

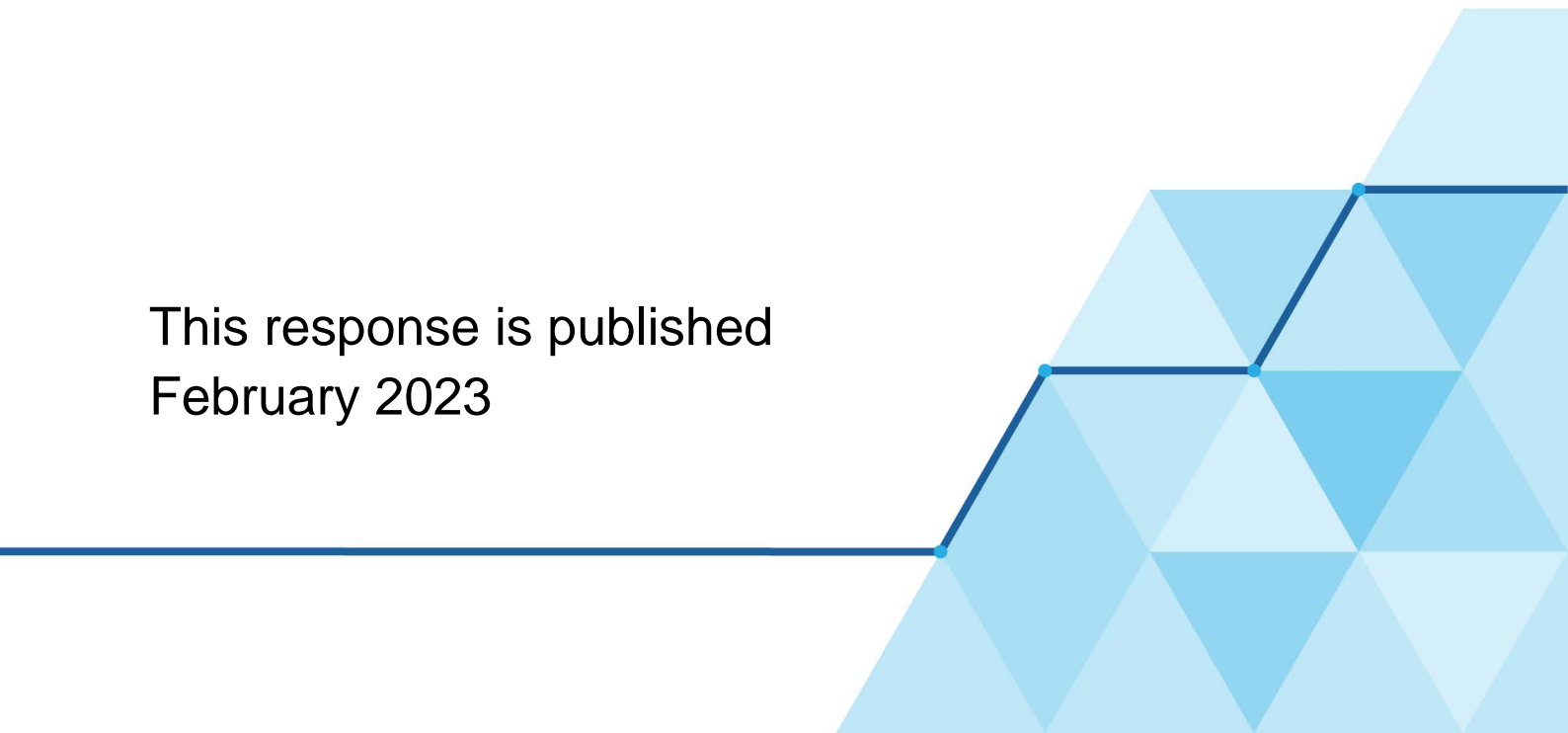


Ministry
of Justice

Mental Capacity small payments scheme

Government response

This response is published
February 2023

A decorative graphic in the bottom right corner consisting of a grid of light blue triangles of various sizes and orientations, with a dark blue line that starts horizontally from the left and then zig-zags upwards through the triangles.



Ministry
of Justice

Mental Capacity small payments scheme

**Response to consultation carried out by the
Ministry of Justice**

**This information is also available at
<https://consult.justice.gov.uk>**



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Contact details

This document is the post-consultation report for the consultation paper, 'Mental Capacity Small Payments Scheme'.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation

Further copies of this report and the consultation paper can be obtained by contacting the **Mental Capacity policy team** at the address below:

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This report is also available at:
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MCAsmallpaymentsconsultation@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Ministry of Justice at the above address.

Ministerial foreword

The Mental Capacity Act 2005 (MCA) is a significant piece of legislation that supports vulnerable people who may be unable to make decisions for themselves. Since coming into force in 2007, it has been a vital tool for individuals who lack capacity to safeguard their interests and empower them, where possible, to make their own decisions.

There is a long-held principle that an adult must have proper legal authority to access or deal with property belonging to another. In cases where the adult lacks mental capacity, the Mental Capacity Act 2005 (MCA) provides the framework for them to grant legal authority by appointing a lasting power of attorney (LPA) while they still have mental capacity, or for third parties to obtain legal authority through applications to the Court of Protection (CoP).

We have heard concerns from financial services and those representing older people and those with disabilities that the process for obtaining a CoP order where someone lacks capacity is disproportionate for accessing small funds or arranging simple payments. We also heard from parents and campaigners of

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children and young adults who lack capacity about the challenges of accessing matured Child Trust Funds (CTFs) on their behalf.

I understand that being a caregiver for an individual who lacks capacity is incredibly demanding, and so the legislation and processes put in place to support individuals and their families should be as accessible as possible. That is why we consulted to gather views on the problems in the existing processes and whether a separate process to access small sums of money would address them.

Throughout the consultation, we have engaged with organisations across the charitable, legal and finance sectors, groups representing the elderly and those with disabilities, parents, and unpaid carers. I would like to thank all these groups for the contributions, time, and consideration they have given to provide evidence for the consultation. Their input has been invaluable in shaping our response.

The consultation has provided us with clear evidence of the challenges faced in the current system. Most consistently we've heard that the Court of Protection Property and Affairs application forms are lengthy and complex, and the time taken between completing the

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application to the final order being made is too long and disproportionate for the sums involved. It has also become apparent through the consultation that in many cases families and carers, especially of those with children approaching 18, are not aware of the MCA and the need to obtain legal authority to manage the financial affairs of others.

The way to deal with the challenges to accessing small payments is to address these underlying barriers. That is why we are working with the judiciary to make improvements to the process for applying for a Court of Protection property and affairs order. This includes making forms simpler to complete and supporting ongoing digital pilots to speed up application processing. There is also a need to raise awareness of the Mental Capacity Act and we are committed to working with other government departments to ensure families and carers have the information and support they need to make future preparations for decision making, especially helping parents and carers supporting young adults that lack capacity in the transition to adulthood. It is vital that families and caregivers engage with the MCA as early as possible to ensure adequate provisions and protections are in place.

