

Title: Small Payments Scheme IA: MoJ 014/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Office of the Public Guardian (OPG)	Impact Assessment (IA)			
	Date:			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary Legislation			
Contact for enquiries: joan.goulbourn@justice.gov.uk				

Summary: Intervention and Options	RPC Opinion: Not Applicable
--	------------------------------------

Cost of Preferred (or more likely) Option (in 2022 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£0m	£0m	£0m	Non qualifying regulatory

What is the problem under consideration? Why is government action or intervention necessary?

Engagement with the voluntary sector, financial service providers and campaigners has raised concerns about the current Court of Protection (CoP) process to gain legal authority to access small cash-based assets on behalf of someone that lacks mental capacity. Families and carers view the process as complex, disproportionate for the amounts involved and unfair where they gifted the money in the first instance. The Government consulted on the possibility of an alternative to the CoP process. The consultation closed on 12th January 2022 and revealed that, whilst respondents support the idea of a small payments scheme, the key barriers to accessing small value assets are issues within the existing system, a lack of awareness of the Mental Capacity Act 2005 (MCA) and the complex, lengthy application process. Based on the responses, the Government now believes that the best way to deal with these issues is through non-legislative changes to the CoP process and the development of an awareness raising strategy. No formal government intervention is therefore necessary since no change to primary legislation is required. Instead, Government will explore how to resolve the key barriers to ensure the public have a quick, simple way to access small value funds with the relevant safeguards. The consultation response document demonstrates the evidence not to legislate in full.

What are the policy objectives of the action or intervention and the intended effects?

1. To ensure that the principles of the MCA are maintained as the current mechanisms for obtaining legal authority to access property of a person lacking mental capacity.
2. To deliver a quicker application process for families / unpaid carers to obtain legal authority to access small value funds of persons lacking capacity.
3. To deliver greater simplicity in the application to obtain legal authority for families/ unpaid carers to access small value funds of persons lacking capacity.

The intended effect is to uphold the principles of the MCA and the relevant safeguards whilst still providing parents and unpaid carers of individuals that lack mental capacity with an accessible route to obtaining legal authority to access limited sums of money.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0: Do nothing – Do not proceed** with primary legislation to create a small payment scheme.
- **Option 1: Introduce a small payments scheme** to allow third party access to limited funds without the need to obtain legal authority.

Based on the consultation responses, Option 1 no longer best meets the policy objectives; therefore Option 0 is recommended. It is Government's view that the best way to address the small payments issue is through non-legislative changes like improvements to the CoP process and raising awareness.

Will the policy be reviewed? Yes Review date: TBC				
Is this measure likely to impact on international trade and investment?			No	
Are any of these organisations in scope?			Micro N/A	Small N/A
			Medium N/A	Large N/A
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	
			Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister  Date: 28/02/2023

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce a small payments scheme to allow third party access to limited funds without the need to obtain legal authority either via a Lasting Power of Attorney or an order from the Court of Protection.

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
2022/23	2022/23	10	Low: N/A	High: N/A	Best Estimate: -£0.3m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0.03m	£0.3m

Description and scale of key monetised costs by 'main affected groups'

This option might require the OPG to maintain a register of successful applicants to prevent withdrawals exceeding £2,500 in total. The cost to the OPG of adding an individual to the register is £18, inclusive of staff costs, building costs, and IT costs. Assuming approximately 2,000 successful applicants to the small payments scheme per year, the same volume of people that successfully apply for one-off Property and Affairs Orders from the Court of Protection (CoP), this will cost the OPG approximately £35,000 per annum.

Other key non-monetised costs by 'main affected groups'

There may be costs to banks and other financial institutions of staff time for paperwork, checks, and familiarisation with the new formalised process although most firms will probably be incurring such costs already under the current process. There may be a cost to the NHS or other medical providers from providing practitioner certification of a lack of capacity and costs to the applicants from applying for medical certifications or identification documents although many will already have this documentation. Additionally, allowing third-party access to savings accounts may detriment existing safeguards for vulnerable people, leaving them open to fraud, abuse and undue pressure, including coercion.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise the benefits of the small payments scheme due to limited evidence required to provide quantitative impacts.

