

MANAGEMENT OF MINORS' AND PATIENTS' FUNDS

Response to Consultation

December 2019

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Background

1. The consultation paper “Management of Minors’ and Patients’ Funds” was published on 13 February 2019; the paper is available on the Department of Justice (DOJ) website using the link below:

<https://www.justice-ni.gov.uk/consultations/management-minors-and-patients-funds>

2. The consultation paper sets out the current arrangements for the management of minors’ and patients’ funds by the Court Funds Office (CFO) and outlines a number of options for how those funds may be managed in the future. Consultees were asked to comment on the extent to which funds should be held in court in the future and on a number of proposed changes to the management and oversight of the funds.
3. The aim of the proposals is to ensure the arrangements for the management of financial assets by the CFO are appropriate so that we can provide a modern and efficient service to our clients in support of their needs.
4. Notice of the consultation was circulated to individuals and organisations on the DoJ list of consultees. In addition, a letter was issued to the representatives of minors and patients with funds in court on 28 January 2019. Follow up emails were also issued.
5. The CFO ran a number of public engagement events in March 2019. These were held in Dungannon, Newry, Belfast and Londonderry. The purpose of these events was to provide consultees with some background to the work of CFO and information on the proposals to enable them to make a better informed response. In total, around 40 individuals attended these events. Attendees were asked to complete feedback forms at the end of the events and the overall response was positive.
6. Responses to the consultation could be made by completing the response form attached to the consultation document, or by completing an online response via NI Direct, Citizen Space.
7. The consultation period closed on 8 May 2019 and this report summarises the responses, includes NICTS comments on the responses and sets out the proposed way forward.

Consultation Responses

8. A total of 96 consultees responded by completing the online response form and hard copy template responses were received from 7 consultees. In addition, comments were received by email from a further 4 consultees.
9. The vast majority of responses were received from individuals. Responses were received from the following organisations:
 - Community Foundation for Northern Ireland
 - The Law Society of Northern Ireland
 - Commissioner for Older People for Northern Ireland
 - Association of Personal Injury Lawyers
 - Association of District Judges in Northern Ireland
10. NICTS is pleased with the level of engagement from consultees during the consultation period. Although a total of 107 responses is a small percentage of the number of letters issued to consultees, responses have been received from both individuals and organisations providing a range of views on the proposals. The organisations that responded represent a large number of stakeholders.
11. NICTS would like to thank all of the respondents who took the time to provide their views.
12. The proposals in the consultation document can be divided into two categories:
 - the role of the court; and
 - internal management and oversight of the funds.

The role of the court

13. Consultees were asked questions about the importance of the protection provided by the court and the extent that funds should be held in court in the future. A summary of the responses to the specific questions is detailed below, along with the NICTS response.

Question 1 – Do you believe that the protection provided by the court to funds held on behalf of children and patients is important?

14. The respondents replied as follows:

Yes	83
Depends on circumstances	9
No	4
Don't know /Not answered	7

15. Many of those who indicated “Yes” highlighted that there would be a risk that the minor may not benefit from the fund if it was paid to a parent or guardian, or that the minor may use the money unwisely if they received it before they were 18.
16. Those that replied saying it depends on the circumstances, generally indicated that court protection would not be required if a responsible parent or guardian was identified to control the funds.
17. Those who indicated “No” believe that the money should be paid to a parent or guardian of the minor.
18. All of the organisations that responded indicated that they believed the protection provided by the court was extremely important.

NICTS response

19. NICTS acknowledges that a large majority of respondents (over 80%) believe that the protection provided by the court to funds held on behalf of children and patients is important. This will be taken into consideration when deciding on the role of the court in the future.

Question 2 – In relation to holding funds in court, which of the options noted do you think is most appropriate?

20. The respondents replied as follows:

Maintain the status quo	48
Only retain funds in court exceptionally	22
Set a financial threshold	28
Not answered	5

21. Out of those respondents who indicated that a financial threshold should be set, seven responses included a suggested limit for the threshold, as follows:

- One suggested £1,000;
- Three suggested £5,000;
- One suggested £8,000;
- One suggested £10,000; and
- One suggested £100,000.

22. In addition, three respondents indicated that the limit should be set for “smaller” or “lower” amounts, without specifying a value.

