



Ministry
of Justice

Mike Freer MP
Minister for Courts and
Legal Services

Dame Meg Hillier MP
Chair of Public Accounts Committee
House of Commons
London
SW1A 0AA

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28 February 2023

Dear Dame Meg Hillier,

SMALL PAYMENTS CONSULTATION

I am writing to inform you of the publication of the Government response to the consultation on small payments held between 16th November 2021 and 12th January 2022.

It is a well-established principle that an adult must obtain proper legal authority to access or deal with the property belonging to another adult. Where an individual lacks capacity, the Mental Capacity Act (MCA) provides the vital piece of legislation to protect the rights of individuals who lack mental capacity and empower their families and carers to support their decision making. When granting legal authority to access the account of another individual, the MCA provides the framework to grant third parties legal authority by a lasting power of attorney if an individual still has mental capacity, or for third parties to obtain legal authority through applications to the Court of Protection (CoP).

Concerns have been raised that the existing CoP process for obtaining legal authority to access accounts on behalf of individuals who lack mental capacity creates barriers to accessing small value assets. This has particularly been highlighted in the case of accessing matured Child Trusts Funds, where a campaign by the families of young adults with learning disabilities has led to attention in both the Lords and Commons

In response to these concerns, Government decided to examine whether there was a case for an alternative process to the current CoP deputyship where access to small funds was required. We consulted on a small payment scheme that would be run by financial services, permit access for six months to limited funds up to £2500 from one account belonging to an individual who lacks mental capacity without an order from the CoP being sought. The scheme set out to meet three aims:

- a. Scope: Scheme must be broad enough to be useful and avoid inadvertent discrimination
- b. Security: Assets of vulnerable individuals should not be subject to unacceptable financial risk;
and
- c. Simplicity: The scheme must be straightforward and allow quicker access to limited funds than current processes, whilst being easy for financial service firms to implement.

The consultation received 225 responses and provided the opportunity for key stakeholders from the financial, legal and disability sectors as well as parents and carers supporting those who lack mental capacity, to share their concerns about the current system and opinions on the new proposal.

The consultation has provided clear evidence of the challenges faced in the current system. Most consistently respondents highlighted that the length and complexity of CoP forms, and the time taken to process the application were key barriers to accessing funds on behalf of the account holder. It has also become apparent through the consultation that in many cases families and carers are often caught off guard when their child turns 18 as they are not aware of the MCA and the need to obtain legal authority to manage another person's financial affairs if they lack capacity.

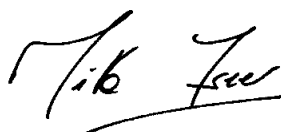
It is my view, that the best way to deal with the challenges to accessing small value assets is to address these underlying problems. As such, we will not legislate for a small payments scheme as evidence suggests that a scheme would not address these underlying barriers. Instead, Government will embark on a programme of work to 1) work with the CoP to support improvements to application processing times and simplify court forms, 2) work with OGDs, charities and the finance sector to raise awareness of the MCA, especially amongst parents and carers of young people who lack capacity as they transition to adulthood, the full details of this work are outlined in the response document available here:

<https://www.gov.uk/government/consultations/mental-capacity-act-small-payments-scheme>.

Importantly, this way forward provides the best approach to uphold the MCA and its principles to empower persons who lack capacity. These next steps ensure that the current system of legislation is upheld to encourage the principles of supported decision making and best interests of the individual who lacks mental capacity when making decisions on their behalf. Furthermore, it maintains critical system safeguards to ensure that family and carers can make decisions in the best interests of individuals who lack mental capacity, and that where they cannot, vulnerable individuals are protected from fraud, abuse, and undue pressure, including coercion.

It is important to remember that while the majority of parents, relatives, and caregivers always act in the best interest of their loved ones, this is not always the case. The protections and rights of vulnerable individuals without mental capacity must be the top priority when granting access to their funds. This has been central to the government's approach to address the challenges to accessing small value assets.

Members of the committee will note that quite a bit of time has elapsed since the consultation took place, and there has been an unfortunate delay in publishing a response. This is because the consultation exposed a number of complex issues and conflicts, and it was absolutely right that officials took careful time to consider and unpack these further, working with external stakeholders to do so.

A handwritten signature in black ink, appearing to read 'Mike Freer', with a stylized flourish at the end.

MIKE FREER MP