy. All the Deputyship fees are payable from the person's funds, up to and including the date of death.

The ADT will ensure that annual costs are met and that they comply with the appropriate supervision level.

Charge for our service

The Court of Protection publishes Practice directives which inform local authorities of the level of fees they are able to charge clients for the work we do.

East Sussex County Council applies charges as detailed in these practice directives to clients in respect of:

- Set up costs

- Annual fees
- Annual reports
- Maintenance and property support
- Travel costs for visiting the client and /or their home

Contracts with third parties

When carrying out tasks on behalf of the client, the Deputy is not personally liable to third parties. Any contract is between the client and the third party, with the client liable for any payments.

If entering into any written contract, ESCC will state that the contract is between the client and the third party, with ESCC acting as Deputy.

Agreements should be signed:

This agreement is between (client's name) acting by (Deputy name) and (third party)"

Best interests decision making

As Deputy we agree to act in the best interests of the person and within the terms of the court order. If we need to make a decision not covered by the court order, we will make an application to the Court of Protection.

We will manage the person's money and assets in manner that is in their best interest, including decisions regarding:

- budgeting
- investments
- decisions regarding property use
- maximising their income
- support regarding property maintenance

Consideration must be given to activities or items that will improve or enhance the client's quality of life.

Client wishes

Client's wishes in respect of managing their finances and possessions will be included in decision making in all appropriate circumstances. Where this is not possible we will ascertain knowledge of their wishes through contact with their relevant support network.

We will inform the OPG of any changes of contact details or circumstances (for the Deputy or the person they are acting for).

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Equality Impact Assessment Update

Name of the project, policy, service or strategy to be updated
Client Affairs Team charging arrangements

File ref:		Issue No:	
Date of Issue:		Review date:	

Equality Impact Assessment Update 1

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Managers(s) and section or service responsible for completing the updated assessment	
Name	Zena Boniface
Section/service	ASC Financial Services
Date	Feb 2017

Part 1 The Public Sector Equality Duty and Equality Impact Assessments (EIA)

1.1 The Council must have due regard to its Public Sector Equality Duty when making all decisions at member and officer level. An EIA is the best method by which the Council can determine the impact of a proposal on equalities, particularly for major decisions. However, the level of analysis should be proportionate to the relevance of the duty to the service or decision.

1.2 This is one of two forms that the County Council uses for Equality Impact Assessments, both of which are available on the intranet. This form is designed for any proposal, strategy or policy. The other form looks at services or projects.

1.3 The Public Sector Equality Duty (PSED)

The public sector duty is set out at Section 149 of the Equality Act 2010. It requires the Council, when exercising its functions, to have “due regard” to the need to

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. (see below for “protected characteristics”

These are sometimes called equality aims.

1.4 A “protected characteristic” is defined in the Act as:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race (including ethnic or national origins, colour or nationality)
- religion or belief;
- sex;
- sexual orientation.

Marriage and civil partnership are also a protected characteristic for the purposes of the duty to eliminate discrimination.

The previous public sector equalities duties only covered race, disability and gender.

1.5 East Sussex County Council also considers the following additional groups/factors when carry out analysis:

- Carers – A carer spends a significant proportion of their life providing unpaid support to family or potentially friends. This could be caring for a relative, partner or friend who is ill, frail, disabled or has mental health or substance

misuse problems. [Carers at the Heart of 21st Century Families and Communities, 2008]

- Literacy/Numeracy Skills
- Part time workers
- Rurality

1.6 Advancing equality (the second of the equality aims) involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristic
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people including steps to take account of disabled people's disabilities
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low

NB Please note that, for disabled persons, the Council must have regard to the possible need for steps that amount to positive discrimination, to "level the playing field" with non-disabled persons, e.g. in accessing services through dedicated car parking spaces.

1.6 Guidance on Compliance with The Public Sector Equality Duty (PSED) for officers and decision makers:

1.6.1 To comply with the duty, the Council must have "due regard" to the three equality aims set out above. This means the PSED must be considered as a factor to consider alongside other relevant factors such as budgetary, economic and practical factors.

