

EAST AYRSHIRE COUNCIL

CABINET – 8 JULY 2009

FINANCIAL GUARDIANSHIP & ACCESS TO FUNDS

Report by the Executive Director of Educational and Social Services

1. PURPOSE OF REPORT

- 1.1 This report outlines the legislative background to changes in the routes to access the funds of adults who no longer have the capacity to do so themselves.
- 1.2 It provides a proposed means to access and manage the funds of individuals where statutory intervention is required and no family member or carer is in a position to undertake this responsibility.

2. BACKGROUND

- 2.1 The Adults with Incapacity (Scotland) Act 2000 was introduced to protect the welfare, property and financial affairs of adults who lacked capacity to do so. Incapacity is defined, in terms of the Act, as an adult being incapable of acting, making, communication or understanding decisions; or retaining the memory of decisions.
- 2.2 When first implemented the Adults with Incapacity (Scotland) Act 2000 permitted interventions without formal statutory measure where an adults finances were uncomplicated and there was no obvious risk of financial exploitation. The local authority were not permitted to use any alternative interventions other than financial guardianship and therefore where an individual's assets were substantial or there were property issues an application for financial guardianship by the local authority was necessary where no family member or carer was willing or able to seek their own appointment as financial guardian.
- 2.3 The Adult Support and Protection (Scotland) Act 2007 amended some provisions of the Act to enable the Office of the Public Guardian to grant authority for individuals and approved organisations to access and use the funds of an incapacitated individual without the necessity of a full financial guardianship.
- 2.4 Arrangements require to be made to ensure the Council has the capacity and robust processes in place to undertake their function to allow "Access to Funds" or act as Financial Guardians as required. Access to Funds permits financial management of an adult's affairs through authorisation granted by the Office of the Public Guardian.
- 2.5 The principles of the mental health legislation require that any interventions in the affairs of an incapacitated adult must be the least restrictive to achieve the intended benefit or outcome.

3. CURRENT SITUATION IN EAST AYRSHIRE

- 3.1 When the Adults with Incapacity (Scotland) Act 2000 was introduced in 2003, council officers initially undertook the tasks associated with the function of Financial Guardian. Due to the nature of the tasks this was subsequently contracted out to independent solicitors and accountants.
- 3.2 Private companies became disinclined to undertake the role without further development of funding and support arrangements.
- 3.3 This has led to risks for the individuals concerned along with risks to the Council for not having in place appropriate provision to manage the financial affairs of individuals who have no family or carers available to undertake this role.
- 3.4 There are currently 20 people subject to Financial Guardianship in East Ayrshire who are dependent on the Council to make alternative arrangements for management of their finances.

4. PROPOSALS

- 4.1 It is proposed the Council apply to the Office of the Public Guardian to register as being a fit organisation to access the funds of those individuals with low value estates in order to undertake day to day budgetary and financial tasks on their behalf.
- 4.2 Where individuals have larger estates including property, it is proposed, as an interim measure, pending a full review of exiting procedures that the role of financial guardian is undertaken by an approved list of private solicitors and accountants within an agreed fee structure.

5. FINANCIAL & LEGAL IMPLICATIONS

- 5.1 The personnel and financial implications arising from the proposals contained within Section 4 of this report will be met from existing budgets.
- 5.2 The proposals contained within Section 4 of this report will ensure the Council meets its legislative duties pending a full review of its existing procedures.

6. POLICY & COMMUNITY PLANNING IMPLICATIONS

- 6.1 Proposals within this report support the Council to meet its responsibility to protect vulnerable adults.
- 6.2 The proposals support effective delivery of the Improving Health and Wellbeing and Improving Community Safety themes of the Community Plan.

7. RISK IMPLICATIONS

- 7.1 The proposals reduce the risk to vulnerable individuals of being financially abused and the risk to the Council of failing to meet its legislative duties.

8. RECOMMENDATIONS

8.1 Members of the Cabinet are asked to:-

- (i) Authorise the Head of Community Care to apply to the Office of Public Guardian to register the Council as being a fit organisation to access the funds of those individuals with low value estates in order to undertake day to day budgetary and financial tasks on their behalf;
- (ii) Authorise the Head of Community Care, on an interim basis pending a full review of procedures, to obtain an approved list of solicitors and accountants who will fulfil the function of financial guardian within an agreed fee structure;
- (iii) Authorise the Head of Community Care, on an interim basis pending a full review of procedures, to contract with those solicitors and accountants to fulfil the function of financial guardian with an agreed fee structure; and
- (iv) Other wise note the contents of the report

Graham Short
Executive Director of Educational and Social Services
June 2009

LIST OF BACKGROUND PAPERS

1. Adults with Incapacity (Scotland) Act 2000.
2. Adult Support & Protection (Scotland) Act 2007.
3. Code of Practice – Access to Funds – Scottish Government 1st April 2008.

IMPLEMENTATION OFFICERS: EDDIE FRASER, HEAD OF SERVICE: COMMUNITY CARE.

Anyone wishing further information please contact Eddie Fraser, Head of Service: Community Care on 01563 576538