ASC - Deprivation of Capital / Assets Policy

Portsmouth
CITY COUNCIL

Summary:

This policy outlines Portsmouth City Councils approach when considering deprivation of capital / assets.

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Policy Owner (TITLE not name)	
Policy Author & Department	Kelly Redman - Team Manager - ASC Income
Related Documents	Care Act 2014 - Charging and Assessment of Resources ASC Charging Policy ASC Depletion of Capital Policy ASC Debt Recovery Policy
Applicability	Adult Social Care Income Team - Finance Adult Social Care Teams including Older Persons, Learning Disability, Adult Mental Health, and Physical Disability Teams
Revision History	v.1.0

CONTENTS

1. PURPOSE

The aim is to outline Portsmouth City Council's (PCC) approach when considering deprivation of capital/assets. This policy aims to support **ASC Charging Policy** and the means tested financial assessment process, providing a fair and transparent charging process in accordance with the Care Act 2014.

Please see the website for this year's capital thresholds.

[Social care - charging for care and support: local authority circular - GOV.UK]

2. BACKGROUND

Currently unlike NHS services, Adult Social care is not free. Individuals will be expected to contribute something towards the cost of services should they be assessed as being able to after a means tested financial assessment.

Some individuals will be expected to meet the total cost of services either due to their financial assessment exceeding the cost of services or because they would be considered as "self-funding".

Currently people with more than the upper capital threshold are considered self-funding for their care and support needs.

People with less than the upper capital threshold but more than the lower capital threshold will make an additional contribution towards their care from their capital known as "tariff" income, this is calculated as £1.00 for every £250.00, or part of capital held between the lower and upper capital thresholds. This "tariff" income is added onto the persons income/benefits/savings to establish their assessed maximum weekly charge towards services.

Portsmouth City Council (PCC) must comply with The Care and Support Statutory Guidance issued within the Care Act; this sets out how local authorities should assess how much a person should pay towards the cost of their care and support.

During the financial assessment process, it may be identified that an individual or legal representative of the person looked after may have deliberately deprived themselves of capital or assets to avoid/reduce care costs.

This also applies to self-funders who may have deliberately deprived themselves of capital /assets to be eligible for Local Authority funding sooner than reasonably expected.

Annex E (Deprivation of Assets) of statutory guidance stipulates:

"The financial assessment will need to look across all of a person’s assets – both capital and income – decide which is which and assess those assets according to the regulations and guidance. A local authority therefore must also refer to Annex C on the treatment of income and Annex B on the treatment of capital before conducting a financial assessment".

"When undertaking or reviewing a financial assessment a local authority may identify circumstances that suggest that a person may have deliberately deprived themselves of assets in order to reduce the level of the contribution towards the cost of their care. In such circumstances, the local authority should have regard to this guidance. Clearly, local authorities should treat this issue with sensitivity and care".

"Deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support."

3. APPLICATION AND INVESTIGATION

Where PCC have identified circumstances which may suggest deprivation of capital/assets regard will be given to section 70 of the Care Act 2014, Annex E (Deprivation of Capital) and will consider the individual circumstances of the case taking into consideration the persons wellbeing and right to spend income as they see fit.

PCC has a duty to protect public funds and therefore will investigate possible deprivation cases placing the onus on the individual to prove the council that deprivation did not incur.

The Care Act is intended to offer a single framework for charging which is clear and transparent for all individuals receiving care and support service, therefore PCC will fully investigate possible deprivation cases to ensure consistency and fairness for all service users.

There is no time limit in how long a local authority can go back when investigating deprivation cases.

What would be considered Deprivation of capital / assets:

In accordance with the Care Act 2014 Annex E - Deprivation of assets, the cared-for person or their legal representative may be considered as having deliberately deprived themselves of capital /assets if any of the following has occurred:

(a) a lump-sum payment to someone else, for example as a gift
(b) substantial expenditure incurred suddenly and is out of character with previous spending.
(c) the title deeds of a property transferred to someone else.
(d) assets placed into a trust that cannot be revoked.
(e) assets converted into another form that would be subject to a disregard under the financial assessment, for example personal possessions.
(f) assets have reduced by living extravagantly, for example gambling.
(g) assets used to purchase an investment bond with life insurance.

However, it will not be deliberate in all cases. Deprivation will only be considered where the person ceases to possess capital or assets that would have otherwise been considered for the purposes of the financial assessment or has turned an existing asset into one that would be disregarded for charging purposes.

PCC will seek to better understand the circumstances surrounding whether the deprivation was intentional, to avoid or reduce care fees or to be subject to LA funding sooner than expected.

Examples of such considerations are set out below.