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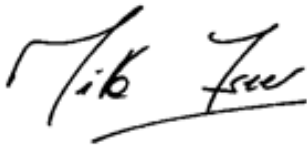
I know that some people will be frustrated that we are not introducing a separate scheme for small payments. We have listened to the concerns of parents and families seeking access to small payments on behalf of the person they care for and fully appreciate that the current process for obtaining the legal authority they need to make decisions on behalf of them is not as straightforward as it could be. We know that the vast majority of parents, relatives and carers will always act in the best interest of their loved ones, however sadly this is not always going to be the case and it is vital that the right protections are in place to safeguard the interests and assets of vulnerable people. I believe that the best way to address the concerns is to address their underlying causes, as quickly and efficiently as possible as is outlined in the Government response.

The steps outlined uphold the MCA and its principles to empower persons who lack capacity to be supported to make their own decisions where possible and for their family and carers to make decisions in their best interest where they cannot. This is essential to maintain the current system's safeguards to protect vulnerable individuals from fraud, abuse and undue pressure, including coercion. Improving the current

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Court of Protection process will also assist parents in making long-term plans to care for family members who lack capacity, helping them to make the necessary legal arrangements from the earliest possible point.

I am confident, the way forward will deliver better outcomes for parents and families trying to access funds and maintain protections for the vulnerable.

A handwritten signature in black ink, appearing to read 'Mike Freer', with a horizontal line underneath the name.

Mike Freer MP

Parliamentary Under Secretary of State

Executive summary

Mental Capacity Act 2005

1. The Mental Capacity Act 2005 (MCA) has been heralded as a piece of legislation which marked a turning point in the statutory rights of people who may lack capacity – whether for reasons of learning disability, autism spectrum disorders, dementia, brain injury or temporary impairment. The MCA applies to people aged 16 and over. It places the individual at the heart of decision-making and signalled a step change in the legal rights of those who may lack capacity.
2. The underlying philosophy of the MCA is to empower people to make their own decisions where possible. Its first principle is to presume that everyone has a level of capacity. It is important that we do not erode this principle by automatically assuming that an adult with impaired capacity does not have any capacity to make decisions for themselves, and simply delegate their decision-making powers to someone else.

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3. Wherever possible, the MCA principles encourage those who care for individuals to support them in making their own decisions if needed or help them express their wishes so others can make decisions on their behalf. The MCA provides safeguards to ensure that decisions made, or actions taken, on behalf of someone who lacks the capacity to decide or act for themselves are in their best interests. For individuals who have capacity and want to prepare for a time when they may lack it in the future, the MCA allows them to appoint an attorney under a lasting power of attorney. For many, with the right support and the right tools, this is entirely possible. Where that is not possible, an application should be made to the Court of Protection (CoP) to authorise a deputy to make decisions on the person's behalf.
4. It is a well-established legal principle that an adult must obtain proper legal authority to access or deal with the property belonging to another adult. Many people are not aware of this and assume that by virtue of being a parent, son, daughter, spouse or civil partner, they have automatic access. Where an adult has capacity, legal

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authority may be given by a general power of attorney. The general power of attorney is a legally binding document under which an individual gives legal authority to their attorney to take decisions and to act on their behalf with regard to their property and assets – as if they are making those decisions themselves. It is only valid while the individual has the mental capacity to make their own decisions and cannot be used once they lose capacity. A lasting power of attorney is similar to a general power of attorney but importantly continues once the individual has lost mental capacity. Both powers end on the death of the individual.

5. In cases where the adult lacks capacity, the MCA provides the framework to obtain legal authority through applications to the CoP. The CoP is the specialist court that deals with all issues relating to a lack of mental capacity. Once an application is made, the court 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.

Issues around small payments under the MCA

6. Financial services firms and age and disability groups have raised concerns that CoP processes for obtaining the legal authority to make decisions on behalf of individuals who lack mental capacity create barriers to accessing small, one-off payments. Much of the concern around one-off access to small-value assets focused on parents wishing to access matured Child Trust Fund (CTF) accounts belonging to young adults who lacked mental capacity. As a result, government decided to explore whether there was a case for an alternative process for authorising the release of small payments from a range of cash-based accounts to suitable recipients, and, if so, what such a process could look like. The Ministry of Justice consultation on small payments considered this proposal and ran from 16 November 2021 to 12 January 2022.
7. The Ministry of Justice has analysed the responses and the impact of our policy proposals in light of themes raised by respondents. We also

considered the potential impacts of changes suggested by some respondents.

Consultation responses

8. While respondents felt there was a need to make improvements to the current CoP application process, there was little consensus on proposals for the design of the small payments scheme, the safeguards required, and withdrawal limits. Some respondents suggested adding features into the scheme that would have led to a very similar process to the existing CoP one.

MCA principles

9. Generally, respondents recognised the importance of the protections in the MCA and supported its principles. This has been reiterated in our engagement with key stakeholders following the consultation.
10. Through the consultation responses, it became clear that the lack of access to small payments has arisen due to issues with operational requirements in the current CoP application process and a lack of awareness of the MCA, rather than objections to the principles of the

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MCA. Respondents were concerned about the length, number and complexity of CoP application forms, the perceived costs of making the application, and the time taken to receive the court order. Adding to this, the worry and misapprehension that they will have to physically attend court and the feeling of being 'judged' may lead to people deciding not to apply for the legal authority they need. There was also a lack of awareness of fee remissions and exemptions that applicants could be eligible for.

Awareness of the MCA

11. Some respondents pointed out that a lack of awareness of the MCA has made it difficult for people to understand the need to have legal authority to access funds for the people they care for. For example, carers of children or young adults who lack capacity will need to have authority to make decisions on their behalf once they turn 18. But it's become apparent that some parents and caregivers may not be adequately informed about the steps they must take to make decisions on their child's behalf when they reach adulthood. Government recognises that this may be an issue particularly for families who are used

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to making decisions on behalf of their child who, by the nature of their vulnerability, may not encounter the usual milestones of the transition to adulthood, such as starting work or leaving home for university. This has left many parents feeling shocked and frustrated that they cannot access their children's accounts once they reach 18.

12. Government considers that this lack of awareness – firstly of the need to obtain legal authority to access the funds of another adult, and secondly of the MCA more generally – is the root cause preventing people from accessing funds on behalf of another individual.

Operational barriers

13. Responses revealed that the causes of people not being able to access small-value assets are operational barriers in the current court application process. As explained, respondents commonly cited concerns about the length, number and complexity of CoP application forms, the perceived costs of making the application, and the time taken to receive the court order. Government considers that the best way to

address these is to work with the CoP to improve the process in property and affairs applications.

The way forward

14. Court forms and processes are the responsibility of the judiciary, and improving service delivery and addressing concerns about the accessibility of the forms is a priority. This is exemplified by the steps that the CoP has taken with the changes in the application process for property and affairs deputyship orders. Over the past year, the CoP has been piloting the use of a new digital process and revised their notification requirements which has significantly reduced processing times (from 24 to 8 weeks). The digital process was rolled out to professional court users in January 2023 and the general public in February 2023. Part of this change involves allowing users to complete some of their court forms electronically and digitally submit remaining paperwork. To facilitate the changes, both digital and paper versions of the court forms are being reviewed to streamline and simplify content and remove duplication wherever possible. This is an iterative process, and forms

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will be tested and continuously reviewed to make improvements based on feedback received.