Other key non-monetised benefits by 'main affected groups'

The small payments scheme may reduce applications to the CoP. This would save court time and allow for a more efficient working of the CoP, who would be able to hear more complex issues, resulting in more efficient use of time and court resource. The small payments scheme may reduce delays and administrative burdens for applicants wishing to access funds on behalf of the mentally incapacitated individual(s) they care for. However, these benefits may not materialise as legal authority would be required to take other decisions around the welfare of an individual lacking mental capacity, including future financial decisions.

Key assumptions/sensitivities/risks	Discount
	3.5%

We assume the annual number of applicants to the small payments scheme would equal that of the annual number of applications to the CoP's 'one-off' Property and Affairs Orders. Due to considerable uncertainty, sensitivity analysis has been conducted to demonstrate how monetised OPG costs would vary if this volume were twice, three times, four times, or five times as large as anticipated.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	Score for Business Impact Target (qualifying provisions only) £m:

Costs: N/A	Benefits: N/A	Net: N/A	N/A
-------------------	----------------------	-----------------	-----

Evidence Base

A. Background

1. The Mental Capacity Act 2005 ('MCA') provides a statutory framework in England and Wales, for supporting people aged 16 and over to make their own decisions, alongside setting out the legal framework for people who lack mental capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they may lack it in the future. It sets out who can take decisions, in which situations, and how they should go about this. The MCA came into force in 2007.
2. Many people view the MCA as being concerned with issues relating to care and treatment, but it also upholds the essential important legal principle in property law that an adult must have the proper legal authority in order to deal with the property and finances belonging to another adult. Where an adult has capacity, this authority is granted using an Ordinary Power of Attorney (OPA). An OPA is useful when it becomes temporarily difficult for an adult with capacity to manage their affairs, for example because they are unwell, recovering from injury or traveling abroad.
3. In cases where an adult lacks mental capacity, the MCA upholds the long-established principle through a Lasting Powers of Attorney (LPA)¹ or an order of the Court of Protection (CoP). The Office of the Public Guardian (OPG) maintains a Register of all LPAs and all cases where the CoP has appointed a deputy. This Register can be searched by the general public, the private and the public sectors. The process by which these forms of authority can be obtained, and the overarching supervision of the OPG and CoP are vital safeguards for the protection of vulnerable people and their assets.
4. In cases where a person has lost mental capacity without having made an LPA, the CoP can make a 'one-off order' authorising a particular decision to be made on that person's behalf or to appoint a deputy to make decisions relating to either their property and affairs or their personal welfare on an ongoing basis.

Problem Under Consideration

5. The application process to obtain an order from the CoP has been criticised due to the numerous forms required for the application, the perception that a solicitor must be retained to deal with the application, the need to pay solicitors fees and fees to obtain a medical certificate and the court application fee of £365. Once an application is received by the CoP it can also take 26 weeks for an order to be issued.
6. Engagement with Voluntary Sector organisations, campaigners on these issues, and discussions with the financial services sector, also suggest that some people are not engaging with the CoP process where smaller sums of money are involved as the process is viewed as too complex, disproportionate to the amount of funds involved or unfair given that, in many instances, they were the ones that paid the money in.

¹ A property and affairs LPA may be granted to allow an attorney to act with the donor's consent, before the donor lacks capacity,