23. Respondents were asked to provide reasons for their preference. Some common themes run through the comments received for each of the options and these are summarised below:

Option - Maintain the status quo

- The protection of the award value is paramount. Retaining funds only exceptionally or above a financial threshold could jeopardise the future value of a fund and creates a risk of fraud that does not currently exist.
- The amount of protection provided to a child’s fund should not be linked to the value of the compensation awarded. Depending on the circumstances, the loss or mismanagement of even a small sum could have a significant impact on the quality of life.
- The risk of parents making poor investment decisions, or of them using minors’ funds for purposes which are not in their child’s best interests, is sufficiently real to compel the retention of the current model. The suggestion that this risk could be mitigated by the production of an annual report is unworkable as the money will already be spent.
- The courts have a responsibility to the minor to ensure that the funds are kept safe and are invested in the safest possible way.
- It would be more costly for an individual to invest privately. There may also be a requirement to create a personal injury trust or disabled beneficiary trust at an additional cost. Investment firms may be reluctant to take on a child’s investment if it is a low amount.

Four of the five organisations that responded indicated a strong preference for this option. Many of the individual respondents choosing this option expressed satisfaction with the current process. Some admitted to a lack of knowledge with investment matters and are content that the court takes this role.

Option – Only retain funds in court exceptionally

- A child's parent should be allowed to put money into a chosen account and be trustee until age 18. They could manage and access the fund without having to go through the legal system.
- There is a low interest rate on the funds being held in court. Higher interest rates are available that would benefit the child, particularly if the fund is placed in an ISA.

Some of the respondents suggested scenarios for exceptional circumstances such as, where a parent or guardian was not responsible enough to manage the funds themselves, or if there is uncertainty that the money will be securely kept for the child, or the court believes the fund may not be spent in the child's best interests.

Option – Set a financial threshold

- Individuals with smaller amounts should be able to take care of it themselves. This would mean a smaller work load for the Court Funds Office.
- At present, the interest paid on the amount held is minimal. For smaller funds held in court, it would be beneficial if a parent could invest this on behalf of their child and get a better return for when they turn 18. The administration costs involved in holding smaller funds in court outweigh any benefits.
- It would be beneficial for parents to manage a certain amount so that it is able to be accessed quickly if required. Consideration would need to go into making sure that these funds are kept or used or invested wisely, for example through an annual report system.
- It costs money to hold the funds in court, which could be better spent in other areas.

Of the organisations that responded, the Community Foundation thought that a financial threshold should be set as they believe that people should be empowered to make decisions for themselves where possible. However, they accepted that this must be balanced by individual circumstances and that funds should be brought into court if there were any concerns. They did not provide any indication of an appropriate level for a threshold.

NICTS Response

24. NICTS notes there is no overall majority for any of the approaches, but the option to maintain the status quo is the most popular (47% of responses).
25. 27% of respondents indicated a preference for a financial threshold to be set. However, less than half of those provided an indication of what the level should be, and out of those that did, there was no real consensus view on that level, with most answers ranging from £1,000 to £10,000 (one respondent suggested £100,000).
26. 21% of respondents indicated a preference for funds to be held in court exceptionally. Many of those that selected this option commented on the low interest rate on the funds in court and that better returns would be available elsewhere.
27. NICTS acknowledges that current returns on cash funds are low, but this must be considered in the context of the current economic climate. The interest rate paid on minors' and patients' funds is equivalent to the UK base rate of interest and is subject to change.
28. Where investments have been made as an alternative to holding the funds as cash (this depends on the circumstances of the case, usually the fund amount and the length of time it is expected to remain in court), returns have been significantly higher than the UK base rate.
29. NICTS acknowledges that higher returns on cash funds are available from other financial institutions, although it is difficult to make a direct comparison with such accounts as they will have different terms and conditions. For example, Junior ISAs are often quoted as examples of accounts that could be used to provide better returns, but funds in these accounts cannot be withdrawn until the child turns 18. Also, there is a limit to the amount that can be invested each year.
30. Clearly, allowing a fund to be held without the protection of the court will increase the risk that the fund is not used for or paid to the intended beneficiary. In addition to this increased risk, NICTS notes the comments received that highlight other issues with arbitrarily allowing the funds to be held without the protection of the court, such as a guardian lacking the knowledge or expertise to deal with the funds effectively, or the difficulty in obtaining a similar cost-effective investment service for a low value fund.
31. The benefits of the approaches where funds are held out of court, allowing a guardian to manage the fund, are that the guardian could have immediate access to the fund for necessary expenditure and that the fund could earn a higher return. NICTS considers that these benefits do not outweigh the additional risk to the fund. NICTS acknowledges that many guardians would manage the funds responsibly and effectively, but there are also many guardians who do not wish to take on that responsibility.

