ABSTRACT

Since 1 April 2007 Part 3 of The Adults with Incapacity (Scotland) Act 2000 as amended by the Adult Support And Protection (Scotland) Act 2007, enables local authorities to manage funds for adults who are incapable of doing so for themselves. The legislation is not clear as to the circumstances in which it might be appropriate for local authorities to undertake this task as opposed to private individuals or other bodies. The attached document is not intended to be an ‘operational instruction’ but a policy statement designed to clarify this issue for stakeholders.

1 RECOMMENDATION

It is recommended that the Social Work and Health Committee endorses this policy statement, which will help to clarify for staff and external stakeholders when it may be appropriate for Angus Council to manage funds under Part 3 of the Adults With Incapacity (Scotland) Act 2000.

2 INTRODUCTION

An amendment under s58 of the Adult Support and Protection (Scotland) Act has empowered local authorities to manage funds under Part 3 of the Adults with Incapacity (Scotland) Act 2000 (the Act) with effect from 1 April 2008.

This is a significant national policy shift in that Part 3 arrangements were previously only open to private individuals. However little guidance is provided for local authorities as to how this power might be exercised. It has therefore been necessary to develop a policy regarding the circumstances in which Angus Council will exercise this new power.

3 PROPOSAL

A draft policy document regarding the use of the new powers under Part 3 of the Adults with Incapacity (Scotland) Act 2000 (the Act) is appended for approval by elected members. The main points are highlighted below.

Angus Council has a general duty to protect the welfare and finance of individuals who are unable to protect their own financial well-being or their own welfare by whatever means are appropriate. This may include undertaking an Access to Funds arrangement under Part 3 where the adult is incapable in terms of s1(6) of the Act. Certain conditions must however be satisfied before this power is invoked:

- This will not be undertaken where financial guardianship would be more appropriate due to high levels of funds or ownership of property or ‘stockmarket’ type investments which need to be managed.
The service user is not in a registered care home. Registered care homes are usually empowered under Part 4 of the Act to manage limited amounts of finance.

There are no relatives or friends who are willing (and suitable) to undertake a Part 3 arrangement. The Act is very clearly intended to assist private individuals to assist their friends and family and nothing in this policy should compromise that important principle.

No-one has existing financial powers under the Act.

Some of the costs of day-to-day management of the funds may need to be met by the service user if this involves use of a chargeable service such as social care officer support.

All other regulations in relation to Access to Funds applications are satisfied.

Effectively this policy means that Angus Council will only operate Part 3 arrangements where other means are not appropriate or not possible and it is essential that the individual is offered assistance to protect their financial situation.

4 FINANCIAL IMPLICATIONS

If use of Part 3 arrangements by local authority is as limited as expected it is unlikely that there will be significant financial implications, however at this stage uptake is not known. This will need to be monitored closely.

5 HUMAN RIGHTS IMPLICATIONS

There are no Human Rights implications arising as a result of the recommendation contained in this report.

6 EQUALITIES IMPLICATIONS

The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment has been undertaken.

7 CONSULTATION

The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law and Administration have been consulted in the preparation of this report.

R Peat
Director of Social Work and Health

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.
POLICY REGARDING ACCESS TO FUNDS ARRANGEMENTS UNDER THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Introduction

Under s58 of the Adult Support and Protection (Scotland) Act local authorities have been empowered to manage funds under Part 3 of the Adults with Incapacity (Scotland) Act 2000 (the Act), with effect from 1st April 2008. This section has inserted several new sections and amended s25 of the Act whereby:

‘25 (1) A person mentioned in subsection (2) may apply to the Public Guardian for a certificate authorising the person to intromit with an adult’s funds’ including ‘25(2)(c) a body (other than a manager of an authorised establishment within the meaning of section 35(2))’.

It has been made clear that this includes local authorities, but does not include care homes who may be registered to manage finances under Part 4 of the Act.

This is a significant national policy shift in that Part 3 arrangements were previously only open to private individuals. However little guidance is provided for local authorities as to how this power might be exercised, therefore for the sake of clarity for users of services, carers and staff, the following paragraphs outline the key elements of Angus Council’s policy with regard to this part of the Act.

Policy Statement

Angus council accepts that it has a general duty to protect the welfare and finance of individuals who are unable to protect their own financial well-being or their own welfare, by whatever means are appropriate.

Where an individual is unable to manage their own finances due to incapacity in terms of s1(6) of the Act, the local authority will seek to ensure that someone is empowered to assist that individual. This may include the local authority undertaking an Access to Funds arrangement under Part 3 providing the following conditions are satisfied:-

- Making arrangements for a solicitor or private individual to undertake a financial guardianship would be inappropriate. It is unlikely that a solicitor would be sought to undertake financial guardianship where an individual had less than £20,000, as there are significant management charges associated with guardianship.
- The individual does not have assets which need to be sold or 'stockmarket' type investments which need to be managed. Part 3 only applies to managing cash and ordinary bank accounts. Intervention orders may be the right route here if the actions required are straightforward e.g. the sale of an asset.
The individual is not in a care home. Registered care homes are usually empowered under Part 4 of the Act to manage limited amounts of finance and the local authority should not be an alternative ‘money manager’ in these circumstances.

There are no relatives or friends who are willing (and suitable) to undertake a Part 3 arrangement. The Act is very clearly intended to assist private individuals to assist their friends and family and nothing in this policy should compromise that important principle.

No-one has financial powers under a continuing power of attorney.

No-one is applying for or is acting as financial guardian or intervener in respect of the funds to be managed. Except where: an intervention order which has been ‘enacted’ might be followed up by a local authority Part 3 arrangement or an individual subject to financial guardianship no longer has sufficient funds to justify this and alternative arrangements are required. In either case the other conditions stated herein must be met.

There are costs involved in the application process and costs may arise in providing support to a service user in relation to a Part 3 arrangement. These should be chargeable in the same way as other services as Part 3.

At present Angus Council manages funds for residents in care homes under appointeeship. This should not be extended to include people living in their own homes as this part of the Act provides a more robust framework in which to situate governance arrangements.

All other regulations in relation to Access to Funds applications are satisfied.

Conclusions
Effectively this policy means that Angus Council will only operate Part 3 arrangements as a last resort i.e. where: other means are not appropriate or not possible, and it is essential that the individual is offered assistance to protect their financial situation.

This policy statement does not seek to outline the procedures that will be followed within the local authority as these may be subject to change in the light of experience, but there should always be a clear line of accountability between the responsible care worker and anyone else with responsibilities for managing or making the necessary arrangements.