- The timing of the disposal of the asset. At the point, the asset was disposed of could the person have reasonable expectation of the need for care and support.
- The health of the individual at the time of capital/assets being disposed of.
- Whether the individual was able to give consent at the time of disposal.
- Whether there are any mental capacity concerns and whether they have any formal or inform representation and or support with finances.
- Did the person have reasonable expectation of the need to contribute towards the cost of their eligible care and support needs.
- How did the person requiring care and support expect the cost of this to be met.
- Had the person previously been through a care act financial assessment before.
- What legal advice/evidence can be provided as to the rationale and reasoning of transferring the asset.
- What receipts/documentation can be provided.
- Is the pattern of spend "normal" for the cared for person.

During the investigation PCC will:

Carefully consider what capital belongs to the person needing care and therefore can be considered when deciding what they should pay towards their care costs, including obtaining evidence of ownership where appropriate.

Carefully consider the value of the capital, including obtaining an independent valuation where the value of an asset included as notional capital is disputed.

Make enquiries about any disposals and establish what the reasons were for the disposal.

Ask the individual and/or the family to provide relevant evidence, including any evidence of the person’s intentions at the time of the disposal.

Ensure there is a clear record of the factors considered and, where appropriate, the weight given to evidence provided and/or the reasons for not accepting the family’s account about the motivation for the disposal.

Decision making:

Where cases are not clear through investigation, PCC will seek legal advice and guidance as to whether deprivation of capital/assets should be upheld.

If deprivation is upheld, as a first step, PCC will provide a written decision, including the reasons for deciding there was a deprivation, and explain how the decision can be challenged.

PCC will seek to charge the person as if deprivation had not occurred. The individual will be treated as still owning the disposed of capital/asset and notional income will be applied to the means tested financial assessment.

If this notional income combined with the means tested financial assessment exceeds the upper capital threshold, PCC may assess the individual as self-funding and therefore not fund the placement/care and support services.

Individuals will be advised to seek independence financial and or legal advice in these circumstances.

Where the person has transferred assets to a third party, such as deeds to a property, selling a property below market value to a family member or transferring significant sums of capital PCC will hold that person or persons liable for that proportion of what would have been charged, should the asset remain.

As with any other debt due to the council, non-payment can be pursued via the county court - please refer to **ASC Debt Policy**.

Where investigations indicate potential financial abuse e.g. unexpected withdrawals, unusual spend activity whilst managed under legal powers such as Deputyship/LPOA, transfer of property by legal representative.

PCC will consult the Safeguarding team and raise concern with the DWP and OPG where appropriate who will conduct their own investigation into the appropriateness of that third party continuing to act in the legal capacity intrusted to them.

Subject to the outcome of independent investigations, Police involvement and or prosecution may be considered.

Example case study - Deprivation:

Mrs. Y received care at home and had been financially assessed to make a small contribution towards the cost of her care and support package.

Mrs. Y her moved out of her house into sheltered accommodation.

A year later the property was sold.

Mrs. Y's family said she had told them to sell the house and split the money between them.

Mrs. Y moved into a nursing home some 18 months later, following a hospital stay.

After it became clear Mrs. Y was not eligible for Continuing Health Care funding, the council carried out a financial assessment.

It decided the transfer of the property was a deprivation of an asset and explained its reasons, which included:

- Mrs. Y knew she may need care and support, which was recorded in case notes and her care at home financial assessment.
- She had been experiencing memory loss and increasing frailty and was diagnosed with dementia shortly before the house was sold.
- Mrs. Y and her family had a reasonable expectation of needing to contribute to the cost of care because Mrs. Y had received chargeable non-residential care at home.
- It considered Mrs. Y's motivation but concluded a transfer of assets to the family could have been achieved through a will.

Decision to treat as deliberate deprivation upheld.

4. COMPLAINTS AND APPEALS:

If an individual disagrees with PCC's decision of deprivation, they have the right to appeal via ASC Complaints Team.

Complaints should be made in writing and will be reviewed and responded to within 15 working days of receipt; where this time frame is not achievable the complainant will be informed of expected timescales.

Charges will continue to be raised throughout the duration of the complaint, however in some circumstances where an active investigation into a complaint is ongoing a hold on any debt recovery action will be put in place.

Once investigated the complainant will be informed in writing and of any consequences resulting from the decision that may impact on charges already raised.

Should the individual remain dissatisfied, they have the option to take to the Local Government and Social Care Ombudsman to review.

5. LEGAL CONTEXT AND REFERENCES

This policy has been written in compliance with the following legislation and government guidance:

- The Care Act 2014
- The Mental Capacity Act 2005
- Equality Act 2010
- Human Rights Act 1998

Portsmouth also recommends this policy is read and understood alongside the following:

- **ASC Charging Policy**
- **ASC Depletion of Capital Policy**
- **ASC Debt Policy**