



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 – Policy for the Disposal of Assets of Deceased Clients

Purpose of the Report:

1. The purpose of this report is to seek approval for the introduction of a policy for the disposal of assets of deceased Court Deputy clients

Executive Summary:

2. The Court Deputy Service provides 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.

The Court Deputy team make an application to become either an Appointee – whereby they receive client benefit income directly from the Department of Work & Pensions (DWP) and arrange payment of routine bills and day to day expenses, and/or Deputy – whereby they are given responsibility by the Court of Protection for all of the client's financial and/or property affairs.

The Court Deputy team open individual bank accounts which they administer on behalf of each client, in order to undertake these duties.

3. The Court Deputy Service also undertakes to discharge the duty of the Local Authority under section 58 of the Social Services & Wellbeing (Wales) Act 2014 to take reasonable steps to prevent, or mitigate against, the loss or damage to moveable property of a person when
 - their care and support involves the provision of accommodation
 - they are admitted to hospital,
4. In the course of undertaking these duties it is sometimes necessary for Court Deputy officers to remove and store items for safekeeping.
5. Responsibility for the above functions ceases upon the death of the client, and any assets or funds held in bank accounts, are returned to be the estate of the deceased client.

In the majority of cases, where it is possible to identify the person who is dealing with the estate, this can be routinely dealt with, but it can be more difficult if the client has not left a will and there are no known relatives.

6. The Court Deputy service is currently holding assets and bank accounts on behalf of approximately 20 deceased clients, dating back to 2001, for whom it has not been possible to either identify anyone to deal with the estate, or if the identified person will not engage.
7. The proposed policy outlines the procedure to be undertaken when seeking to identify someone to deal with the estate of the deceased client, and where this is not possible, the procedure for disposal of assets.

Background:

8. The Court Deputy team are currently holding a range of miscellaneous personal effects including jewellery and watches of relatively low value for approximately 10 clients for whom it has not been possible to identify anyone to deal with their estate, and to arrange collection of the items.

9. Also, prior to 2015 accounts for Court Deputy clients were administered via the Coop bank, who required authority from the beneficiaries of the deceased's estate to close the account.

For a limited number of cases it has not been possible to identify anyone to deal with the estate and as a consequence these accounts have remained open for many years.

10. Bank accounts for Court Deputy clients are currently arranged through Santander who provide banking services for the Council, and who permit the council to close the accounts following the death of the client

11. During 2019 the Coop bank changed their position in respect of these accounts, and agreed to transfer the funds relating to 9 clients (£39k) to the Council's bank account.

12. The copy of the proposed policy is included in Appendix 1 and outlines the procedures for identifying someone to deal with the estate of deceased clients, and where this is not possible, for the disposal of the assets/funds.

13. The key aspects of which are outlined below

(a) Upon the death of a client officers will seek to identify if the client made a will, and to identify a person to deal with the estate.

(b) Where a person has been identified to deal with the estate, we will issue a written notice period of 6 months for collection of the assets.

(c) Any asset not collected after the 6 month notice period will vest with the Authority

- (d) If there is no will, there are no known blood relatives, and if the net value of the estate is more than £500, the assets will pass to the Treasury Solicitor (BVD).
- (e) If there is no will, and there are blood relatives, but after 5 years no one has agreed to deal with the estate, the asset will vest with the Council.
- (f) If the asset vests with the Council, we will dispose of it in an appropriate manner.
- (g) The Council charge a fee of £300 for winding up the estate of deceased clients
- (h) Any additional proceeds from disposal of assets after funeral costs and paying for the winding up fee will be separately recorded as income against the Court Deputy budget.
- (i) Should the client have any debts owed to the Authority, where there is a will, a claim will be made against the estate for the sums owed to the Council.

Where there is no will, a probate search will be undertaken to identify who is dealing with the estate and a court claim made to recover the debt against the beneficiaries of the estate, by the service that raised the invoice.

Following a successful court claim, the debt will be settled using any funds held in the individual bank account held on behalf of the client.

If no one can be identified to deal with the estate the debt will be written off, in line with current Council practices.

Financial Impacts:

14. The Council has a duty to finalise the administration of former client service user accounts. The approval of this policy will enable the Council to carry out that work. Any surplus funds

from client bank accounts and/or from any disposal proceeds recovered will be utilised to fund funeral costs and winding up fee. Any surplus will be transferred to the Council's bank account and separately recorded as income for the Court Deputy service, to offset costs incurred in administering the policy.

