MCC – CASE STUDY 1 – CAN A CLIENT USE EQUITY RELEASE TO TOP UP THEIR OWN LIVE-IN CARE FEES?

THE CLIENT

MCC's Client: Mr A's Nephew

Who is in need of care: Mr A – the client's uncle

THE GENERAL SITUATION

Mr A lives in his own home and has a live-in carer. This care has been completely funded by Mr A until now. However his assets have dropped below the upper capital threshold of £23,250, so he has approached his local authority about what help might be available to fund his care going forward.

The LA has carried out a needs assessment and a financial assessment and has found Mr A to have eligible needs which they calculate could be met by 5 hours of care per day. Mr A wants to continue to be cared for in his own home, by the live-in carer whom he trusts and is used to. This 24 hour live-in care will obviously cost more than the local authority is prepared to pay for Mr A's care, so he has opted to take the local authority contribution as a direct payment. He plans to use this to pay towards his care, and to make up the difference from the savings he still has.

When his savings run down to below £10,000 he plans to use Equity Release to top his savings back up to just under the £23,250 limit so that he can continue to receive some level of local authority support, but can also continue to pay the extra to keep his live-in care.

THE FINANCIAL SITUATION

We looked at the client's financial situation in the way that the local authority would, taking into account eligible income, tariff income based on his savings at this point of £20,097 and all eligible deductions, to ensure that his LA financial assessment had been correctly calculated.

If Mr A was in a residential home, he would not be allowed to fund his own top-up payments as he would be assessed as not being able to afford it. Any top-up would have to be paid by a third party (a friend, relative or charity). If this wasn't possible, Mr A would have to accept a reduction in hours of care, and/or a change of care provider to one that accepts the amount the local authority is prepared to pay.

However, as Mr A is continuing to live in his own home (which he owns outright), it is disregarded in the local authority's financial assessment but the equity within it is available to Mr A who would like to use this to allow him to continue to receive the level of care he is used to, from the provider he prefers.

POINTS FOR CONSIDERATION

Unlike residential care, the right to a choice of *home care* providers does not exist in any explicit sense. Many councils do *try* to offer it as it helps them to discharge their duty to meet needs, in a person-centred way, and to promote well-being – but they are not obliged to. In practice, choosing a preferred home-care provider, buying a 'better' or more convenient service or an additional service (for example, to meet non-eligible needs) tends to be limited to those, like Mr A, who receive direct payments from their local authorities.

There are currently no definitive, centrally agreed "rules" about whether someone in receipt of care at home can top up direct payments to fund non-eligible care needs (i.e. extra services or more expensive providers that they have *chosen* but which the local authority does not deem to be *necessary)*. It appears to be a matter of discretion for each individual local authority, and care must be taken to check into the local authority's attitude towards this.

It's possible that a local authority might take the view that choosing to use equity in residential property to pay for a level of care which the LA deems unnecessary, amounts to deliberate deprivation of assets if the client then has to move into residential care, or when the money runs out completely and they become fully LA funded. (i.e. if the client had not chosen to pay for this higher level of care, but had accepted the local authority's assessed level of eligible care needs, then the equity in the house would still be available to help contribute towards their ongoing care costs).

To be clear, we're not aware of an LA having taken this stance, but with an increasing emphasis on care at home rather than residential care, it's a situation which is only likely to arise more frequently. Without clear guidelines to inform them, it will be interesting to see how local authorities react to this.

GUIDANCE GIVEN TO THE CLIENT

- Mr A's nephew was sent a copy of the financial assessment carried out by MCC so that he could see how the local authority works everything out, and so that he could check that the LA had done this correctly.
- We made him aware that , even if the money released through equity release remains below the £23,250 threshold, his uncle would still have to inform the local authority of the change in his financial situation, and it would have an impact on the tariff income payments that he has to contribute towards his care.
- We also made Mr A aware that taking equity release may impact on benefit entitlement, for example council tax reduction or pension Credit, and that he should ensure that the Benefit Agency was aware of any changes to his capital position.
- We raised our concern that if his Uncle goes ahead and uses equity release in this way, the equity may eventually run down again, and he will still be faced with having to accept only whatever care the local authority is prepared to pay for – possibly meaning losing his trusted live-in carer at a point where he is even more vulnerable than he is now. In other words, this doesn't make the problem go away long-term.
- We advised Mr A's nephew to carefully check the LA's care needs assessment which brought them to the conclusion that his uncle only qualified for 5 hours of care per day. His uncle has presumably accepted this as a direct payment, but if they feel that 5 hours is not sufficient to meet his uncle's *eligible* needs, they could challenge the assessment.
- We made him aware that any direct payment set up by the LA should be reviewed 6-8 weeks after it is set up, and yearly thereafter to ensure it continues to meet his eligible needs. In the meantime, his uncle must inform the LA of any change in his financial situation as and when they occur.

- We suggested that if they wanted to proceed with their plan to use Equity Release, they should initially approach the LA to discuss whether they would accept this as a way to top up, and to check if it would lead to any complications relating to the LA's funding of his uncle's care. If the LA agrees, we recommended that they make sure they put in writing that they have authorised it.
- If the LA will not accept Mr A topping up his own care fees in this way, there would be no issue with a third party making the top-ups. One way to manage this would be through a type of loan arrangement where the money could be repaid to the third party out of the sale of the house if the uncle moves into residential care or passes away. We suggested that legal advice was vital if they chose to take this option.

OUTCOME

When the client approached the LA (in this case Norfolk County Council), they were happy for the uncle to proceed with the equity release solution. They confirmed that if the uncle's savings didn't go above the lower capital limit (currently £14,250) then the capital from the equity release would have no impact on his direct payments. If his savings went over £14,250 but remained below £23,250, he would continue to receive the local authority's contribution, adjusted to take account of any change in tariff income. However if the equity released was taken as income (whether as an income-producing product, or as frequent lump sum payments) then it would most likely be viewed as additional income and would be treated as such in any subsequent financial assessment.

The adviser handling the case proceeded with the Equity Release transaction, and also obtained a quote for a care annuity for the client's consideration as a more long-term solution.

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