



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Cabinet

12 February 2020

Report of the Director of Finance and Corporate Services – H.Jenkins

Matter for Decision

Wards Affected: All Wards

Court Deputy – Investment Strategy for Client Funds

Purpose of the Report:

1. The purpose of this report is to seek approval for the introduction of a Court Deputy Investment Strategy for Client Funds, and to seek authority to undertake a procurement exercise to appoint a Financial Advisor to provide investment advice for clients with capital of more than £50k, in accordance with the strategy.

Executive Summary:

2. The Court Deputy Service receive referrals from Social Services to provide support for persons lacking capacity to deal with their property and financial affairs, where there are no family or friends willing or able to act on their behalf.
3. An application is made to the Court of Protection, for an order appointing the Council as Deputy.

4. The Deputy is required to comply with standards laid out by the Office of the Public Guardian (OPG), and is subject to regular inspection by the OPG.
5. The Mental Capacity Act (2005) also places a duty on the Deputy, to ensure that all client affairs are managed according to client needs and in their best interest.
6. The Deputy must therefore ensure that client funds are able to meet their needs for the duration of the order, and seek to maximise the return on investments.
7. The investment strategy has been developed to document the operational framework within which Court Deputy officers administer investments on behalf of clients, to ensure compliance with the Court Order and OPG standards,

Background:

8. The Court Deputy Service receive referrals from Social Services to provide support for persons lacking capacity to deal with their property and financial affairs, where there are no family or friends willing or able to act on their behalf.
9. The Court Deputy Manager reviews the referral to determine if it is appropriate to apply to become Deputy and/or Appointee for the client.

An application to become Appointee is usually made where the client has little capital and their financial affairs are relatively straight forward. The application is made to the Department of Work and Pensions (DWP) to receive all welfare benefits on behalf of the client, in order to arrange payment of routine bills, and day to day living expenses (current Appointee caseload is approx. 80 clients). Authority under this arrangement is limited administration of benefit income. It does not cover management of other income or property which may relate to the client.

An application to become Deputy with responsibility for all financial and property matters, is made if the property and financial affairs of the client are more complex (current Deputy caseload approx. 160 clients).

The proposed investment strategy therefore only applies to Deputy Clients.

10. An application for the Head of Finance to be appointed as Deputy for the client is made to the Court of Protection.

Responsibility for providing the day to day service is delegated to the Court Deputy Team which consists of 9.31 fte staff.

11. The Deputy is required to comply with standards laid out by the Office of the Public Guardian (OPG), and is subject to regular inspection by the OPG.
 - Standard 1a (5) requires that the Deputy seek independent financial advice, where appropriate, to maximise the return on the client's savings, investments and any other assets.
 - Standard 1(b) states that a review of savings and investments portfolios is carried out at least once a year, and expert and independent advice is sought where necessary.
 - Standard 4(9) requires that the deputy and all members of staff delegated with deputyship responsibilities (case officer) have access to appropriate advice and expertise on investments, savings and property.
12. The Mental Capacity Act (2005) places a duty on the Deputy to ensure that all client affairs are managed according to client needs and in their best interest. The Deputy must therefore ensure that client funds are able to meet their needs for the duration of the order, and seek to maximise the return on investments.
13. It is proposed that an investment strategy is introduced to provide a clear operational framework in which staff delegated

with deputyship responsibilities manage client investments in accordance with OPG standards.

14. To date the preparation of a financial plan for each client has been carried out by the Court Deputy case officer, and any surplus funds invested in “Funds in Court” (FIC). FIC is the office of the Supreme Court of Victoria that administers funds paid into Court for and on behalf of people under a disability (beneficiaries). FIC is a self-funded, not-for-profit division of the Court committed to providing the best quality service to all beneficiaries, in the most efficient and cost-effective manner.
15. Historically the rate of interest provided on the FIC was competitive, but in recent years has become less so, and therefore it has become necessary to seek alternative investment options in order to maximise returns for clients.
16. The investment strategy is proposed to provide an operational framework within which Court Deputy officers administer investments on behalf of clients.
17. There has also been an increase in the number of clients with significant assets and investment portfolios, which require more expert knowledge of financial markets and long term financial planning of a complex portfolio of funds, which is outside the scope, function and roles of the Court Deputy Case officers.
18. There are currently approximately 20 clients each with capital of more than £50k – with a total value of approximately £2.5m.
19. Approval is therefore also sought to undertake a procurement exercise to appoint an Independent Financial Advisor (IFA) to provide investment advice for clients with capital of more than £50k, in accordance with the strategy.
20. The benefits of utilising an IFA are as follows:-
 - Ensure compliance with requirements of duties under the Court order

- Ensure compliance with requirement of OPG Deputy standards
- Provide professional and comprehensive external Independent Financial Advice service to eligible clients
- Preserve limited resources within the team to deal with other Deputy functions.

21. A copy of the proposed Investment Strategy is included in Appendix 1.

Financial Impacts:

22. The cost of the Independent Financial Advisor will be funded from client funds, any interest on investments will be paid direct to client, and so there are no financial implications for the Council.