15. These changes should make the forms more accessible and easier to complete, while also reducing application processing times. Government will obtain regular reports from the chief executive of HM Courts and Tribunals Service to keep the progress of these improvements under review.
16. To address the lack of awareness of the MCA, the Ministry of Justice will embark on a programme of awareness raising. We will engage with other government departments, financial service providers and charities so that the general public is aware of the need to obtain legal authority for adults lacking capacity, and in the case of 16/ 17 year olds who lack capacity, to do so in good time before they reach 18. Parents and carers of individuals who lack capacity interact with many different services and agencies, such as the Department for Work and Pensions, special educational needs and disabilities schools, banks and social workers. Engagement and joint working with these groups

will be important to ensure that parents and carers have access to the support and information they need to assist the person lacking capacity.

Conclusion

17. The Ministry of Justice believes that the CoP digital application process and raising awareness of the MCA will address the root cause of the problem (operational barriers and lack of awareness) and resolve many of the challenges raised by respondents to the consultation. As a result, the Ministry of Justice will focus on addressing the key barriers to accessing payments, and not seek to develop a small payments scheme. Taking these measures will ensure that we protect the legal principle that an adult must have proper legal authority to access or deal with property belonging to another adult, while ensuring that those who need to obtain that legal authority can do so in a straightforward and timely way.

Background

18. The consultation paper ‘Mental capacity small payments scheme’ was published on 16 November 2021.¹ It invited comments on a potential small payments scheme to allow third-party access to a limited amount of funds held in an account, without the need to obtain the forms of legal authority required under the MCA 2005.
19. Under our proposals, the small payments scheme would:
- permit payments from one account for a six-month period
 - allow payments up to a total sum of £2,500 – an amount which is sufficient to include the majority of matured CTFs and is in line with previous proposals
 - permit a single extension to the access period of a further six months, but only if the value of £2,500 has not been reached

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033639/mental-capacity-small-payments-scheme-consultation.pdf

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- prevent access to the same account or other accounts belonging to the individual by the same or a different applicant
- be run by financial services firms (such as banks, building societies and e-money institutions), allowing payments or withdrawals primarily from cash-based accounts
- grant access to someone who could prove their suitability, rather than just family members
- ask applicants to consider whether a deputyship was necessary or appropriate for longer-term management of accounts, and encourage them to apply to the CoP as part of the process

20. The consultation closed on 12 January 2022. This report summarises the responses, including how the consultation process influenced the final decisions regarding the proposal and next steps.

21. The impact assessment was not commented on by those responding to the consultation. Therefore, the consultation stage impact assessment has not been revised. A Welsh

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language response paper is being produced separately.

22. A list of respondents is at Annex A.

Overview of responses

23. A total of 225 responses to the consultation paper were received. On reviewing these responses, 2 were identified as either a duplicate or blank response and were therefore not included in the analysis. This means the total number of responses analysed was 223. 190 of these responses were submitted through the consultation hub, 32 were received by email, and one was submitted by post.
24. We asked respondents to state their organisation so that we could understand the capacity in which they were responding to the consultation. A breakdown of the respondents grouped by their organisation is provided in table 1.
25. Many of the respondents also specified the reason for their interest in the consultation. For example, they said they were a member of the public and then provided information on a personal interest such as being a carer or a parent of a disabled young person.
26. Four meetings and a ministerial roundtable were also held during the consultation period.

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Attendees representing financial firms, the legal sector and charities were invited to find out more information about the proposed scheme and ask questions to Ministry of Justice policy officials.

There were 57 attendees at these events.

Questions asked by attendees related to the scope, simplicity and security of the scheme.

27. We have reflected the full range of opinions provided by respondents in our analysis. The content of the responses received is described in more depth in the detailed analysis of each question.
28. Parents and carers were by far the largest respondent group in the 'members of the public' category, followed by solicitors and financial services firms. This is not unexpected given that the focus of the consultation was on access to funds and the concerns of parents seeking access to recently matured CTFs.
29. We extend our thanks to all respondents for their time and effort in participating in the consultation.

Types of respondent:*

Table 1

Respondent	Number of responses
Parent/family member/carer	72
Did not specify	65
Legal	21
Financial sector	21
Charity or third sector	10
Private individual	9
Local authority/council	9
NHS trust	6
Other healthcare/adult social care and social work	5
Other organisations	3
Parliamentarian	2

* Based on information provided in the ‘about you’ section of the questionnaire, namely organisation.

Introduction

Mental capacity and financial affairs

30. If a person 'lacks mental capacity', they are unable to make a particular decision or take a particular action for themselves at that time due to an impairment of the mind or brain. Capacity is both time-specific and decision-specific. This means that people may have capacity to make some decisions for themselves at some times, but lack the capacity to make others at other times.
31. The MCA is the legal framework to empower, support and protect vulnerable people who may not be able to make decisions for themselves because of disability, injury or illness, or make preparations for when they may not be able to in the future. The Act applies to everyone aged 16 and over living in England and Wales who may lack capacity to make particular decisions for themselves. The Act also upholds the essential principle in property law that an adult must have the proper legal authority to deal with the property and finances of another adult. These are

vital safeguards for protecting vulnerable people and their assets.

32. Legal authority can be granted either through a lasting power of attorney or by making an application to the CoP. This is the specialist court that deals with all issues relating to a lack of mental capacity in England and Wales. An application to the CoP for a property and affairs order requires completing and submitting an application form, a supporting information form, an assessment of capacity form by a practitioner, and a deputy's declaration. The court application fee at the time of writing is £371, but it is possible to apply to have fees reduced or waived depending on financial circumstances. While the process can be completed without the assistance of a solicitor, some applicants choose to use one, adding to the cost of the process.

Stakeholder engagement before consultation

33. Representations to the government from parents seeking to access matured CTF accounts on behalf of young adults brought the issue of

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accessing small-value assets for people that lack mental capacity to the fore. CTFs are long-term, tax-free children's saving accounts set up by the government in 2002 and were available until 2011. They were designed to ensure that children arrived at adulthood with a savings account, were encouraged to save and understood why it was important to save. The first CTFs 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 lacked the mental capacity to manage the accounts were advised by CTF financial providers that they needed to obtain legal authority from the CoP to access the CTF. For the reasons described above, some parents and carers saw this requirement as an unfair, time-consuming and costly process to be able to access their children's assets on their behalf.

34. CTF campaigners argued 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.

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35. Wider stakeholder engagement with financial service providers and disability groups confirmed that this problem was experienced elsewhere. As a result, government became aware that the existing processes are not widely understood and are viewed as too lengthy for families and carers trying to access small funds on behalf of someone who lacks mental capacity. We sought to build a robust evidence base via a consultation to understand the extent and nature of the difficulties and the barriers individuals may face navigating the required processes.

Consultation

36. Government considered whether an alternative process to the CoP for authorising access to small payments might be appropriate in some circumstances. This was due to the potential number of people whose families, friends and carers may not be applying to the CoP because they consider the process too complex or disproportionate to the amount of funds involved, or were unaware of the need to apply in the first place.