7. To address these issues, many financial institutions prefer to make risk-based assessments to release funds on an informal basis, in line with guidance from the Financial Conduct Authority on supporting vulnerable customers. However, this is not underpinned by legislation. Campaigners on the issue expressed an interest in Government creating a scheme which would replace this one-off order process.
8. In November 2021, the Government decided to consult on a small payments scheme to access small amounts of money to enable minor or immediate needs to be addressed, whilst maintaining the deputyship system for those that need to make future financial decisions on behalf of someone who lacks capacity. The purpose of the consultation was to gather more evidence on the scale of the problem and a consider whether such a scheme is a proportionate response to the difficulties faced.
9. The decision to consult was partly driven by the issues raised concerning access to matured Child Trust Funds (CTFs).
10. CTFs were a government scheme for a long-term tax-free children's saving accounts set up in 2002. The Government provided an initial deposit of £250 and a further top up of £250 to every child born after 2002 until the scheme ended in 2011.
11. The first CTF's matured in September 2020, when the oldest account holders reached 18 years of age. With the maturity of these first accounts the parents and carers of young adults who lack mental capacity were advised by CTF financial providers of the need for them to obtain legal authority from the CoP in order to access the CTF. For the reasons described above, some parents and carers see this requirement as an unfair, time-consuming and costly process to go through to be able to access their children's assets on their behalf.
12. CTF campaigners maintained that there should be a simpler means of accessing these funds and that it should not be necessary to apply to the CoP for a young adult with only one modest savings account. In addition, discussions with financial institutions suggested that the issues surrounding access to small funds may extend to a broader range of customers who lack capacity and to other types of accounts with small values.
13. As a result, a consultation was needed to further investigate the case for change and how to balance access and efficiency, with legislative principles and safeguards against fraud, abuse and undue pressure, including coercion. It is important to note that it is not the intention for a solution to replace the CoP order process since parents or individuals caring for someone who lacks capacity will likely require broader, longer-lasting legal authority in the future, through a CoP deputyship order.

Consultation

14. The consultation proposed an alternative to the current CoP order process to access small payments. The proposed scheme followed a model put forward by the Law Commission in 1997, with additional features to address some previous concerns that had been raised in relation to safeguards. The consultation closed on 12 January 2022.

15. The consultation responses revealed that whilst respondents supported a scheme to address the problems with the current system, there was no consensus on what was required for sufficiently simple and secure small payments scheme.
16. In addition, there is concern that legislative changes to allow third party access to small funds could undermine existing legislative principles, by too easily delegating decision making to parents or carers, instead of the account holder. This undermines the MCA principle for parents and carers to support individuals that lack capacity in their decision making where it is possible. A scheme could also dilute existing safeguards for vulnerable people, leaving them open to fraud, abuse and undue pressure, including coercion. Finally, the process may prevent parents and caregivers from engaging to make future preparations, since many would require provisions to make sustained decision making on behalf on an individual through a CoP deputyship order.
17. However, the consultation revealed that the key barriers to accessing small funds were operational processes and a lack of awareness of the MCA. Given the results of the consultation, the Government decided not to legislate for a small payments scheme as the evidence suggested this would not address these underlying issues.
18. Instead, it is Government's view that the best way to improve access to small value assets is to improve the current system through non-legislative interventions. In particular, the consultation raised several frustrations with the CoP processing times and the complexity of forms. Separate to the consultation, the CoP have begun efforts to improve service delivery. The Government will now support the improvements process, by feeding in the consultation responses.
19. The consultation revealed that a lack of understanding of the MCA has partially created a barrier to parents and caregivers of young adults who are unaware of the steps to take to continue making decisions on behalf of their child in adulthood, including legal authority to access payments. As a result, the government will explore awareness raising of the MCA at the relevant touchpoints for families and caregivers that require support.

B. Policy Rationale and Objectives

Rationale

20. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
21. In this instance, the policy rationale was based on both equity and efficiency arguments. In terms of equity, it is not fair that certain groups of the population might be delayed in accessing their own money due to onerous procedures. With regard to

efficiency, there is scope to reduce processing times and reduce costs for the individuals that use the system and those that implement it.

Policy Objectives

22. The option assessed in this Impact Assessment (IA) was intended:

- To ensure that principles of the MCA are maintained as the current mechanisms for obtaining legal authority to access property of a person lacking mental capacity.
- To deliver a quicker application process for families / unpaid carers to obtain legal authority to access small value funds of persons lacking capacity.
- To deliver greater simplicity in the application to obtain legal authority for families/ unpaid carers to access small value funds of persons lacking capacity.

C. Affected Stakeholder Groups, Organisations and Sectors

23. The option assessed in this IA would primarily affect the following groups:

- Financial Services customers who lack mental capacity, their families and carers.
- Providers of financial services, who may benefit from a standardised process for dealing with third party requests.
- The OPG, who currently maintain a register of all LPAs and deputies appointed by the CoP and conduct register searches upon request, and who may be required to hold a register of account holders and third parties using the small payments scheme (subject to consultation outcomes).
- The CoP - who may see a drop in applications for 'one off' orders – and HM Courts and Tribunals Service (HMCTS) who may lose court fee income.
- The NHS and other medical providers to provide medical certification of a lack of mental capacity.
- Voluntary sector and charity organisations who advise and support people who lack capacity and their families/carers.
- Providers of legal services - who often advise on the making of LPAs and applications to the CoP, although this is not required by the existing process.
- Police and small claims courts – should misappropriation of funds be reported.