1.6.2 What regard is "due" in any given case will depend on the circumstances. A proposal which, if implemented, would have particularly negative or widespread effects on (say) women, or the elderly, or people of a particular ethnic group would require officers and members to give considerable regard to the equalities aims. A proposal which had limited differential or discriminatory effect will probably require less regard.

1.6.3 Some key points to note :

- The duty is regarded by the Courts as being very important.
- Officers and members must be aware of the duty and give it conscious consideration: e.g. by considering open-mindedly the EIA and its findings when making a decision. When members are taking a decision, this duty can't be delegated by the members, e.g. to an officer.
- EIAs must be evidence based.
- There must be an assessment of the practical impact of decisions on equalities, measures to avoid or mitigate negative impact and their effectiveness.
- There must be compliance with the duty when proposals are being formulated by officers and by members in taking decisions: the Council can't rely on an EIA produced after the decision is made.

- The duty is ongoing: EIA's should be developed over time and there should be evidence of monitoring impact after the decision.
- The duty is not, however, to achieve the three equality aims but to consider them – the duty does not stop tough decisions sometimes being made.
- The decision maker may take into account other countervailing (i.e. opposing) factors that may objectively justify taking a decision which has negative impact on equalities (for instance, cost factors)

1.6.4 In addition to the Act, the Council is required to comply with any statutory Code of Practice issued by the Equality and Human Rights Commission. New Codes of Practice under the new Act have yet to be published. However, Codes of Practice issued under the previous legislation remain relevant and the Equality and Human Rights Commission has also published guidance on the new public sector equality duty.

Part 2 - Scope of original EqlA and reasons for revision

2.1 What is being assessed?

- a) Name of the project, policy, service or strategy.

Client Affairs Team – comprising of Protection of Property Service and Appointee & Deputyship Team

The Protection of Property (POP) scheme applies when people are not able to care for their property or possessions whilst receiving support through Adult Social Care, and there is no-one else (or no one suitable) to do it for them. Examples might be an older person, living alone, who has gone into emergency respite care or someone who is detained under the Mental Health Act.

In both these cases, assuming there was no-one able to secure their home or belongings; we would be required to take action to ensure that their home or belongings were secure, and that any pets were being cared for.

In cases where Adult Social Care supports people who have no-one else to manage their financial affairs for them (including owned properties and tenancies), the Appointee and Deputyship Teams takes on this responsibility.

The revised POP and Appointee and Deputyship policies enable a more consistent approach to this and to provide consistent support to our clients in terms of their properties and providing a visiting support for clients whose affairs we manage.

2.2 Reasons for the revision

Policies for Protection of Property and Appointee & Deputyship Teams have been reviewed for the following reasons:

1. A review of service offer for Protection of Property under the Care Act resulted in a change of offer and location of the service, which was transferred to ASC Financial Services from the Adult Social Care Contact and Assessment Team.

Local authorities have had the means to re-charge costs for those receiving Protection of Property assistance in the past – this has not been consistently applied. The Care Act further supports the ability to re-charge reasonable costs. In July 2016 Adult Social Care appointed a Protection of Property Officer and support which has been able to ensure consistency and oversight in this area.

2. The move to a new service area has allowed us to review the offer to clients we are Appointee and Deputy for, to provide more support for those living at home, or who own properties whilst in long term care.

As deputies we have a duty to support clients in this respect, and the Court of Protection Practice Directives supplies local authorities with the means to re-charge set costs for areas of work completed.

We have charged set fees for managing finances annually for some time, however cost for management of properties has not been fully implemented as this work was not regularly undertaken. Now that we have a Protection of Property Officer in post, they will provide regular property inspections and

support to our clients living in the community who live in their own homes, and those in long term care who own properties.

3. The Office of Public Guardians has produced standards it expects Professional Deputies to act under, and we need to reconsider our offer to our clients to comply with this. As part of a recent Office of Public Guardians inspection, we have been recommended to provide a visiting function to our clients. In recognition that visits to clients and properties have costs attached to them, the Court of Protection Practice Directives has implemented the ability for local authorities to charge travel costs to clients for undertaking these visits – the work completed is already covered in our annual and property maintenance costs, the ability to charge travel in addition recognises the impact on local authorities for providing this much needed service.