Integrated Impact Assessment:

15. 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:

16. No implications

Workforce Impacts:

17. No implications

Legal Impacts:

18. Implementation of the policy will ensure the Council fulfils its duty to transfer any assets held to the estate of the deceased client, and formalise procedures for the disposal of assets.

Risk Management Impacts:

19. Implementation of the policy will minimise the risk of claims being made against the authority, by potential beneficiaries of the estate of deceased clients.

Consultation:

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

Recommendation:

21. It is recommended that Members approve the policy included at Appendix 1 of this Report in respect of Disposal of Assets of Deceased Clients Policy.

Reasons for Proposed Decision:

22. To formalise an operational framework for the disposal of assets, of deceased Court Deputy clients.

Implementation of Decision:

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

Appendices:

24. Appendix 1 –Policy for the Disposal of Assets of Deceased Court Deputy Clients

Appendix 2 – First Stage Integrated Impact Assessment

List of Background Papers:

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

Officer Contact:

26. Mr Hywel Jenkins – Director of Finance & Corporate Services
Tel no 01639 763251
Email: h.jenkins@npt.gov.uk

Mr Huw Jones – Head of Finance
Tel no 01639 763575
E-mail: h.jones@npt.gov.uk

Mrs Sue Gorman, Chief Accountant - Financial Services
Tel. No. 01639 763937
E-mail: s.gorman@npt.gov.uk



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

Policy for the Disposal of Assets of Deceased Court Deputy Clients

The policy outlines the process for managing the transfer of any assets held on behalf of deceased Court Deputy Clients, to their estate.

1. Establish if there is a will

If we are unable to confirm from family and friends if the client has written a will Court Deputy officers will

- check if there is a certificate of deposit – this will apply if the will is kept by the Principal Registry of the Family Division
- check if a will has been registered with the National Will Register – the Law Society’s endorsed provider

2. Identify a suitable person to deal with the estate

The Council will take reasonable steps to identify a person to deal with the estate.

- a) If the client leaves a will, we will contact the person holding the will, and/or liaise with the executor.
- b) If, to the Council’s knowledge, the client died intestate:
 - If the client is known to have blood relatives, reasonable enquiries will be taken to locate an appropriate person to deal with the estate via
 - Care management staff
 - Social services client records
 - Staff at the residential home,
 - Carers if receiving support in the community

- Friends and family
- Council tax department
- Probate register
- Probate genealogist (heir hunters)

If the above processes are unsuccessful, we will deem that we have taken all reasonable steps to identify a suitable person to deal with the estate, and formerly record the date on which the decision is taken.

- if there are no blood relatives and the net value of the estate is more than £500, the assets will be referred to the Treasury solicitor (BVD – Bona Vacantia Dept).
- if there are no blood relatives and the net value of the estate is less than £500, the assets will vest with the Council.

Legal advice will be sought in the event of accessing any of the above information, to ensure Data Protection obligations are met.

3. Personal effects

a. Valuation of property

We will document the process used to value the property, which will be dependent on the nature of the items held.

We will obtain 3 separate valuations for single items estimated to be worth more than £500 each.

b. Disposal of property

We will immediately dispose of any items of a perishable nature, and those which would cause the Council unreasonable expense or inconvenience.

If we are able to identify someone to deal with the estate we will:

- issue a written notice period to collect the property within 6 months. Upon collection of the items the person will be asked to provide proof of ID and sign a written disclaimer/indemnity (see Appendix a) absolving the Council of any further responsibility for the assets.
- If the identified person refuses to collect the property, they will be asked to provide proof of ID and sign a written disclaimer/indemnity (see Appendix b) confirming that they do not wish to collect the assets, and the assets will vest with the Council.
- If the property is not collected 6 months after the notice was issued, the property will vest with the Council.

If we are unable to identify anyone to deal with the estate,

- If there are no known blood relatives, and the net value of the estate is more than £500, the asset will be referred to the Treasury solicitor (BVD).
- If there are known blood relatives and the value of the property is more than £500, but after 5 years no one has agreed to deal with the estate, the property will vest with the Council.
- If the value of the property is less than £500, it will vest with the Council.

The above process is illustrated in a flow chart in Appendix 1c

If the property vests with the Council, we will arrange for any items to be sold

4. Bank accounts

During provision of the Court Deputy service, individual bank accounts are opened for each client, with the Council banker, for use in administering day to day banking on behalf of the client. Upon the death of the client the account is closed and funds transferred to the estate of the deceased client.

Where a person has been identified to deal with the estate of a deceased client we will issue a letter confirming the balance held on the bank account (and other relevant financial information) and confirm if we require proof of probate, where the balance held is more than the capital threshold limit set by the DWP, (i.e. £16k as at January 2020), in order for funds to be released.