D. Description of Options Considered

24. To meet these policy objectives, the following options are considered in this IA:

- **Option 0: Do nothing – Do not proceed with primary legislation to create a small payment scheme**
- **Option 1 – Introduce a small payments scheme to allow third party access to limited funds without the need to obtain legal authority either via a Lasting Power of Attorney or an order from the Court of Protection**

25. The evidence gathered during the consultation indicates that Option 1, which would legislate for a small payments scheme, would not deliver satisfactorily on the aims of security and simplicity whilst fully supporting the MCA principles. As a result, Option 1 does not meet the policy objectives and Option 0 is now the best option.

Option 0 – Do nothing

26. Under this option the existing legislation for accessing funds would remain unchanged. This will ensure that the MCA and its principles are upheld to protect people that lack mental capacity and empower them to make decisions where possible. Additionally, it will maintain the current system protections, safeguarding individuals against fraud and abuse.

27. Although no legislative intervention will be made, Government will look at improvement to existing processes to ensure that access to small payments improves for individuals that lack mental capacity, their families and caregivers. Government will now support the CoP improvements process and explore developing a robust awareness raising strategy with the relevant stakeholder groups. More detail on this is provided in the Government response.

28. Financial providers will continue to use their preferred discretionary method of releasing funds on a case-by-case basis when approached by family, parents, and carers for the release of funds, in line with guidance from the Financial Conduct authority to be more flexible in the handling of vulnerable customers. However, this is not underpinned by legislation, circumvents the MCA 2005 and has no formal safeguards for the vulnerable individuals. Additionally, informal decisions made by banks will be driven by risk appetite and so may not always lead to consistent outcomes for all consumers

Option 1 - Introduce a small payments scheme to allow third party access to limited funds without the need to obtain legal authority either via a Lasting Power of Attorney or an order from the Court of Protection

29. Under this option, a small payments scheme would have been introduced. The scheme would allow payments to be made for a fixed period, enabling the specific needs of a person without capacity to be met while more permanent arrangements are put in place, if necessary.

30. The main characteristics of the scheme would have been as follows:

- Payments would have been permitted for a six-month period from one account, up to a value of £2,500.
- Access would have only been granted for one six-month period, with a single extension permitted only if the £2,500 value had not been reached.
- The scheme would have been run by financial services firms (e.g., banks and building societies, other financial institutions) allowing payments or withdrawals primarily from cash-based accounts by someone who could prove their suitability. This includes matured CTF, current and savings accounts, cash ISAs and e-money (see consultation for full list of products).

- Applicants would have been asked to consider whether a deputyship is necessary or appropriate for longer term management of accounts and encouraged to apply to the CoP where necessary.
- It was expected that the scheme would take approximately four weeks to process applications.
- The same account or other accounts belonging to the individual could not have been accessed again by the same or a different applicant.
- The application process would have also request confirmation via a practitioner that the account holder lacks mental capacity to manage their finances, contact details for referees and asked the applicant to declare their reason for applying and what they intend to spend the money on.
- Financial Institutions would have confirmed that an LPA or Deputyship order does not exist by requesting an OPG register search. Subject to the outcomes of the consultation, OPG may have also maintained a register of account holders and third parties that use the scheme.
- Further information on the other elements of the scheme, including mechanisms for making payments and withdrawals can be found in the consultation document.

E. Cost and Benefit Analysis

31. This IA follows the procedures and criteria set out in the Impact Assessment Guidance² and is consistent with HM Treasury Green Book³.
32. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
33. The costs and benefits of the option are compared to Option 0, the counterfactual or 'do nothing' option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
34. The NPV has been appraised over a 10-year period beginning in 2022/23, with a 3.5% discount rate applied and a 2022/23 discounted base year. All costs in this IA are given in 2022/23 prices.
35. IAs typically place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised which might include how the policy impacts differently on particular groups of society or changes in equity and fairness. In the case of this proposal, it has not been possible to

² <https://www.gov.uk/government/collections/impact-assessments-guidance-for-government-departments>

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf

monetise some of the cost and benefits associated with the measures proposed under Option 1.