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37. The aim of the consultation was to gather specific feedback on elements of the proposed process and broader views on areas such as current barriers in the system, to support the further development of a small payments scheme, if appropriate, for people lacking capacity.
38. Our proposals for the scheme were based on three themes:
- **scope** – any scheme must be broad enough in scope to be useful to applicants while avoiding inadvertent discrimination, or replacing the CoP process
 - **security** – the scheme must be secure enough that it does not create undue risk to the assets of those without mental capacity or create a risk to the security of all accounts
 - **simplicity** – a proposed scheme must be simpler, faster and more straightforward than what exists, while not being too costly or difficult for financial services firms to implement, ensuring consistency across the industry

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39. We applied the following principles to assess the suitability of any new process:
- Does it uphold the principles of the MCA to put the vulnerable person's rights first?
 - Will it contribute to achieving simpler access to funds?
 - Does it mitigate potential risk to people's assets and to financial services firms?
 - Does it reflect the principle that the scheme is to act as a simpler alternative to a one-off property and affairs order rather than a replacement for a deputyship?
 - Is it capable of being applied without disproportionate impact on any one group? For example, does it avoid negative equalities implications?
 - Is it deliverable?
40. The consultation also examined what barriers individuals faced when obtaining a property and affairs deputyship order from the CoP to better understand and address these obstacles.

Responses to specific questions

Overview

41. In considering elements of the scheme, we examined what was already available to allow access to funds. This included the processes for obtaining a lasting power of attorney, or requirements for an application to the CoP for a deputyship or 'one-off' order.
42. We also reviewed proposals made by the Law Commission in 1992 and 1995.² These proposals were for a scheme enabling firms such as banks, building societies and insurance companies, 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. The scheme would require the paying institution to enter into

² Law Commission reports: 'Mentally incapacitated adults and decision making' (1992) and 'Mental incapacity' (1995)

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an agreement with the proposed recipient of the funds.

43. We engaged with the financial sector to understand the existing processes to release funds to individuals, and with organisations representing people with disabilities to understand the needs of these individuals.

Question 1: In your view, is a small payments scheme needed?³

Yes	No	Don't know	Total responses
188 (87%)	17 (8%)	12 (6%)	217

44. The majority of respondents (87% of 217) thought that a small payments scheme was needed. Despite this, responses to other questions in the consultation made it clear that there was a lack of consensus on what the exact nature of the scheme should be – in particular the safeguards required and whether these would

³ Response percentages sum to more than 100% due to rounding.

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make any scheme proposed simpler than existing processes. Therefore, while the majority agreed that a scheme for small payments was needed, they were not necessarily supportive of the scheme outlined in the consultation, with many respondents providing their own suggestions of elements to add or remove (which will be addressed in later questions). Additionally, many respondents supported the protections given by the CoP process but were frustrated by what they perceived as barriers in the system, rather than objecting to the principle of needing to seek legal authority.

45. 161 respondents provided a reason for their answer. At least a quarter of the respondents mentioned access to CTF accounts (at least 43 out of 161 responses). They felt that there needed to be an easier way to access money held in these accounts and were concerned that their child would not benefit from these funds without going through a lengthy process. Some others felt that parents who have provided care for their children should not need legal authority to access these funds once their child reaches adulthood. This was particularly the case where

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they were appointees and managed benefits on behalf of their child.

46. It is worth remembering that the money in a CTF can only be accessed once the child turns 18 and is legally an adult. At this point, parental responsibility ends and the young adult is afforded the same property rights as all other adults. Under the MCA, parents or any other person seeking to make decisions on the young person's behalf would need to apply for legal authority to access funds if the account holder lacked mental capacity to make specific decisions about their account.
47. The other most common reasons provided in support of a small payments scheme were in relation to the CoP. Many thought the CoP deputyship application process was time-consuming, costly and stressful, and considered the process disproportionate for small-value assets.
48. It is worth pointing out that anyone who needs legal authority for small assets is likely to need it to make other decisions affecting a person lacking capacity. These include paying bills,

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employing support workers or signing tenancy agreements for supported living, which would require an application for a deputyship order.

49. Other respondents thought that a simpler route to access small payments would reduce the stress and financial burdens on families and could cover urgent immediate needs. Some others suggested that such a scheme should be used to provide interim financial support while obtaining longer-term legal authority. Overall, many thought a small payments scheme would provide an inexpensive, consistent process to access small savings amounts.
50. It is helpful to address some of these concerns here. The CoP offers an urgent application service where there is an immediate need for a decision. In such cases, decisions can be made within 24 hours and out of hours where necessary. Regarding the cost of the CoP process, there are many situations where applicants may be eligible for a fee exemption or remission. Such a remission may apply in the case of CTFs, where the application is made while the account holder is still a child (and in

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some circumstances when they are 18) and the CTF is the only asset being accessed.

51. In other responses, those against any proposal for a small payments scheme raised its risk of abuse. They said that the existing routes for access to funds were more appropriate due to the safeguards provided by the MCA, including supervision of deputies by the Office of the Public Guardian and the requirement for the deputy to provide an annual report. In addition to providing an account of financial transactions undertaken, deputies are asked to detail the current values of assets, the level of contact they have with the person lacking capacity and funds spent on them, how any care is funded, and whether the person is receiving all benefits to which they are entitled. The Office of the Public Guardian has identified that if a deputy does not meet these requirements, it can be an early indicator of the person lacking capacity being at risk of abuse, or a red flag that they are not receiving adequate support.
52. A few respondents suggested that we should improve the CoP process rather than create a

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separate process that may replicate existing barriers in the current system.

Question 2: What effect do you think the proposed scheme would have for those without mental capacity?⁴

Positive	Mostly positive	Neutral	Mostly negative	Negative	Don't know	Total responses
114 (55%)	66 (32%)	18 (9%)	2 (1%)	6 (3%)	3 (1%)	209

53. The majority of respondents (87%) said the scheme would have a 'positive' or 'mostly positive' effect on those without mental capacity.
54. Most commonly, respondents thought that quicker and easier access to funds would improve the individual's quality of life and wellbeing. Others noted that as the money belongs to the individual, they should be able to benefit from their own funds with ease.

⁴ Response percentages sum to more than 100% due to rounding.

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55. Despite agreement that the scheme would have a positive impact, some respondents recognised the risk of fraud and abuse and felt that safeguards were crucial to realise the full benefits of the scheme. This included ensuring that there was a limit on the total value that could be released through the scheme.
56. Some others thought that the proposed scheme was not simple enough, or still had too many restrictions and would offer limited value to individuals.

Question 3: In your view, what effect would the proposed scheme have for the carers of those without mental capacity?

Positive	Mostly positive	Neutral	Mostly negative	Negative	Don't know	Total responses
142 (68%)	43 (21%)	7 (3%)	5 (2%)	8 (4%)	4 (2%)	209

57. The majority of respondents (89% of 209 responses) thought that the scheme would have a 'positive' or 'mostly positive' effect on the carers of those without mental capacity.

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58. Over 50% of the respondents who provided a reason for their answer (78 out of 146 responses) suggested that a small payments scheme would reduce the burden on parents and carers. Some of them highlighted the challenges and obstacles parents and carers face when caring for people who lack mental capacity, and thought a simpler scheme would help free up time and resources.
59. Other common positive reasons centred on enabling easier, faster and cheaper access to money so that it could be used in the best interests of the individual lacking capacity. Examples ranged from taking charge of day-to-day expenses, paying for home adaptations and buying personal items.
60. A few responses suggested that carers could also ensure the money is spent responsibly. On this point, it is worth remembering that one of the principles of the MCA upholds the right for individuals with capacity to make unwise decisions. An unwise spending decision is not an indicator of a lack of capacity and individuals should be supported wherever possible to make

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their own decisions, even if the parent or carer disagrees with how the money is spent.

