



NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Cabinet

12 February 2020

Addendum to Agenda Item 4

Court Deputy - Investment Strategy for Client Funds

Following further review of the report already circulated for Members, the following clarification amendments to the policy are proposed and for ease of reference a full copy of the policy is set out as Appendix 1 attached.

Paragraphs 14 and 15 should be read as:

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 the "Courts Fund Office" CFO. CFO provides a banking and investment service for the Courts throughout England and Wales, including the High Court. The CFO is responsible for money held on behalf of clients who are deemed mentally incapacitated. The Accountant General of the Supreme Court is responsible for the proper control of all money paid into court.
15. Historically the rate of interest provided on the CFO 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.

Appendix 1

The following paragraph was omitted from the policy included at Appendix 1 of the report. This has been added as the last paragraph prior to Section 5 Annual Review.

- In considering investment strategies the Court Deputy Authorised Officer in conjunction with the IFA will ensure that priority is given to the security of client's capital.

An updated policy is attached to this Addendum.

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

In considering investment strategies the Court Deputy Authorised Officer in conjunction with the IFA will ensure that priority is given to the security of client's capital.

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