Where it has not been possible to identify anyone to deal with the estate:

- If there are no blood relatives, and the net value of the estate is more than £500, the funds will be referred to the Treasury solicitor (BVD). If the net value of the estate is less than £500 the account will be closed and the balance transferred to the Council
- If there are blood relatives, but after 5 years no one has agreed to deal with the estate, the relatives will be notified that the account will be closed, and the balance transferred to the Council

5. Debts owed to NPTCBC

Where there is a will, a claim for the outstanding debt will be made against the estate of the deceased client, by the service that raised the invoice.

Where there is no known will, a probate search will be undertaken to identify who is dealing with the estate and a court claim will be made to recover the sums owed against the beneficiaries of the estate, by the service that raised the invoice.

Following a successful court claim, the debt will be settled using any funds held in the NPT bank account held on behalf of the client. Any balance remaining in the bank account will be treated as outlined in paragraph 4 above.

If it is not possible to identify anyone to deal with the estate the debt will be written off.

6. Charging

Upon death, the first call on the estate is for funeral costs, and the Council charge a fee of £300 for winding up the estate of deceased clients, from any balance remaining. If the Council pays for external services to identify beneficiaries of the estate that are in excess of the £300 winding up fee these will also be claimed against the estate of the deceased client.

Any surplus proceeds from the disposal of assets, after funeral costs and winding up fee, will be separately recorded as income within the Court Deputy Service budget, and used to offset the costs of valuation and disposal of assets, and any other costs incurred in administering the process. Records will be kept to evidence such costs.



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

THIS INDEMNITY AGREEMENT is made the day of
2020

BETWEEN:-

1.

of
(‘the Indemnifying Party’)

2. NEATH PORT TALBOT COUNTY BOROUGH COUNCIL of the
Civic Centre Port Talbot SA13 1PJ (‘the Council’)

WHEREAS:-

a) The Indemnifying Party acknowledges receipt from the Council of the monies and chattels listed on the attached Schedule being the whole of the property (‘the Diseased Client’s Property’) being held by or under the control of the Council’s Head of Finance in his capacity as the duly appointed Court Deputy of the late
(‘the client’)

b) The Indemnifying Party confirms that he/she has/will arrange(d) the funeral of the Diseased Client and has/will fully discharge the costs of same.

c) In delivering the Diseased Client’s Property to the Indemnifying Party the Council wishes to be indemnified as more fully set out in this Indemnity Agreement.

In consideration of the above and the covenants contained herein the receipt and sufficiency of which are hereby acknowledged the parties to this Agreement hereby agree as follows:-

1. The Indemnifying Party agrees to indemnify the Council, its employees, officers, servants or agents, from and against, any and all, claims liability, loss, expenses, suits, damages, judgements, demands and costs (including reasonable legal fees and expenses) of whatsoever nature arising directly or indirectly out of:-

- (i) the delivery by the Council to the Indemnifying Party of the Diseased Client’s Property; and
- (ii) the arrangements made relating to the funeral of the late Diseased Client.

2. The Indemnifying Party shall defend and settle at his/her sole expense all suits or proceedings arising out of the foregoing.

3. The obligations of the Indemnifying Party under this Indemnity Agreement shall last in perpetuity.

4. Any failure or delay by the Council to exercise any right power or privilege hereunder or to insist upon observance or performance by the Indemnifying Party of the provisions of the Indemnity Agreement shall not operate or be construed as a waiver thereof.

IN WITNESS whereof the parties to this Agreement have hereunto set their respective hands on the day and date appearing at the head of this Agreement

SIGNED: _____
The Indemnifying Party

Print Name: _____

WITNESS Signature _____

Print Name _____

Address _____

SIGNED: _____
Authorised Signatory on behalf of the Council

PRINT NAME: _____



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

THIS AGREEMENT is made the _____ day of _____ 2020
BETWEEN:-

1. ('the Representative')

Of

2. NEATH PORT TALBOT COUNTY BOROUGH COUNCIL of the
Civic Centre Port Talbot SA13 1PJ ('the Council')

WHEREAS:-

a) The Representative confirms that it does not want to collect from the Council, the monies and chattels listed on the attached Schedule, being the whole of the property ('the Diseased Client's Property') held by, or under the control of, the Council's Head of Finance, in his capacity as the duly appointed Court Deputy of the late ('the Client')

IN WITNESS whereof the parties to this Agreement have hereunto set their respective hands on the day and date appearing at the head of this Agreement

