

<b>Title:</b> Small Payments Scheme <b>IA:</b> MoJ 014/2021 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Office of the Public Guardian (OPG)	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 10/09/2021			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary Legislation			
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable
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**Cost of Preferred (or more likely) Option (in 2021 prices)**

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£0.3m	£0m	£0m	Non qualifying regulatory provision

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

Where an individual lacks mental capacity to manage their own property and financial affairs and has not made prior arrangements to authorise another person to manage those affairs through a Lasting Power of Attorney (LPA), an application must be made to the Court of Protection (CoP) for an order (a 'one-off' order or deputyship). Applications to the CoP can take up to six months and involve paying a fee (although fee waivers can be applied in some cases). In cases where access is needed for a limited sum of money the court application process is seen by some as disproportionate, with campaigners citing lengthy forms, complex process and expensive fees as a barrier. To address this, many financial institutions make a risk-based assessment to release funds to third parties without the required legal authority, but this is not underpinned by legislation, has no formal safeguards for the vulnerable individuals and may not lead to consistent outcomes for all consumers. This consultation therefore sets out proposals for a small payments scheme that will permit authorised third party access to limited funds without a court order. Government intervention is needed as a change to primary legislation will be required.

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

1. To create a new simplified, accessible and clear framework to be followed by all financial services firms such as banks and building societies which will allow third party access to limited sums of money on behalf of an individual who lacks mental capacity.
  2. The scheme must be simpler than applying for a 'one off' order or deputyship, be faster than obtaining a property and affairs order and maintain sufficient safeguards for those without capacity.
  3. To deliver improved outcomes for persons lacking capacity their families / unpaid carers.
  4. To ensure that applications to the Court of Protection continue to be made and the principles of the Mental Capacity Act (MCA) 2005 are followed and upheld.
- The intended effect is to provide parents and carers of individuals without mental capacity a simple but secure route to access limited sums of money to meet the needs of the account holder, without applying to the CoP.

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

- Option 0: Do Nothing - Maintain the existing process for accessing funds.
  - 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.
- Option 1 is preferred because it meets the policy objectives.

**Will the policy be reviewed?** N/A, consultation stage. **Review date:** N/A

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	<b>Micro</b> YES	<b>Small</b> YES	<b>Medium</b> YES	<b>Large</b> YES
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> 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:

11/11/21

# 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 Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: -£0.3m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	NA	NA
High	NA	NA	NA
Best Estimate	NA	£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, subject to consultation outcomes. The cost to the OPG of adding an individual to the register is £17, 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 £34,000 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.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	NA
High	NA	NA	NA
Best Estimate	£0m	£0m	£0m

### 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.

### 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 would reduce delays and administrative burdens for applicants wishing to access funds on behalf of the mentally incapacitated individual(s) they care for.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	NA
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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)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: NA	Benefits: NA	Net: NA	
			NA

# 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 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) 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. The Register can be searched by the general public, the private and the public sectors. These are vital safeguards for the protection of vulnerable people and their assets.
4. In cases where a person has already 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 appoint a deputy to make decisions relating to either property and affairs or personal welfare on an ongoing basis.
5. Criticisms have, however, been made of the CoP application process in terms of 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 received by the court it can also take 21 weeks for an order to be issued. The process is also the same whether the court issues a 'one off' order or a full deputyship.

### *Problem Under Consideration*

6. In addition to the above, we have been made aware that the existing processes for obtaining legal authority under the MCA may not be suitable for all circumstances. Engagement with Voluntary Sector organisations representing the elderly and those with learning disabilities, other campaigners on these issues, and discussions with the financial sector, 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, or disproportionate to the amount of funds involved. This means that vulnerable individuals may not be able to benefit from their own funds. To address this issue, many financial institutions make risk-based assessments to release funds on an informal basis, without the recipient of the funds having the required legal

authority but this is not underpinned by legislation, circumvents the MCA and has no formal safeguards for the vulnerable individuals.