2.3 Scope of the update

The update covers the effect of these changes on people of different ages, disabled people and carers. See above 2.1 for details of scope

2.4 Has there been any change to who is affected by this revised EqIA?

No

Part 3 - Consideration of additional data and research

3.1 List any examples of additional quantitative and qualitative data or any consultation information available for the update

Please mark the relevant boxes below with an 'X'

Census	
Consultation	
Complaints	x
ESiF	
Other	X
Staff survey	

3.2 Have you carried out any additional consultation or research to complete this update?

Yes

3.3 What does the consultation, research and/or data indicate about the negative impact of the project, policy, service or strategy update?

We have discussed the implication on our clients internally at Operational Managers Forum to clarify reasons for implementing charges and to elicit views of our Operational colleagues. Their views have been taken into account and are identified in the mitigations to be applied to the service.

We have also discussed legal implications with Orbis Public Law to ensure we are interpreting guidance and charging practices are being applied appropriately.

We have also communicated with other authorities to gain best practice for provision of assistance under Protection of Property and operating Corporate Appointee & Deputyship services

3.4 What does the consultation, research and/or data indicate about the positive impact of the project or update?

We anticipate that the changes to the service will provide much needed support to clients who have no other to support them in respect of property and finances. We expect there to be a positive impact on older people living alone, due to the demographics in East Sussex (see below) and the likelihood of those people to need to go into care away from home.

Living arrangements by age in 2011 - super output areas

Living arrangements	Living in a couple total	Not living in a couple total
England and Wales	273,2335	336,5253
South East	449,600	513,566
East Sussex	35,661	42,386
Eastbourne	6,113	8,678
Hastings	4,043	6,134
Lewes	6,663	7,766
Rother	7,774	8,952
Wealden	11,068	10,856

(Source: [ESIF](#))

On recommendation from Mental Health colleagues, those who require Protection of Property intervention at a time when they have no capacity to make informed decisions in respect of their property may be particularly affected by this change. Usually, an initial assessment is made (which will determine capacity) and then a reassessment is made within 28 days. We have accordingly agreed to a waiver of 28 days in these circumstances.

For clients we are Deputy and Appointee for, the additional visiting service will provide much needed support and information about how we will work with them to manage their finances. Charges will be applied on a case by case basis and only where clients have sufficient means to pay for costs incurred.

Part 4 – Changes to assessment of impact

4.1 From the evidence available, does the update affect or have the potential to affect equality groups differently?

Please mark the relevant boxes below with an 'X'

	Yes	No	No change
Age	x		
Disability	x		
Ethnicity			x
Gender/transgender			x
Marriage and Civil Partnership	x		
Maternity and Pregnancy			x
Religion, belief			x
Sexual orientation			x
Others (please state e.g carers/ruralityetc):			x

4.2 If yes, do any of the differences amount to? Please duplicate this box for each equality group that you identify will have a changed impact.

Age	Reason, evidence, comment
Barriers, negative impact or unlawful discrimination	
Neutral Impact	
Positive impact	<ul style="list-style-type: none"> The majority of clients eligible for the additional services we are offering are likely to be older people, receiving care and support at home or going into residential care, either on a short or long term basis. East Sussex has an ageing population with a high proportion of people living alone. The changes we are proposing to make to the service aim to provide clients with peace of mind in respect of their properties and the support they can expect from us as Deputy or

	<p>Appointee for their finances.</p> <ul style="list-style-type: none"> • In most circumstances, clients have either no-one (or no suitable person) to provide assistance if they lose capacity to manage their finances. The authority is not legally required to provide this service to its clients, but we choose to do so to support the most vulnerable and as a last resort. • Costs applied by solicitors (to provide the same service) are much higher than those that are allowed by local authorities, so the service is good value, and the charges we can apply also assists to ensure the service is cost neutral and has no overall impact on costs incurred by the local authority. • The additional service will ensure we can consult with and work with individuals to a greater degree when it comes to managing money, property and possessions
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Marriage	Reason, evidence, comment
Barriers, negative impact or unlawful discrimination	
Neutral Impact	<p>In some circumstances it is possible that we may support clients living in the community who continue to live with a partner / spouse. Practice Guidance identifies when this would be appropriate and the policy seeks to ensure that we maintain the dignity and respect for the client and their relationship.</p> <p>When we're legally responsible for the care of a client's property, when visiting them, we will ensure we take the views of the partner or spouse into account. This includes considering the appropriateness of both the number and timeliness of visits, and provides the level of support they require as a couple, to ensure the rights of that person are not affected by our legal duties.</p> <p>In circumstances where the best interests of the client could supersede this, we would manage the situation in conjunction with care managers and if necessary, the courts would make some decisions.</p>