61. The safeguarding concerns raised in question 2 were echoed in some responses to this question, with some suggesting that as the money did not belong to the parent or carer, there was a potential risk of abuse.

Question 4: What categories do you think the scheme would most likely be used to pay for?

62. Respondents to this question could select multiple categories and were also able to provide a free text response to support their answer.

Category	Number of responses
Clothing and footwear	110
Housing, maintenance and furnishings	106
Recreation and entertainment	105
Health	85
Travel	80
Food and drink	69
Consumer electronics	59
Other	43
Don't know	20

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Category	Number of responses
I wouldn't use the scheme	7

63. The most common categories selected by respondents were 'clothing and footwear' (110 respondents), 'housing, maintenance and furnishings' (106 respondents) and 'recreation and entertainment' (105 respondents).
64. Those who expanded on their responses or selected 'other' suggested that the money could be used to pay for adaptations to the car or home, mobility aids and other specialist equipment. Others suggested the money could be used for educational purposes such as paying for tutors.
65. Many of those who provided a reason for their response stated that there should be no restriction on what the money can be spent on, and that parents and carers should be permitted to buy anything that is in the account holder's best interests. In contrast, a few respondents suggested that there should be restrictions in

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place and, for instance, that money should not be spent on electronics or travel.

People covered by the scheme

Question 5: Should the scheme apply to individuals who have fluctuating or temporary loss of capacity?

Yes	No	Don't know	Total responses
114 (54%)	47 (22%)	50 (24%)	211

66. 54% of 211 responses thought that the scheme should apply to individuals who have fluctuating or temporary loss of capacity (the situation where a person sometimes has the capacity to make their own decisions and sometimes does not). Most respondents did not provide a reason for this response, but those who did highlighted that expenses often continue in the event of temporary loss of capacity, so this scheme would be of benefit.
67. 46% were against this proposal or were unsure. Some thought that the CoP was best placed to

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manage applications involving individuals with temporary or fluctuating capacity. Some financial institutions were particularly concerned about making judgements in these circumstances when the CoP already has the necessary expertise to do this. Others were concerned about potential disputes on how the money was spent if the individual regained capacity.

Question 6: If yes, should there be a minimum period of time for which capacity must be lost? If no, why?

Yes	No	Don't know	Total responses
27 (47%)	27 (47%)	4 (7%)	58

68. Responses to this question were divided, with equal numbers responding yes and no (27 out of 58 responses for each).
69. Those against putting in place a minimum time period once again emphasised that temporary loss of capacity can have an ongoing impact on finances. They therefore thought the scheme could assist in all situations where the person

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lacked capacity, even where this is temporary. Some thought that the small payments scheme should also cover emergency situations, where immediate release of money was required (within 24 hours).

70. Some respondents selected 'no' but then explained that individual circumstances varied so it was difficult to quantify what the most appropriate 'minimum period' would be. Therefore, they would support some restrictions. Others suggested the medical evidence provided should be used to determine a minimum period on a case-by-case basis.
71. Those in favour of including a minimum period echoed some of the points made above, saying that while they supported putting in place a minimum period, it should be decided on a case-by-case basis. Others were concerned about the risk of abuse and thought imposing a minimum period would reduce this risk where an individual may be experiencing periods of temporary loss of capacity.
72. Suggestions of time frames for a minimum period ranged from weeks to up to a year. The most

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common suggestions were three months, six months and 12 months.

Value of payments

Question 7: In your view, is £2,500 an appropriate limit to the funds accessible through a small payments scheme?

73. Respondents to this question could select 'yes', 'no' and 'don't know'. Wherever possible, if a free text response was provided to explain a 'no' answer, we have used it to quantify support for a higher or lower limit. Where an answer of 'no' was provided without a free text response or no clear indication of preference, we have marked it as 'no – did not specify'.

Yes	No – should be lower	No – should be higher	No – did not specify	Don't know	Total responses
68 (31%)	15 (7%)	105 (48%)	5 (2%)	26 (12%)	219

74. Responses were mixed. Just under half of the respondents to this question (48% of 219)

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thought that the total withdrawal limit should be higher. 38% thought the limit should remain £2,500 or be lower.

75. 132 respondents provided a reason for their answer. Of these, 37% (49 of 132) said that the limit should be raised to £5,000. This was considered a more appropriate amount to cover the majority of needs, with some citing inflation and increased cost of living in their answers. Many pointed out that care costs, bills and expenses associated with specialist equipment and adaptations would often exceed £2,500. Therefore, they thought the full benefit of the scheme would not be realised unless the total withdrawal limit was raised.
76. Some stated that an increased limit was also necessary to provide adequate interim financial support while the CoP considered an application. £2,500 was not considered enough for a period of 6 to 12 months, particularly for those who also had to pay CoP application fees. Others commented that banks released more than £2,500 through their informal processes, and that

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a limit of £2,500 would disincentivise use of this scheme.

77. Some respondents were specifically concerned about access to CTFs and suggested that no limit should be imposed on these accounts, recognising that many parents would have paid in large sums of money over the years. Respondents did not think it was fair to penalise those families who had invested money by prohibiting their access to the small payments scheme. Some financial institutions pointed out that current CTF legislation prohibits part-payment from a CTF, and were concerned that many CTF accounts may therefore be excluded from the scheme. Some suggested having a higher withdrawal limit specifically for these accounts.
78. Many respondents did not consider £2,500 a 'small sum of money' (the average amount held in a UK savings account is £12,500, but 25% of

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households have less than £2,100 saved).⁵ They argued that the limit should stay the same or be lowered, with suggestions ranging from £500 to £1,500. Those in favour of keeping the limit at £2,500 thought this amount was most compatible with the safeguards in place and would allow for meaningful purchases. They noted that the release of higher sums would increase the risk of abuse and would require the scheme to increase levels of protections. Others thought £2,500 was a suitable amount as it would cover the funds in the vast majority of CTFs. Respondents in favour of a lower limit were concerned about the risk of abuse and did not think £2,500 was a small enough sum of money.

79. Others suggested that the limit should be adjusted based on individual financial circumstances and levels of expenditure. They suggested that banks could set a limit depending on the total value of assets held by the individual,

⁵ <https://www.nimblefins.co.uk/savings-accounts/average-household-savings-uk#:~:text=The%20median%20household%20gross%20savings,unpaid%20balances%20on%20credit%20cards>

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and that individuals with higher net-worth should be able to access larger sums of money through the scheme.

Duration of payments

Question 8: Is six months a suitable time limit for access to the small payments scheme?⁶

Yes	No	Don't know	Total responses
77 (37%)	90 (43%)	40 (19%)	207

80. Responses to this question were mixed, with 43% of respondents (90 out of 207) against a six-month time limit. Many suggested that the time limit should be increased to 12 months to allow families sufficient time to manage their affairs and obtain legal authority in the interim period. Some raised that families juggling caring responsibilities are often faced with many difficult decisions and

⁶ Response percentages may not sum to 100% due to rounding.

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increasing the time limit would reduce pressure on them.