Option 1 – Introduce a small payments scheme to allow third party access to limited funds without the need to obtain legal authority either via a Lasting Power of Attorney or an order from the Court of Protection

Costs of Option 1

Monetised Costs

OPG

36. Under Option 1, successful applicants may have needed to be added to a register maintained by the OPG, subject to consultation outcomes. Assuming this would have been the case, the cost to the OPG of adding a person to their register, which already contains LPA users, is estimated at £18 per person (2022-23 prices). This cost reflects the 30 minutes of staff time per new entry, and is inclusive of searching the current register, creating a new register entry; as well as additional overheads such as building, IT, and proportional staff costs including training, annual leave pension and National Insurance contributions.
37. We have assumed approximately 2,000 successful applicants per year, the same volume of people that have successfully applied for 'one-off' Property and Affairs Orders from the CoP between 2019 and 2021. This would have cost the OPG approximately £35,000 per annum.
38. It should be noted that there is a high degree of uncertainty as to how many applicants would have chosen to apply via the small payments scheme. Should the number of applicants proven to have been higher than suggested above, the costs to the OPG will be proportionally higher. This issue is explored further via sensitivity analysis in Section F below.

Non-monetised Costs

OPG

39. OPG would have also incurred some small staff time costs associated with initial register searches for small payments scheme applicants who are ultimately rejected (for instance, by not providing the required medical certification or identification documents). This is not to be confused with the full costs associated with adding successful applicants to the register, which are monetised above. If an applicant were not successful, OPG would not incur any time costs beyond an initial register search meaning the costs associated with unsuccessful applicants are expected to be small. These have not been monetised.

Court of Protection

40. The CoP currently charges £365 to file an application for a 'one-off' Property and Affairs Order. An additional £485 is paid where there is a need for an oral hearing –

this would be in contested cases. Under Option 1, we would have expected some people who would apply for these orders to instead apply for the small payments scheme. In this situation, the CoP would lose some of its fee income. However, it should be noted that even where people initially applied under a small payment scheme for immediate access to small amounts of money, they may still need to apply for a deputyship order to enable ongoing, longer-term decisions regarding someone's finances or welfare. Therefore, the effects may be minimal. While CoP fees are charged on a cost recovery basis, a large proportion of the cost underpinning these specific fees relate to the CoP share of overhead costs, which do not vary with court demand. Accordingly, we would have expected the net effect on CoP finances to be negative.

41. The small payments scheme would have encouraged applicants to apply for deputyship orders via the CoP where appropriate (for example, when an applicant would like to access an amount greater than £2,500 on behalf of a mentally incapacitated individual). As such, some applicants who decide to apply to the small payments scheme rather than pursue a 'one-off' Property and Affairs Order may have ultimately paid fees to the CoP (for a deputyship order).
42. It has not been possible to quantify the proportion of current CoP applicants who would no longer apply to the CoP should Option 1 have been favoured and brought into effect. As such, it has not been possible to monetise a cost to the CoP of Option 1.

Financial Institutions

43. There may have been costs to banks and financial institutions in terms of staff time from completing forms for the application, background checks (such as for fraud or access to other bank accounts) to set up the process, checking applications for small payments on behalf of those without mental capacity, and maintaining an internal record of payments and applicants for audit purposes, separate to the OPG register.
44. However, as described above, many financial institutions have informally been granting access to small withdrawals for applicants, so are likely to have staff who are already performing some of these duties. Therefore, we would expect that any additional staff costs would have been limited to familiarisation costs with new processes, unless the small payments scheme had expanded to such an extent that it would require new staff to be hired and trained to oversee additional applications.
45. In the case of actual or alleged fraud or misuse of funds, financial institutions may have incurred additional time and staff costs associated with investigating these concerns.

NHS

46. There may have been a cost to the NHS or other medical providers to provide medical certification of a lack of mental capacity. This could have included a medical evaluation, and the relevant staff and time costs for the evaluation.
47. It is believed that some people who would have accessed the scheme already have this documentation. The cost of documentation would have therefore only expected

to be generated by those who would not otherwise use formal processes and would now use the small payments scheme.