Positive impact	
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Disability	Reason, evidence, comment
Barriers, negative impact or unlawful discrimination	
Neutral Impact	<p>East Sussex has unique geographical features which makes the local authority more likely than most to need to take emergency action in supporting adults who are not resident in the county, who have significant mental health issues and possible lack of capacity.</p> <p>The service provided by Protection of Property is only provided when no other support is available. Charges for costs incurred will only be applied when actual additional costs are incurred by the local authority to assist a person – boarding costs of pets, or locksmiths, for example. If an individual were able to make these arrangements without our support, the same costs would be incurred. We do not propose applying time and trouble costs in addition - this cost will be covered by the authority.</p> <p>Where it has been determined that someone doesn't have capacity to make decisions at the time, we will waive any incurred costs in protecting their property for the first 28 days. This allows time for a care manager to work with the person to ascertain their wishes for their property. Any additional costs will be charged following this first period – ie boarding or pets, storage of possessions. Where capacity issues continue a Best Interests decision will need to be taken for the client in respect of recharging costs and any long term implications of storing belongings – this will be reviewed throughout any hospital stay or care placement.</p>
Positive impact	

- a) If there is a negative impact, can it be justified on the grounds of promoting equality of opportunity for one group over another or for another legitimate reason?

4.3 Specify measures that can be taken to remove or minimise the disproportionate or negative effect identified in Section 3. If none were identified in Section 3; identify how disproportionate impact or adverse effect could be avoided in future.

We will continue to review application of visiting clients and charges based upon the individual needs of the client and their own personal circumstances.

Where we are deputy we will report annually to the Office of Public Guardians., care management will also be informed of the level of support we will provide to ensure they agree it meets with the needs of the person.

4.4 How will any amended project, policy, service or strategy be implemented, including any necessary training?

The change in policy will be implemented to Operational colleagues with guidance to support the changes and practice change.

For staff within Client Affairs Team (Protection of Property Officer, Appointee & Deputyship Teams) specific guidance will be implemented and training to support understanding of Mental Health and providing proportionate support to clients based upon their needs and wishes.

We will continue to be visited by the Office of Public Guardian to review our practices and we provide annual reports for each client to provide information on interventions undertaken on their behalf.

We will continue to liaise with the OPG, and colleagues in other local authorities to ensure our practice is in line with requirements.

Part 5 - Conclusions and recommendations

5.1 Does the project, policy, service or strategy comply with equalities legislation?

Yes

5.2 What are the main areas requiring further attention?

See 5.3

5.3 Summary of recommendations for improvement

- a. Finalising policies and operational instructions for operation colleagues
- b. Finalising guidance for Client Affairs team to take account of changes

5.4 Is there a plan in place to carry out regular checks on the effects of the project, policy, service or strategy?
(Give details)

Yes

For Protection of Property cases we will continue to consider impact on clients and take into account individual persons needs at the time intervention is required.

For our Appointee & Deputyship clients we will monitor the impact of the change to service provided and complete a review of the changes within one year of full implementation to ensure any lesson learnt are taken account of moving forwards.

Monitoring will go through the Adult Social Care Operational Management Team on a regular basis, and will also take into account any other feedback from the service including complaints and customer feedback.

5.5 When will the updated project, policy, service or strategy be reviewed?

The service to be reviewed within one year of full implementation, policy and guidance annually in line with ASC standards.

The table below should be completed using the information from the updated equality impact assessment to produce an action plan for the

1. Lower the negative impact, and/or

- Please ensure that you update your service/business plan within the equality objectives/targets and actions identified below:**

Area of negative/	Cost	Cost of loss	Time to loss	Resource	Cost of loss
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