81. Many suggested that a time limit was unnecessary and could lead to money being spent unwisely, as individuals would seek to withdraw large sums quickly before access was lost. Others noted that sometimes withdrawals may need to be staggered across a longer time period – for example, if paying for a holiday in instalments. Therefore, a six-month limit was considered impractical.
82. With regards to CTF accounts, some commented that a time limit was unnecessary as a CTF account would be closed once the full amount had been withdrawn. Others argued that as loss of capacity was long term and the expenses would continue after six months, access should be ongoing with potential review points if needed.
83. In contrast, some suggested that the limit should be between three and six months. They suggested that a smaller time frame would reduce the risk of financial abuse. However, this may be a misunderstanding of how the scheme

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would operate, since a shorter time frame would not reduce the withdrawal limit.

Question 9: Do you think the scheme should allow for a single renewal (with no extension to the original £2,500 limit)?

Yes	No	Don't know	Total responses
76 (37%)	55 (27%)	73 (36%)	204

84. Responses to this question were mixed, with 37% of respondents (76 of 204 responses) in favour of an extension, and 36% (73 of 204 responses) unsure.
85. Many of those who were unsure thought that the scheme should be flexible and were not in favour of limiting access to just one renewal. Those in favour of a single renewal thought that extensions would provide continued access while a CoP application was being processed, given some applications can take longer than six months if there are complications or missing information. Those in favour of a single extension noted that individual circumstances may make an

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extension appropriate. For example, parents and carers juggling caring responsibilities at the same time as managing administrative tasks may require access for longer periods.

86. Respondents who said ‘no’ were also mixed in their reasoning. Some suggested that an extension should not be permitted as it would make the scheme too complex to administer. Some of those against a ‘single’ extension supported ongoing access and did not think an extension was required in that case.

Products in scope

Question 10: Do you agree with the proposed list of financial products in scope of a small payments scheme?

Yes	No	Don't know	Total responses
115 (57%)	27 (13%)	60 (30%)	202

87. 57% of 202 responses agreed with the proposed list of financial products in scope for the small payments scheme. Most respondents did not

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provide a reason for their responses, but those who did noted that the list was broad enough and captured the most common small-value assets.

88. Others agreed with the products listed but suggested that the list should be reviewed periodically and could also be monitored by a government body or the CoP.
89. The majority of respondents who disagreed with the proposed list thought that the list was restrictive and unfair. They argued, making particular reference to CTFs, that individuals with capacity were not restricted in the accounts they could access. Some also considered it discriminatory to limit the products that could be accessed via the scheme.
90. Some concerns were raised by financial services firms on the feasibility of including or excluding some of the products listed. There were concerns about whether regulations governing these products or other operational issues may complicate access to the scheme.
91. A small number of respondents who disagreed with the products listed suggested that the list

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was too broad and should be limited to everyday products instead.

92. The majority of people who were unsure required further information on how the list would be managed. In particular, they wanted more information on the logistics of accessing specific products such as investment accounts and accounts with penalties. Others required more information on how banks would restrict access to certain products out of scope.

Question 11: If any, which products do you think should be added or removed from this list?

93. 38 respondents provided a free text response to this question. The most common responses related to third-party fees and saving accounts.
94. On third-party fees, care costs were raised the most, with respondents noting that the scheme could be used to top up or temporarily cover care fees. A few were interested in including third-party fees to cover bills and expenses.
95. Regarding savings accounts, respondents suggested adding tax free accounts such as CTFs and Junior ISAs.

Question 12. Should financial services firms be responsible for administering a small payments scheme?

Yes	No	Don't know	Total responses
92 (44%)	64 (31%)	51 (25%)	207

96. This question received a mixed response, with 44% of respondents in favour of financial services firms administering the small payments scheme. Many of the free text responses focused on banks' capabilities to administer the scheme.
97. Those in favour of financial services firms administering the scheme suggested two main benefits: banks have the ability to secure funds against fraud, and banks understand their customer needs best.
98. Respondents explained that financial services firms will be able to ensure funds are secured against fraud through using controls they already have in place, such as the Financial Conduct Authority guidelines. Other respondents noted that financial services firms can provide further

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security as they would have overall oversight of the scheme, enabling them to vet applicants and oversee fund withdrawals.

99. On understanding customer needs, some respondents suggested that banks were best placed to administer the scheme as they know their customers' circumstances best and hold an overall picture of the account holder's finances, enabling them to make informed decisions on a case-by-case basis. Some respondents also highlighted that many banks are already using risk-based assessments and exceptions processes to release money from accounts such as matured CTFs.
100. Some respondents suggested that if the scheme was administered by financial services firms, some form of government or local authority oversight would be required to ensure that the scheme was consistent and in line with the MCA.
101. Contrary to this, respondents who were not in favour of banks administering the scheme (31% of 207 responses) were concerned about financial services firms understanding of the MCA. Respondents highlighted that financial

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services firms may not have the appropriate resources or training to assess mental capacity or make judgements about applications, and suggested this responsibility should remain with the CoP. They raised problems currently experienced with the use of lasting powers of attorney and deputyship orders in banks and were concerned that similar issues would arise if these firms were to administer the scheme. Some respondents suggested that to mitigate against this risk, frontline staff should undergo training and be offered comprehensive guidance to upskill them on the MCA.

102. In addition, other respondents raised concerns over the costs that firms would incur administering the scheme and suggested that these would be passed on to the applicant. Respondents were strongly against any fees being charged for the scheme and were particularly against banks generating any profit from it.

103. A few respondents, including those in favour of banks administering the scheme, suggested that some form of government or local authority

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oversight would be required in any case.

Respondents explained that this would ensure consistent application of the scheme and the principles of the MCA across firms.

104. A quarter of respondents were unsure about who should run the scheme (25% of 207 responses), with some suggesting that more information was needed on the administrative requirements of the scheme before a judgement could be made.
105. They suggested what clear guidance would be needed and how it would work in practice. They explained that this would be key to ensuring consistency across institutions and addressing the risk that an institution would adapt the process to fit their organisation. Some respondents also said that further guidance would be needed from the Financial Conduct Authority, particularly on handling complaints and appeals.

Applicants

Question 13: Which approach do you consider most appropriate for determining applicant suitability: approach A or approach B?

106. Approach A: Existing authorisation to manage money, such as a Department for Work and Pensions appointee or nominated contact for CTF

107. Approach B: Wider suitability checks

Approach A	Approach B	Both	Neither	Don't know	Total responses
62 (48%)	23 (18%)	7 (5%)	3 (2%)	35 (27%)	130

108. Just under half of respondents (48% of 130 responses) thought that the scheme should adopt approach A, so that money was only released to individuals with existing authorisation to manage money, such as Department for Work and Pensions appointees. Respondents thought this would provide the most suitable safeguard and reduce risk of financial abuse, as applicants would already have responsibility for managing

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other sums of money for the account holder. Respondents noted that appointees commonly receive substantive sums of money on behalf of individuals who lack capacity and are trusted to manage these sums. Therefore, they thought this authority should be extended to small payments. Approach B was considered to be higher risk and would therefore require increased safeguards, making this option more complex.