32. Taking account of the response to question 1, where over 80% of respondents believe that the protection provided by the court is important, there does not appear to be enough support in this area to warrant a change in policy to either of the alternative approaches. In addition, many comments were received in support of our current operations. Therefore, **NICTS proposes to maintain the status quo regarding the extent to which funds are lodged in court.**

Internal management and oversight of the funds

33. Consultees were asked to indicate which of the proposals in the document they believed would improve the operation of CFO. Respondents were also given the opportunity to provide additional comments on the proposals or any other suggestions on improving the services offered by CFO.
34. Online respondents were given the option to select each of the proposals using radio buttons. Selecting the option would therefore indicate support for that option, but not selecting an option would not necessarily mean that the respondent was against it. The proposals and the number of times each was selected is as follows:

Power to delegate the Accountant General's functions	22
Introduction of nominee accounts for investments	28
Extending the list of authorised investment types	34
Making improvements to oversight arrangements	17
Providing for discretionary investment decisions	21
Enabling the surrender of long standing unclaimed funds	17
Amending the allowable methods of payment	32

35. Those respondents that completed a hard copy template did not have radio buttons to select. They were able to provide comments under the question.
36. A small number of comments were received expressing reservations over some of the proposals, including:
- An investment company should not be involved. They are profit making organisations and will charge management fees.
 - In principle, the powers to delegate would have potential benefits, as long as the Accountant General or oversight body retained accountability for the funds.
 - Nominee accounts may not be appropriate for a Patient's fund unless a Trust arrangement is also established.
 - The financial risk to funds should be restricted to a medium level to safeguard against potential loss.
 - Discretionary investment decisions could be made by an investment manager, provided there are secure parameters agreed with the court.
 - Faster payments online bring a risk of cybercrime. There must be protections in place to prevent fraudsters from taking advantage of vulnerable people.
 - It is not clear why a move to delegate the Accountant General's functions to a third party would 'be helpful'.
 - It is essential that the CFO is maintained and not absorbed into another entity.

37. The Community Foundation proposed that unclaimed funds could be released and put to good use in local communities through the foundation of a dedicated charitable fund. Such a fund could support a wide range of causes across Northern Ireland. The fund could indemnify CFO against any future claims.

NICTS response

38. NICTS notes that all seven proposals were selected by a number of online respondents. The most popular option was selected by 34 respondents and the least popular by 17 respondents. No comments were received giving reasons why NICTS should not proceed with any specific option.
39. NICTS notes the reservations expressed by the respondents and responds as follows:
- Engagement with an investment manager on commercial terms has added significant value to client portfolios over time. The contract is put out for tender at regular intervals to ensure value for money.
 - NICTS confirms that the intention is for the Accountant General to retain accountability for the funds and for CFO to be maintained.
 - As noted in the consultation document (paragraph 4.13), the intention is that any discretionary investment decisions would be within narrow parameters set by the court.
 - NICTS believes that there are sufficient controls in place within CFO to ensure that the risk of cybercrime with faster payments is no greater than the risk with current payments made by Bacs Direct Credit.
40. NICTS notes the comment from the Community Foundation. This proposal cannot be taken forward without a change in legislation, but NICTS accepts that it can be considered as part of any future legislative changes.
41. Given that all of the proposals in the consultation document received some support and no reasons were provided against them, **NICTS proposes that steps are taken to introduce a modern and more flexible approach in the management of minors' and patients' funds. Significant legislation change is required, but the intention would be that new legislation should be flexible enough to enable any of the above proposals to be introduced if, in the future, it is considered appropriate to do so.**

Question – Is there anything else that you think we should consider in order to improve the service that is offered by CFO?

42. A number of comments were made by respondents under this question. These can be categorised as follows:

Online / Digital services

- Online facility to make applications for payments, claim funds, etc.
- Online access to information relating to minor's account.
- Ability to track applications online.

Communication / Information provided

- More communication.
- Provide a more informative and simple annual statement of growth.
- Patients could be visited and assessed in their home environment on a more regular basis.
- More information on the type of investments held.
- Ensure practice is compliant with evolving jurisprudence, specifically the principle that all persons, including those requiring support, are afforded opportunities to contribute to decision-making as far as possible on issues which impact on them.