7. Investigations into the issue also revealed that access to small funds has previously been the subject of reform. In particular, in 1992 and again in 1995, the Law Commission suggested a Release of Payments scheme which would have allowed banks to release sums of money to a named individual without that person having either a Power of Attorney or an order from the CoP. The scheme proposed that institutions such as banks, building societies, and insurance companies, should be able, at their own discretion, to permit a named individual to withdraw money or receive payment from an account or under an insurance policy belonging to a person lacking mental capacity. People who responded to the Law Commission's proposals such as financial institutions and voluntary sector organisations agreed that there was a need for such a scheme.
8. In the 1997 Green paper "Who Decides" the Government accepted the Commission's proposals in principle but advised that there were 'a number of practical problems, including ensuring that there are adequate safeguards against abuse.' In 1999, Government consulted on the issue but considered that 'the extent of the problems that the scheme was intended to solve should be clarified, and that further consultation should take place on this issue, and on the appropriate safeguards for any scheme. The work was not taken forward at that point.
9. Government has decided that the time is right to revisit and consult on the idea of a small payments scheme for accessing funds on behalf of those who lack capacity. The consultation, which this Impact Assessment (IA) supports, is also an opportunity to gather more evidence on the scale of the problem and consider whether such a scheme is a proportionate response to the difficulties faced. This reconsideration is partly driven by the issues surrounding access to matured Child Trust Funds (CTFs) which has again exposed some of the barriers parents and carers may face in the existing legal framework, where limited funds are involved.
10. CTF's are long-term tax-free children's saving accounts set up by the Government in 2002. Government provided the initial deposit of £250 and a further top up of £250. They were designed to encourage children to become savers for their future adult life; and were available to all children in the UK. The accounts were withdrawn as a financial product in 2011 and were replaced by Junior ISAs.
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, we have heard that many 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. Instead CTF campaigners maintain 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. The need to obtain legal authority is also seen as onerous and disproportionate given the small balances in most CTFs, (many of which only contain the initial funds provided by the Government), and more

suitable to those who manage the more complex and substantial financial affairs of an adult who has lost mental capacity. As a result, many families would rather not apply to access matured CTFs.

13. Discussions with financial institutions and voluntary sector organisations representing the elderly and those with learning disabilities has confirmed that the issues surrounding accessing small funds may not be limited to CTFs but to a wider range of customers and to many other types of accounts with small values. Similar to CTF's, many families and carers of the elderly and learning disabled would rather not go through the process of applying to the CoP to access small balances on accounts which could otherwise be used for the benefit of the person lacking mental capacity.
14. This suggests that over twenty years on the problems previously consulted on by the Law Commission and Government remain and that a simpler process may be required. We believe that there may be a case for an alternative process to the CoP or LPA for authorising the release of small payments to suitable recipients. The proposals we are consulting on build on those put forward by the Law Commission, with additional elements to address some of the previous concerns raised in relation to safeguards. Any scheme would need to balance ease of access and efficiency, with safeguards against fraud, abuse and undue pressure, including coercion.
15. Finally, whilst we have heard anecdotal accounts of the difficulties faced in the existing process, there is no formal or quantitative evidence base to fully understand or validate the scale or extent of the problem. To remedy this, we are seeking to gain a deeper understanding and more robust evidence base through the consultation.

## **B. Policy Rationale and Objectives**

### **Rationale**

16. 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).
17. In this instance, Government intervention is needed to address both equity and efficiency challenges. 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, introducing an alternative process would introduce time-savings for individuals and could reduce overall costs to the account holders and their families and carers, as well as financial services providers due to following a more standardised process.

## **Policy Objectives**

18. The option assessed in this IA is intended to improve accessibility and ensure that the process is as speedy as possible for those most in need, whilst balancing the need for safeguards. The specific policy objectives associated with the small payments scheme are:

- To create a new simplified, accessible and clear framework to be followed by all financial services firms such as banks and building societies ('firms') which will allow third party access to limited sums of money on behalf of an individual who lacks mental capacity.
- The scheme must be simpler than applying for a 'one off' order or deputyship, be faster than obtaining a property and affairs order and maintain sufficient safeguards for those without capacity.
- To deliver improved outcomes for persons lacking capacity their families / unpaid carers.
- To ensure that applications to the Court of Protection continue to be made and the principles of the MCA 2005 are followed and upheld.