Applicants

48. There could have been costs to the applicants of applying for medical certifications or identification documents. We expect many applicants would have already had these documents, particularly as both the CoP and banks already require medical certificates and identification. Therefore, the cost of documentation would've only been applicable to those who would not otherwise use formal processes and would now use the small payments scheme.
49. Despite applicants accessing funds through a small payments scheme, parents or individuals caring for someone who lacks capacity will likely require broader, longer-lasting legal authority in the future, through a CoP order. A small payment scheme may have prevented parents and caregivers from engaging early in future preparations.
50. Existing legislation empowers adults who may lack mental capacity to make decisions where they can, by putting a strong onus on parents and carers to support their decision making. Where individuals cannot make a decision, it ensures that parents and carers still make decisions in their best interest. Legislative changes to allow third party access to small payments could undermine these principles, by too easily substituting decision making to parents or carers where small sums are involved rather than encouraging the principles of supported decision making.
51. Allowing third-party access to savings accounts may have also been detrimental to existing safeguards for vulnerable people, leaving them open to fraud, abuse and undue pressure, including coercion.

Police and small claims courts

52. Should there have been cases of fraud or malpractice, it is possible that these cases would have been handled by the police or small claims courts, and this would create time and staff costs to investigate and resolve. However, we had expected due to the small sums of money involved that these cases were likely to be handled by banks internally, and therefore it was unlikely that this policy would have increased court or police workloads.

Legal service providers

53. Legal service providers who currently act in CoP cases may have seen their workload reduce under Option 1. However, we assumed providers would find work of equal or next best economic value as their current income from this area is driven by inefficient legal processes which have no wider benefit to society.

Benefits of Option 1

Monetised benefits

54. It has not been possible to monetise the benefits associated with Option 1 due to limited evidence required to provide quantitative impacts.

Non-monetised benefits

Applicants

55. It was expected that Option 1 would reduce the average time between application and access to funds for applicants requesting access to small sums of money (up to £2,500) on behalf of mentally incapacitated people. The present time from application to order issuance via the CoP is on average 26 weeks, at which point applicants can then use their legal authority to access funds. Option 1 would have been expected to reduce the time taken to access funds.

56. Reduced processing times may have meant quicker access to the goods and services applicants wish to purchase on behalf of the individual they care for. The simplification of applying for access to funds under Option 1 as opposed to via the CoP may have reduced costs to applicants' time due to reduced form filling, however the complexity of such forms and level of required checks and balances to maintain safeguards was not clear from the consultation responses (respondents had widely varying views) so time improvements may have been minimal.

57. Individuals who may have previously been put off from applying to the CoP due to the onerous and lengthy application process may have benefitted. The reduced processing times may be seen as a reduced barrier to apply, which would have encouraged a greater number of carers to apply.

58. However, it is likely that parents or carers making decisions on behalf of adults lacking capacity would have required legal authority to take other decisions around their welfare including future financial decisions so it is unlikely that these benefits would have materialised.

Court of Protection

59. It had been expected that Option 1 would have reduced some volume of applications to the CoP for 'one-off' Property and Affairs Orders, as initially applicants would prefer the faster process of applying via the small payments scheme. As a consequence, some CoP resource may have been freed up to handle more complex issues, ensuring more efficient use of its time and resources.

60. As mentioned in paragraph 57, it is likely that individuals would have required to apply to the CoP for deputyship orders to take other decisions around the welfare of an individual who has lost mental capacity. Therefore, this benefit would likely have been negligible.

Voluntary sector and charity organisations

61. Under Option 1, the more streamlined small payments scheme would have resulted in voluntary sector and charity organisations needing to provide less complex support to applicants. This would have reduced resource and time costs for these

organisations that would have previously been spent assisting with more complex CoP applications.

62. Under Option 1, banks and other financial institution who currently operate informal processes to allow withdrawals of small sums of money by carers on behalf of mentally incapacitated individuals would have benefitted from a more standardised process. This may have reduced the risk of errors and inconsistent handling of customer requests
63. It should be noted that this standardisation would not have impinged upon financial firms' ability to act flexibly in the context of an emergency request for access to funds on behalf of a mentally incapacitated individual. This is because the CoP's urgent application process would have continued to offer a faster means of accessing funds in an emergency, which the small payments scheme would not have superseded.