109. Approach A was also considered more straightforward than approach B as it would require fewer administrative checks by banks, enabling faster release of money. Overall approach B was considered to be burdensome for banks. Some financial firms expressed significant concerns about conducting the suitability checks that would be required as part of approach B. They did not think they had the necessary expertise to make this judgement and preferred to rely on some form of existing authorisation.
110. In contrast, 18% of respondents favoured approach B due to its flexible nature. They were concerned that restricting applications to those

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acting as Department for Work and Pensions appointees or CTF-registered contacts could exclude individuals with legitimate needs and make the scheme inaccessible to many people. They considered approach B more suitable to cover a wider range of circumstances, including when capacity had been lost unexpectedly, or emergency cases. Some respondents noted that banks would have existing relationships with account holders and applicants, so may require less information than anticipated.

111. A few respondents suggested that while approach A should be used for the majority, approach B could be used where there was an urgent need or in other exceptional circumstances.

Question 14: How do you think applicants should demonstrate their suitability when applying to the scheme?

112. Respondents were asked to submit free text responses to this question. The most common answers provided were as follows.

Nature of relationship

113. Many respondents suggested that applicants should submit proof of their relationship to the account holder. They suggested that parents, legal guardians and long-term carers should be considered favourably and be subject to no or minimal checks.

Proof of existing authority to manage benefits or accounts belonging to individuals lacking mental capacity

114. This is in line with answers provided for question 13. The most common examples cited were Department for Work and Pensions appointees managing Personal Independence Payment benefits and CTF-registered contacts. Some respondents suggested that in addition, evidence could be requested to prove that funds have been managed responsibly to date.

115. A few respondents also suggested that individuals receiving carer's allowance should be deemed suitable. However, it should be noted that receiving carer's allowance does not give individuals authority to manage money on someone else's behalf, nor is it proof that a

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person is caring for someone who may lack mental capacity.

Proof of incapacity

116. Many respondents suggested that applicants should provide proof that the account holder lacks mental capacity. They thought a range of evidence should be accepted, ranging from practitioner certification, education and healthcare plan paperwork and relevant medical records.

Background checks

117. Several respondents supported conducting background checks to verify the suitability of applicants. This ranged from basic credit and identity checks to more intensive criminal record checks. Views on background checks are discussed further in question 17.

Character reference from a professional

118. Some suggested that the applicant should provide banks with a character reference from a professional such as an employer, GP or teacher. This was to provide assurance of good character.

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Views submitted on referees are discussed further in questions 19 to 22.

Reasons for applying

119. Some suggested that applicants should confirm their reason for applying to the scheme, to verify that they were acting in the best interests of the account holder. This is discussed further in question 15.

Security

120. While acknowledging that the vast majority of parents, guardians and others would act in the best interests of the person lacking capacity, we know that this would not always be the case. Due to the vulnerable nature of account holders, we were concerned to ensure that any scheme had sufficient safeguards to protect against fraud and misappropriation of funds, and therefore concluded that any scheme should include some safeguards. Suggestions included a referee, possible checks on the applicant's financial history and a declaration by the applicant on how the funds would be spent.

Question 15: Do you think applicants should have to state their reasons for using this process as opposed to applying for a one-off or deputyship order from the CoP?⁷

Yes	No	Don't know	Total responses
125 (63%)	54 (27%)	18 (9%)	197

121. The majority of respondents (63% of 197 responses) thought applicants should have to state their reasons for using the small payments scheme instead of applying for a CoP order.

122. Respondents thought recording their reasons was an important safeguard that provided a clear audit trail, increased accountability and could flag the risk of financial abuse. Most commonly, respondents said this provided the opportunity to ensure the applicant intended to act in the account holder's best interests.

⁷ Response percentages sum to less than 100% due to rounding.

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123. Others in favour thought that it was important to encourage applicants to consider other options for accessing funds and advise them of alternative routes of obtaining longer-term legal authority. In particular, some stated that individuals should be asked to justify why they did not intend to manage finances long-term, if that was the case.
124. Those opposed to this option did not think it was appropriate or fair to ask family and carers to justify their use of the scheme. Others suggested that this step added complexity, bureaucracy and stress to the application process. They also thought it provided a limited, trust-based safeguard as banks would not be able to verify intent with the account holder. Some pointed out that a deputyship wasn't suitable for all people and suggested that the most common reasons provided for using the scheme would be related to the disproportionate nature of the CoP process where limited funds were involved.

Question 16: Should applicants have to declare in their application what the funds will be spent on?

Yes	No	Don't know	Total responses
109 (56%)	71 (36%)	16 (8%)	196

125. 56% of 196 responses suggested that applicants should be asked to declare what the funds accessed would be spent on. Most commonly, respondents thought this would help to safeguard vulnerable adults from financial abuse and would confirm that the money was intended for use in the account holder's best interests.

126. While many supported increased transparency, some suggested that declarations of intended use of the funds should be high-level and not prescriptive. This would allow individuals to use money with flexibility, as needs may change over time, or some individuals may not accurately be able to predict what they would spend the money on.

127. Some respondents were concerned about banks making judgements on what money would be

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spent on and were concerned they might be restricted with what they could purchase if the bank did not agree. They thought this would be discriminatory as other adults can spend their money without judgement.

128. Other arguments against this proposal were that there was little value in making this declaration, unless banks were able to verify what the money was spent on. Without any follow-up or means of checking receipts, this declaration was considered pointless. Others argued that it would increase the administrative burden on parents and pointed out that this was not a requirement in appointeeship applications. This is discussed further in question 28.

Question 17: Should financial services firms be requesting information on the applicant's financial history (such as bankruptcy, insolvency, debt)?

Yes	No	Don't know	Total responses
83 (42%)	79 (40%)	35 (18%)	197

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129. Views on this question were mixed and there was no clear consensus, with 42% in favour and 40% against the suggestion.
130. Those in favour thought this would be a good safeguard that increased assurance and trust that money was being released to an appropriate person. They thought that these checks could flag up the potential for abuse and suggested that evidence of inability to manage one's own money should be a factor in the decision-making process. For example, a few responses raised concerns that money released via the scheme might be used to clear personal debt of the applicant.
131. In contrast, some respondents were opposed to banks requesting financial history because they did not think it was relevant to the process. They did not think that a poor credit history or a record of bankruptcy were indicators that the money released would be mismanaged. A few also said that those caring for individuals may have a poor credit history as they were unable to work full-time, but said that this would not affect the level of care they provided.

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132. Others suggested that these additional checks should not be necessary if the applicant was an appointee and already managed benefits, or if approach A was taken with regards to suitability checks (see question 13). Instead, they suggested that a discretionary approach could be taken, where information was only requested from applicants where there was a concern about suitability.
133. Other arguments against this included concerns that it would be intrusive and disproportionate to the small sums involved. Some respondents were concerned that it would add cost, administrative burden and delays to the overall process.

Question 18: Are there any instances in which you think money should not be released to individuals?

Yes	No	Don't know	Total responses
112 (58%)	32 (17%)	49 (25%)	193

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134. 58% of 193 responses thought there were instances where money should not be released to individuals. The most common reasons cited were as follows:

- failed background checks or convictions, or suspicions of financial abuse or fraud
- history of bankruptcy and debt
- concern or proof that the money was not being used in the best interests of the account holder
- safeguarding concerns – for example, a history of abuse or the applicant being a known perpetrator in safeguarding enquiries
- the financial service institution having received concerns or objections directly from family, friends, local authorities or other agencies
- insufficient proof of incapacity provided
- scrutiny should be increased if the applicant was not a close relation to the account holder, or if proof of relationship could not be provided

135. 74% of those who provided a reason for their response (82 out of 111 respondents) provided a

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response which covered the first, second and fourth points above. It is worth noting here that to prevent money being released to individuals covered in these points, background checks such as criminal records, bankruptcy or other safeguarding enquiries would be needed.