SIGNED: _____
The Representative

Print name: _____

WITNESS Signature _____

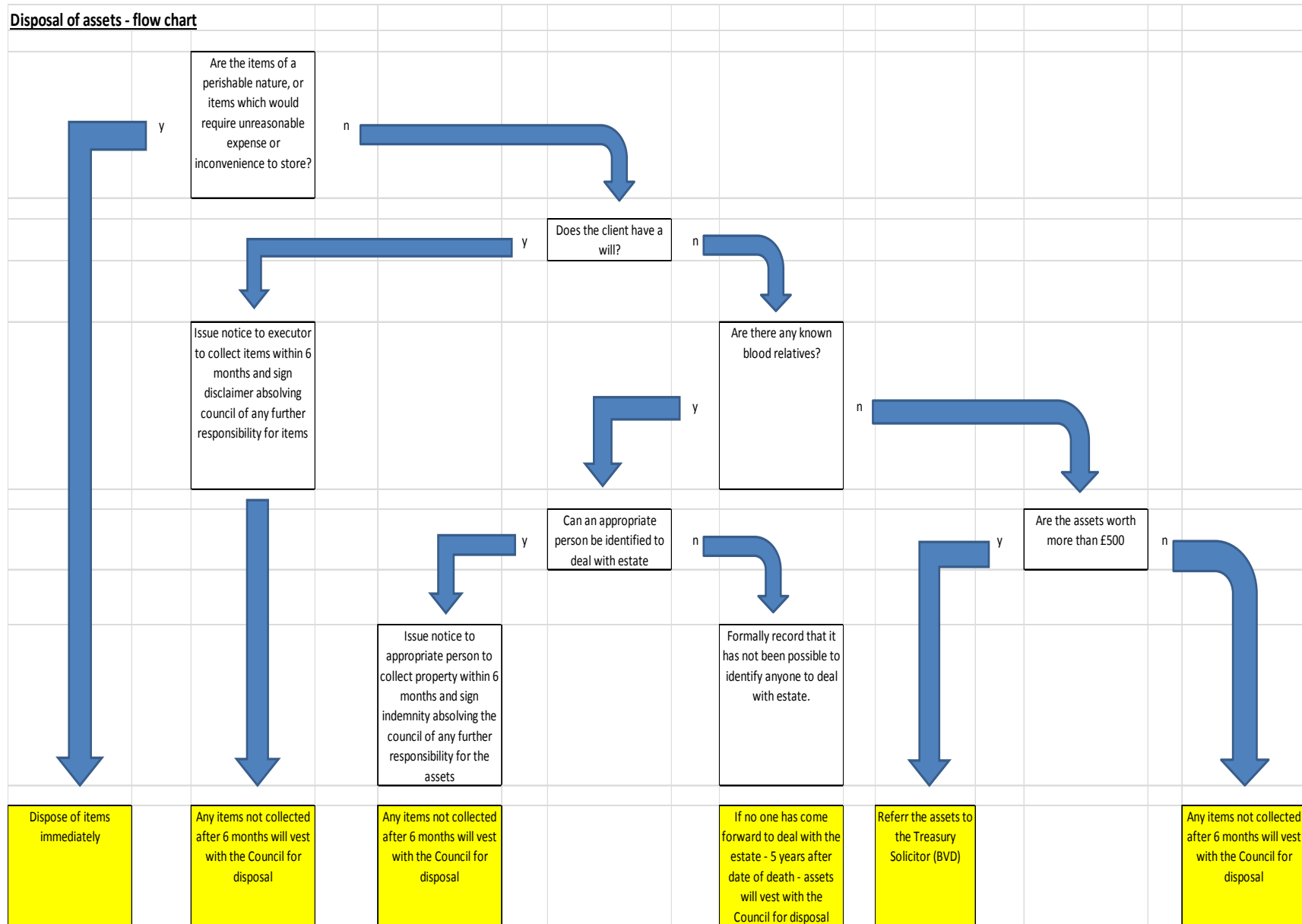
Print name: _____

Address _____

SIGNED: _____
Authorised Signatory on behalf of the Council

PRINT NAME: _____

Disposal of Assets - Flow chart



Impact Assessment - First Stage

1. Details of the initiative

<p>Initiative description and summary: Court Deputy – Policy for the Disposal of Assets of Deceased Clients. The Court Deputy Service responsibility to manage the financial and property of clients ends when they die. The aim of this policy is to enable the Council to appropriately manage the affairs of deceased clients.</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		The policy will ensure that assets re transferred to the rightful beneficiaries of the clients estate.
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	

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

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