F. Risks, Assumptions and Sensitivity Analysis

Volumes

64. For the purposes of estimating the costs and benefits associated with Option 1, the annual volume of successful applications to the small payments scheme is assumed to be approximately 2,000 per year. This is based on the CoP's average annual volumes of 'one-off' Property and Affairs Orders issued during 2019, 2020 and 2021⁴.
65. As noted above, there is a considerable degree of uncertainty associated with this assumption. The annual volumes provided above include applications that would have been made in order to access CTFs, as well as other financial products that are in scope of Option 1. However, the volume also includes applications made to the CoP to access financial products that would *not* be in scope under Option 1. Therefore, this may be an overestimate.
66. On the other hand, if Option 1 were to be implemented, it is possible that the shorter, less onerous process of applying to access funds may encourage individuals who would not otherwise apply (e.g., via the CoP) to access financial products. As such it is possible the volume assumption may be an underestimate.

OPG Costs Sensitivity Analysis

67. Should the number of successful applicants prove to be higher than the assumed 2,000 per year, the costs to the OPG associated with adding these to their records would be proportionally higher.
68. The cost of a successful application to the OPG is £18 per person. The volumes of successful applicants are assumed to be approximately 2,000 people per year, based on figures for 'one-off' Property and Affairs Orders issued.
69. Given the high degree of uncertainty in applicant volumes, several scenarios have been created by multiplying the average annual volume (approximately 2,000) of successful applications to the CoP for one-off Property and Affairs Orders by 1, 2, 3,

⁴ [Family Court Statistics Quarterly: January to March 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2021)

4, and 5. This is to reflect how sensitive OPG costs associated with Option 1 would be to differing volumes of successful applicants.

Table 1 – Estimated annual costs to The Office of the Public Guardian to update and maintain a register of small payment scheme applicants (nominal)

	Multiple of current annual CoP 'one-off' payment orders				
	1	2	3	4	5
Cost to OPG	£35,000	£71,000	£106,000	£141,000	£177,000
Successful applicant Volumes	2,000	4,000	6000	8000	10,000

OPG fees

70. For the purposes of illustrating potential costs to develop and maintain a register of successful applicants, this IA assumes that OPG will cover all costs associated with the register entries for successful scheme applicants. As such, a £18 fee may ultimately be passed on to scheme applicants, or the Government. If this is the case, scheme applicants or the Government, as opposed to the OPG, would face the monetised costs estimated within this IA.

Informal access

71. Rather than starting the six-month application for a 'one-off' Property and Affairs Order from the CoP, some people who lack mental capacity may be subject to informal processes that allow carers or guardians to access their bank accounts, such as shared pin numbers. Due to the informal nature of this, it is not possible to estimate how many people take this route, or how many people would be willing to change to the formal process created if Option 1 were to be implemented.

Process waiting time

72. It is assumed that the small payments scheme would take less than a month between application and approval if successful. This would include a 2-week period in which the account holder would be notified of the request for account access, to which they can respond if they are not mentally incapacitated. The period also includes time to apply for and secure practitioner certification. Assuming this process takes 4 weeks in total, it will save applicants approximately 22 weeks, compared to the approximate 26-week wait required via the current CoP process.

73. However, this period may vary depending on financial institutions and medical practitioner capacity at the time of application.

Amount of money accessed

74. The proposed scheme under Option 1 would limit applicants to a maximum withdrawal of £2,500. This would limit the benefit enjoyed by scheme users who would wish to access a larger sum of money. In these instances, successful applicants would be able to access an initial £2,500 and would be encouraged to apply for a Deputyship order via the CoP.

G. Wider impacts

Equalities

75. For the equalities impact of Option 1, please see the Equalities Statement that was published alongside this impact assessment.

Better regulation

76. This proposal is classed as a non-qualifying regulatory provision and will not count towards the department's business impact target.

Potential implications for trade

77. There are no expected implications for international trade arising from the proposal.

H. Monitoring and Evaluation

78. The current system will be monitored to ensure that the alternative arrangements to support CoP improvements and possible awareness raising resolve the challenges for individuals to access small payments.