Integrated Impact Assessment:

23. A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016, a copy of which is included at Appendix 2. The first stage assessment has indicated that a more in-depth assessment is not required for the reasons set out in Appendix 2

Valleys Communities Impacts:

24. No implications

Workforce Impacts:

25. Utilising a financial advisor for those clients with more than £50k capital will provide additional capacity to support the client and enable staff to undertake other Court Deputy duties.

Legal Impacts:

26. Implementation of the policy will ensure compliance with the duties outlined in the Court Order, the Mental Capacity Act (2005) and the Office of the Public Guardian standards.

Risk Management Impacts:

27. Implementation of the policy will minimise the risk of failing to comply with the relevant statutes and standards.

Consultation:

28. There is no requirement for external consultation on this item.

Recommendations:

29. It is recommended that Members
- a) approve the strategy included at Appendix 1 of this Report in respect of Court Deputy Investment Strategy for Client Funds
 - b) approve the proposal to undertake a procurement exercise to appoint financial advisors to provide investment advice for clients with capital of more than £50k, in accordance with the strategy

Reasons for Proposed Decision:

30. To provide a framework for the investment of Court Deputy client funds, to ensure compliance with relevant standards and statutes.

Implementation of Decision:

31. The decision is proposed for implementation after the three day call in period

Appendices:

32. Appendix 1 – Court Deputy - Investment Strategy for Client Funds

Appendix 2 – First Stage Integrated Impact Assessment

List of Background Papers:

33. Mental Capacity Act (2005) re best interest decisions
OPG Deputy Standards

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Court Deputy – Investment Strategy for Client Funds

1. Strategy Aim

The aim of the strategy is to provide an operational framework within which the staff delegated with deputyship responsibilities, manage client affairs in accordance with OPG standards and statutory requirements.

2. Background

The Court Deputy section are a service of last resort and provide support for persons lacking capacity to deal with their property and financial affairs.

Referrals are received from Social Services and an application is made to the Court of Protection for an order appointing the Council as Deputy.

The Deputy is required to comply with standards laid out by the Office of the Public Guardian (OPG), and is subject to regular inspection by OPG.

- Standard 1a (5) requires that the Deputy seek independent financial advice, where appropriate, to maximise the return on the client's savings, investments and any other assets.
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- Standard 1(b) states that a review of savings and investments portfolios is carried out at least once a year, and expert and independent advice is sought where necessary.
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- Standard 4(9) requires that the deputy and all members of staff delegated with deputyship responsibilities (case

officer) have access to appropriate advice and expertise on investments, savings and property.

The Mental Capacity Act 2005 places a duty on Deputies to ensure that all client affairs are managed according to each client's needs, and in their best interest (see appendix 1a). There is a requirement for the Deputy to ensure that each client's funds are able to meet their needs for the duration of the Order, and that any capital investments are receiving the best possible return on investment.

3. Financial review

Upon being appointed as Deputy the nominated case officer will undertake a financial review to

- Record all sources of income, and ensure the service user is claiming all eligible benefits
- Assess the client's financial requirements for a 12 month period, taking into account historic costs and future requirements
- Assign a sum to cover unexpected expenditure
- Compare requirements against income, to identify any surplus to be treated as capital
- Check that the Court Order allows the investment of service user funds, or if necessary make an application for the order to be amended accordingly.
- Develop an investment strategy for the client

4. Developing an Investment strategy

a. Client with capital of less than £50k

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- The Court Deputy case officer will:-
 - Consider different account types / tax efficient savings e.g. ISA, fixed term, savings accounts
 - Use comparison sites to identify alternative investment opportunities to maximise interest, and minimise costs.

- Document the review process and the options considered to provide an audit trail of all decisions taken

In developing the investment strategy for each client the court deputy case officer will take into account the:-

- Investment aims of the client
- Social, environmental and ethical views of the client
- Security of the assets, achieved via diversification in risk of investments
- Liquidity requirements - achieved via diversification in duration of investments
- Yield – the best rates available having satisfied the above requirements
- Investment duration - based on life expectancy, future care funding requirements
- Flexibility of the strategy – consider any penalties from changing or withdrawing from the strategy
- Extent to which beneficiaries are considered, and if consultation with service user family / friends is required.

The Court Deputy Manager or Assistant Manager will review the proposed investment strategy, and consider best interest, before it is agreed and implemented for each client.

b. Client with capital of more than £50k capital

These cases require the expert knowledge of the financial markets and long term financial planning. It requires professional systems and advice on investment options, which is outside the expertise of the Court Deputy case officers, and so an Independent Financial Advisor will be appointed.

A procurement tender process, in accordance with corporate contract procedures, will be undertaken to identify a suitable IFA who:-

- is regulated by the Financial Conduct Authority
- is independent and can give whole of market advice i.e. are not “restricted” advisers.

- will outline all fees and charges e.g. hourly rate, commission based
- has been a financial advisor for more than 3 years
- will hold appropriate qualifications - the IFA requires that all advisors pass level 4 – diploma
- has an annual statement of professional standing (SPS) issued by an FCA accredited body.