## **C. Affected Stakeholder Groups, Organisations and Sectors**

19. The options 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

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

- (i) **Option 0 – Do Nothing. Maintain the existing process for accessing funds.**
- (ii) **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**

21. Option 1 is recommended as it best meets the policy objectives described above.

### **Option 0 – Do nothing**

22. Under this option the existing system for accessing funds would remain unchanged. As a result, many people may continue to decide not to apply to the CoP to access small sums held on accounts for the reasons described above. This means that some individuals that lack mental capacity cannot benefit from their own funds.

23. Financial providers would continue to use their discretion 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<sup>1</sup> 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**

24. Under this option, a small payments scheme would be 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.

25. The main characteristics of the scheme would be as follows:

- Payments would be permitted for a six-month period from one account, up to a value of £2,500.
- Access would only be granted for one six-month period, with a single extension permitted only if the £2,500 value had not been reached.
- The scheme would be 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).

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<sup>1</sup> <https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers>

- Applicants would be 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 is expected that the scheme would take approximately four weeks to process applications.
- The same account or other accounts belonging to the individual could not be accessed again by the same or a different applicant.
- The application process will also request confirmation via a practitioner that the account holder lacks mental capacity to manage their finances, contact details for referees and will ask the applicant to declare their reason for applying and what they intend to spend the money on.
- Financial Institutions will confirm that an LPA or Deputyship order does not exist by requesting an OPG register search. Subject to the outcomes of the consultation, OPG may also maintain 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.

26. Option 1 is recommended as it will provide firms with a clear framework to follow when allowing access to limited funds, with appropriate safeguards. It will also offer an alternative route for those individuals who do not feel that a one-off order or deputyship is appropriate for their circumstances, but still directs individuals to apply for the correct legal authority as provided for within the MCA where larger sums of money, or more complicated finances and ongoing arrangements are involved. This option is a variation of a proposal for a Release of Payments Scheme made by the Law Commission in their 1995 report titled 'Mental Incapacity'.

## **E. Cost and Benefit Analysis**

27. This IA follows the procedures and criteria set out in the Impact Assessment Guidance<sup>2</sup> and is consistent with Her Majesty's Treasury Green Book<sup>3</sup>.

28. 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.

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

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938046/The\\_Green\\_Book\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf)



29. The costs and benefits of the options for each policy area 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).
30. As noted above, one objective of the consultation is to establish the costs of establishing a small payments scheme. If the evidence gathered during the consultation suggests that the direct costs to business (the EANDCB) of the scheme exceeds the +/- de minimis of £5 million per year, the department will engage with the Regulatory Policy Committee (RPC) for an opinion.

**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*

31. Under Option 1, successful applicants might need to be added to a register maintained by the OPG, subject to consultation outcomes. Assuming this is the case, the cost to the OPG of adding a person to their register, which already contains LPA users, is estimated at £17 per person (2021-22 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, building, IT, and staff costs including pension and National Insurance contributions.
32. 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 2018 and 2020. This would cost the OPG approximately £34,000 per annum.
33. It should be noted that there is a high degree of uncertainty as to how many applicants would choose to apply via the small payments scheme if Option 1 is favoured. Via the consultation process, we will aim to derive a clearer understanding of demand for a small payments scheme, which will provide more certainty in estimates of quantified costs and benefits associated with the scheme.
34. Should the number of applicants prove to be 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*

35. OPG will also incur 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 is not successful, OPG will 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*

36. The CoP currently receives £365 per person for a 'one-off' Property and Affairs Order application. An additional £485 is paid where there is a need for a hearing in contentious cases. Under Option 1, we expect 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. 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 expect the net effect on CoP finances to be negative.
37. The small payments scheme would encourage 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 still ultimately pay fees to the CoP (for a deputyship order).
38. It has not been possible to quantify the proportion of current CoP applicants who would no longer apply to the CoP should Option 1 be favoured and come into effect. As such, it has not been possible to monetise a cost to the CoP of Option 1.

### *Financial Institutions*

39. There may be 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.
40. 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 be limited to familiarisation costs with new processes, unless the small payments scheme expands to such an extent that it would require new staff to be hired and trained to oversee additional applications.
41. In the case of actual or alleged fraud or misuse of funds, financial institutions may incur additional time and staff costs associated with investigating these concerns.