Access to funds

- Rather than setting a monetary threshold, a proportion of a fund (e.g. £2,000 of £12,000 or £1,000 of £6,000) could be controlled by the parent. If they wish to apply for more, they would need to justify what the initial money was spent on and prove that additional money was required.
- The option should be available to lock the money away in a high interest account with no risk associated with it.
- The current system shows a lack of trust in parents to do what is best for their own child. Parents could sign an agreement to say that the money is solely for the child's use when they turn 18. The government could inform the child of this close to their 18th birthday. As a parent, I believe I could make the money go further. The government could provide advice to parents on how best to invest.

Fees / Return on funds

- Abolish fees for a parent claiming funds. When funds are lodged initially, a parent should have 30 days to nominate a savings account for the funds to be transferred to. The Courts should not hold funds for a minor as long as there are regulated financial institutions in the UK capable of doing the job.
- Increase the interest rate.
- I am happy with the services provided by CFO, but not the charges that increased after a previous consultation. Anything that minimises these costs while protecting a patient's fund is worth considering.
- The Department could give consideration to CFO management fees being borne by the wrongdoer, rather than the innocent child.

NICTS response

43. NICTS thanks the respondents for their comments and suggestions to improve the service offered by CFO. NICTS regularly review CFO communications to ensure they are as effective as possible and we will reflect the comments received through the consultation as part of the next review.
44. Through our current modernisation programme we want to make greater use of digital technology to allow all of our clients to access case information online, tracking progress on applications. CFO reforms will be included as part of this programme.

Conclusions and Way Forward

The role of the court

45. NICTS does not believe there is sufficient support to warrant a change in policy regarding the extent to which funds are held in court. The preferred option is to maintain the status quo. The other options increase the risk that the intended beneficiary would not receive the full benefit of the fund. **Therefore, NICTS does not intend to make any changes to the current procedures by which money is lodged into court on behalf of minors and patients.**
46. Currently, where appropriate, funds held in court are invested on the recommendation of a contracted investment manager. The investments are monitored by the Judicial Liaison Group, which includes independent individuals with investment expertise. The returns on the invested funds have consistently exceeded targets and benchmarks; **NICTS does not believe that there is any reason to alter these arrangements.**
47. NICTS accepts that it could be beneficial to consider alternative arrangements for lower value funds, or where a fund is likely to be held in court for less than five years; these sit outside the scope of investment portfolios. The aim being to strike a balance between the protection of the fund and an enhanced return on the fund.
48. NICTS notes that where a guardian currently makes an application to withdraw a child's fund from court to be placed in a Junior Cash ISA, the court is likely to look favourably on such an application, as the fund will remain protected until the child turns 18.
49. Given the information above, for funds that would be held in court as a cash deposit, **NICTS will, in conjunction with the judiciary, consider the introduction of a scheme whereby guardians will be invited to make an application to pay the funds into a Junior Cash ISA.**

Internal management and oversight of the funds

50. Respondents did not provide any reasons why any of the seven proposals included in the consultation document should not be taken forward.
51. The proposals can be divided into two main categories:
 - Those that would have a direct effect on investment holdings and payments
 - i. Extending the list of authorised investment types,
 - ii. Amending the allowable methods of payment,
 - iii. Introducing nominee accounts for investment, and

- Those that relate to internal governance and management.
 - i. The power to delegate the functions of the Accountant General,
 - ii. Providing for discretionary investment decisions,
 - iii. Make improvements to oversight arrangements, and
 - iv. Enabling the surrender of long standing unclaimed funds.
52. With the exception of amending the allowable methods of payment, all proposals would require a change to primary legislation.
53. Amending the allowable methods of payment to include faster payments could be achieved by making a minor change to the Court Funds Rules.
54. NICTS notes the comments from respondents with suggestions of ways to improve the service offered by CFO, particularly in respect of online and digital services. NICTS will continue to progress CFO business in line with suggested improvements.

Next steps

55. NICTS will seek legal advice to progress the legislative changes required to allow implementation of the proposals.
56. NICTS will consider what administrative improvements can be made to CFO operations, with particular focus on online and digital services.
57. NICTS will progress the necessary Rule change to enable the faster payments process to be used.
58. If you require any further information regarding the consultation or this response please contact:

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