The Independent Financial Advisor appointed will:-

- provide a comprehensive review of clients current savings/investments
- provide a comprehensive assessment of financial investment options, relevant to client circumstances/wishes
- prepare a report outlining the work undertaken, and reasons for selecting the recommended investments, and detailing all costs and charges associated with the recommendations
- provide an annual review of investments, and if appropriate recommend any changes.
- provide annual valuation and tax information to assist in the completion of tax returns

The cost of the IFA will be funded by the client.

The Court Deputy authorised officer and the designated Care manager will consider the advice provided by the IFA, and consider best interest before authorising, and implementing an investment strategy for each client.

5. Annual review

An annual review of investments will be undertaken for each client and where necessary, the investment strategy will be updated to ensure that returns on savings, investments and assets are being maximised, and to reflect any change in circumstances that have arisen.

Appendix 1a - Best interest

The following statutory checklist is included in section 4 of the Mental Capacity Act (2005)

(1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of:-

- (a) the person's age or appearance, or
- (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps. .

(3) they must consider:-

- (a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
- (b) if it appears likely that he will, when that is likely to be. .

(4) they must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.

(5) Where the determination relates to life-sustaining treatment they must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

(6) they must consider, so far as is reasonably ascertainable:-

- (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
- (b) the beliefs and values that would be likely to influence his decision if he had capacity, and

- (c) the other factors that he would be likely to consider if he were able to do so.
- (7) they must take into account, if it is practicable and appropriate to consult them, the views of:-
- (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
 - (b) anyone engaged in caring for the person or interested in his welfare,
 - (c) any donee of a lasting power of attorney granted by the person, and
 - (d) any deputy appointed for the person by the court,
- as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).
- (8) The duties imposed by subsections (1) to (7) also apply in relation to the exercise of any powers which
- (a) are exercisable under a lasting power of attorney, or
 - (b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.
- (9) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) they reasonably believes that what he does or decides is in the best interests of the person concerned.
- (10) "Life-sustaining treatment" means treatment which in the view of a person providing health care for the person concerned is necessary to sustain life.
- (11) "Relevant circumstances" are those
- (a) of which the person making the determination is aware, and
 - (b) which it would be reasonable to regard as relevant.



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Impact Assessment - First Stage

1. Details of the initiative

<p>Initiative description and summary: Court Deputy - Investment Strategy for Client Funds</p> <p>The Council's Court Deputy Service is appointed to look after the financial affairs and /or property of individual people who do not have the capacity to manage their own affairs. This strategy provides the ability to manage individual client savings in accordance with the Office of the Public Guardian standards to maximise returns.</p>
<p>Service Area: Court Deputy</p>
<p>Directorate: Finance & Corporate Services</p>

2. Does the initiative affect:

	Yes	No
Service users	y	
Staff	y	
Wider community		n
Internal administrative process only		n

3. Does the initiative impact on people because of their:

	Yes	No	None/ Negligible	Don't Know	Impact H/M/L	Reasons for your decision (including evidence)/How might it impact?
Age		n				
Disability	y					Clients receive a service because they lack capacity to manage their property and financial affairs
Gender Reassignment		n				
Marriage/Civil Partnership		n				
Pregnancy/Maternity		n				
Race		n				
Religion/Belief		n				
Sex		n				
Sexual orientation		n				

4. Does the initiative impact on:

	Yes	No	None/ Negligible	Don't know	Impact H/M/L	Reasons for your decision (including evidence used) / How might it impact?
People's opportunities to use the Welsh language		n				
Treating the Welsh language no less favourably than English		n				

5. Does the initiative impact on biodiversity:

	Yes	No	None/ Negligible	Don't know	Impact H/M/L	Reasons for your decision (including evidence) / How might it impact?
To maintain and enhance biodiversity		n				
To promote the resilience of ecosystems, i.e. supporting protection of the wider environment, such as air quality, flood alleviation, etc.		n				

6. Does the initiative embrace the sustainable development principle (5 ways of working):

	Yes	No	Details
Long term - how the initiative supports the long term well-being of people	y		The strategy will ensure compliance with relevant statutes and standards and efficiently manage client finances in both the short and longer term
Integration - how the initiative impacts upon our wellbeing objectives	y		Efficient management of client funds will impact on their well-being.
Involvement - how people have been involved in developing the initiative		n	
Collaboration - how we have worked with other services/organisations to find shared sustainable solutions		n	
Prevention - how the initiative will prevent problems occurring or getting worse		n	

7. Declaration - based on above assessment (tick as appropriate):

A full impact assessment (second stage) is not required	y
Reasons for this conclusion	
The approval of this policy will enable Court Deputy Officers to manage the financial affairs of clients in line with best practice.	

A full impact assessment (second stage) is required	n
Reasons for this conclusion	

	Name	Position	Date
Completed by	SE Gorman	Chief Accountant	27/01/20
Signed off by	DH Jones	Head of Finance	3/02/20