### *NHS*

42. There may be a cost to the NHS or other medical providers to provide medical certification of a lack of mental capacity. This could include a medical evaluation, and the relevant staff and time costs for the evaluation.

43. It is believed that some people who would access the scheme already have this documentation. The cost of documentation is therefore only expected to be generated by those who would not otherwise use formal processes and would now use the small payments scheme.

#### *Applicants*

44. There may be costs to the applicants of applying for medical certifications or identification documents. We expect many applicants would already have these documents, particularly as both the CoP and banks already require medical certificates and identification. Therefore, the cost of documentation would only be applicable to those who would not otherwise use formal processes and would now use the small payments scheme.

#### *Police and small claims courts*

45. Should there be cases of fraud or malpractice, it is possible that these cases would be handled by the police or small claims courts, and this would create time and staff costs to investigate and resolve. However, we expect due to the small sums of money involved that these cases are likely to be handled by banks internally, and therefore it is unlikely that this policy would increase court or police workloads.

#### *Legal service providers*

46. Legal service providers who currently act in CoP cases may see a reduced workload under Option 1. However, we assume providers will 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**

47. It has not been possible to monetise the benefits associated with Option 1.

#### **Non-monetised benefits**

#### *Applicants*

48. It is 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 21 weeks, at which point applicants can then use their legal authority to access funds. Option 1 would be expected to reduce the time taken to access funds to less than 1 month.

49. Reduced waiting times would mean 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 might also reduce costs to applicants' time due to reduced form filling.

50. In addition, due to the more streamlined nature of the small payments scheme under Option 1, some applicants who may have paid or otherwise engaged legal service firms for assistance with their CoP application may no longer face financial or time costs as they would feel more comfortable handling the application by themselves.
51. Individuals who may have previously been put off from applying to the CoP due to the onerous and lengthy application process would also benefit. The reduced waiting times may be seen as a reduced barrier to apply, encouraging a greater number of carers to apply.

#### *Court of Protection*

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

#### *Voluntary sector and charity organisations*

53. Under Option 1, the more streamlined small payments scheme would result in voluntary sector and charity organisations needing to provide less complex support to applicants. This would reduce resource and time costs for these organisations that would have previously been spent assisting with more complex CoP applications.

#### *Financial Institutions*

54. Under Option 1, banks and other financial institutions who currently operate informal processes to allow withdrawals of small sums of money by carers on behalf of mentally incapacitated individuals would benefit from a more standardised process. This may reduce the risk of errors and inconsistent handling of customer requests, which could arise when staff do not have a formalised set of procedures to follow.
55. It should be noted that this standardisation would not impinge 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 continue to offer a faster means of accessing funds in an emergency, which the small payments scheme would not supersede.

## **F. Risks, Assumptions and Sensitivity Analysis**

#### *Volumes*

56. For the purposes of estimating 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 2018, 2019 and 2020<sup>4</sup>.

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<sup>4</sup> [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)

57. It should be noted that 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.
58. 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.
59. Via the consultation process, we will aim to derive a clearer understanding of demand for a small payments scheme.

#### *OPG Costs Sensitivity Analysis*

60. 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.
61. The cost of a successful application to the OPG is £17 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.
62. Given the high degree of uncertainty in applicant volumes, several scenarios have been created by multiplying the average annual volume (2,000) of successful applications to the CoP for one-off Property and Affairs Orders by 1, 2, 3, 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	£34,000	£68,000	£102,000	£136,000	£170,000
Successful applicant Volumes	2,000	4,000	6000	8000	10,000

#### *OPG fees*

63. 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. At the time of consultation, this is not a finalised decision. As such, a £17 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*

64. 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.

### *Waiting time*

65. 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 17 weeks, compared to the approximate 21-week wait required via the CoP process.

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

### *Amount of money accessed*

67. 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**

68. For the equalities impact of the proposal, please see the Equalities Statement that was published alongside this impact assessment.

### **Better regulation**

69. 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**

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

## **H. Monitoring and Evaluation**

71. We are open to monitoring and evaluating the impact of the scheme to ensure there are no significantly adverse impacts. Appropriate monitoring arrangements will be

determined based on the evidence available, including that gained through consultation.