136. Similar to question 16, there were mixed views about requesting financial history information from applicants, including concerns about proportionality given the small sums involved and the administration and delays of such checks.
137. The responses to questions 17 and 18 exposed the tension between the protections respondents thought the scheme should have (question 18) and the information they felt should be collected to deliver the required safeguards (question 17). Carrying out further background and criminal checks is likely to be perceived as even more invasive and will inevitably increase the administrative burden on the applicant and banks. This will increase the time taken for processing applications and may not be considered proportionate given the small sums involved. There was no majority consensus on

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this, which suggests that trade-offs would be required to deliver a scheme that meets the aims of being simpler than current processes, while ensuring that money is not released to individuals where there is a genuine concern.

Question 19: Do you think that applicants should have to provide contact details of a referee known to the account holder when applying to a small payments scheme?⁸

Yes	No	Don't know	Total responses
107 (55%)	52 (27%)	37 (19%)	196

138. 55% of 196 responses thought that applicants should have to provide details of a referee when making an application.

139. Many of the respondents considered this to be a safeguard as the referees could vouch for the applicant's character and trustworthiness. While this was a strong view across the responses

⁸ Response percentages sum to more than 100% due to rounding.

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submitted, some did comment that the safeguard referees provide is not always robust. For example, some thought it might be possible for an applicant to fake, or collude with, a referee. Others suggested that a referee would not always take their role seriously. However, some said that this risk could be mitigated by restricting referees to professionals (such as teachers, doctors or local authorities) as opposed to friends and families.

140. Some respondents were supportive of a referee, but not if the applicant was a parent or someone already receiving benefits. In this case some respondents suggested fewer checks should be required, in line with responses discussed previously (see question 17).
141. Those against including referees in the process thought they would be a barrier, as some applicants might find it difficult to identify an appropriate referee. Overall, they thought the requirement would be burdensome and complex and would increase the administration required for a scheme.

Question 20: Should financial services firms be required to contact named referees in all cases before making payment?⁹

Yes	No	Don't know	Total responses
74 (38%)	81 (42%)	40 (21%)	195

142. Responses to this question were mixed with no strong consensus. 38% (74 out of 195 responses) said that financial services firms should contact named referees in all cases before making a payment. They argued that this was a good safeguard against fraud and was likely to deter those with malicious intent. Some also thought that it would be ineffective to request details of a referee and then not contact them, thereby weakening the safeguard provided.

143. While 42% (81 of 195 responses) answered 'no' to this question, many of their responses were caveated. Respondents did not think that referees should be contacted for all applications,

⁹ Response percentages sum to more than 100% due to rounding.

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but they suggested it was appropriate in some circumstances. Examples would be where the bank felt it was necessary to provide extra assurance, or there was concern about a particular application. Other respondents suggested that referees did not need to be contacted if the application was being made by a close family member or appointee.

144. Those against making any contact with referees said that it would add time, complexity, delays and administrative cost to the overall process. They were concerned about the burden it would place on firms and thought the requirement would be disproportionate to the small sums of money being accessed via the scheme.

Question 21: Should the named referee be required to sign a declaration in the application process to confirm they know both the account holder and applicant, and understand the purpose of the scheme?

Yes	No	Don't know	Total responses
108 (56%)	58 (30%)	26 (14%)	192

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145. 56% of 192 responses agreed that the referee should sign a declaration confirming that they knew both the account holder and applicant and understood the purpose of the scheme.
146. Those in favour suggested this was a good safeguard against fraud and that referees were more likely to take their role seriously as a result. It would also give all parties assurance that everyone involved understood the purpose of the scheme.
147. Those against argued that this was a complex and disproportionate requirement that added barriers to the process. Others felt that the process would not be robust enough and that it would still be possible for fraudulent parties to collude. They suggested that contacting referees would be better.

Question 22: Is a two-week notification period appropriate/long enough for the account holder or referee to raise an objection?¹⁰

Yes	No	Don't know	Total responses
101 (54%)	54 (29%)	33 (18%)	187

148. 54% agreed that a two-week notification period was sufficient to raise an objection. Most respondents who answered 'yes' did not provide a reason for their response. But the few who did suggested that the notification period acted as a safeguard, and that two weeks was a good balance between speed and security.

149. Those who responded 'no' and 'don't know' provided more reasons for their response. Many were concerned that two weeks would not be enough time to raise an objection if the notified person was on holiday or required time to collect evidence. Most commonly, those who provided a free text response suggested that the notification

¹⁰ Response percentages sum to more than 100% due to rounding.

period should be extended to four weeks, mirroring the lasting power of attorney process.

150. A few said that two weeks was not appropriate for emergency situations and that banks would likely make risk-based payments in this period if an urgent need arises.

Question 23: What risks, if any, might this approach to notification of referees and account holders have?

151. 81 respondents provided a free text response to this question. The most common responses expressed concern about the time it would take for financial services to notify referees and the implications of waiting for the full notification period to lapse, especially if money was required urgently. In contrast some thought the notification period was too short and that there was a risk of the notified person not being able to respond in time. This was a particular concern for those who were reliant on postal services.
152. Other respondents raised the risk of crime or fraud if the applicant and referee were to collude. They thought the lack of third-party checks might weaken the safeguards a referee could provide.

153. A few said that involving another person in the application process would expose the account holder's financial situation and mental capacity vulnerabilities to people who were previously unaware of them. This could make the account holder more susceptible to abuse.

Mechanism of payment

Question 24. Which mechanism for payment/withdrawal do you think the scheme should adopt and why?

- **Option 1 – Money is paid directly to the applicant**
- **Option 2 – Payments are made directly to the providers of goods and services**
- **Option 3 – Both**

Option 1	Option 2	Option 3	Don't know	Other	Total responses
66 (50%)	8 (6%)	37 (28%)	7 (5%)	14 (11%)	132

154. 50% of 132 responses suggested that payments should be made directly to the applicant (option 1). Respondents thought that this would be the

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most simple, quick and effective option, giving the applicant greater independence and flexibility on how funds were spent.

155. Some respondents who favoured option 1 suggested that this should be supported by additional security measures. One common suggestion was that funds should be released into a separate third-party bank account to allow for greater monitoring. This would also prevent the mixing of funds released by the scheme and the applicant's own personal funds. Other security measures included identity checks and setting single-use withdrawal limits. Respondents also emphasised the importance of maintaining a clear audit trail of spending to increase applicant accountability.
156. Option 3 (both) was the second most favoured option among respondents (28% of 132 responses). Not many respondents provided a free text response to explain this answer, but those who did thought that option 3 provided the most flexibility. They suggested that while direct payments would be suitable for the majority, there may be cases where banks would want to

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restrict a direct payment and pay funds directly to a goods or service provider for added security.

157. Option 2 (payment to goods and services) was least preferred (5%) among respondents due to its restrictive nature and reliance on third-party involvement. Respondents noted that option 2 may be burdensome for financial services firms, due to the added work of reviewing invoices and paying them out to services. Other respondents noted that this would put the applicant at a disadvantage, as they may be out of pocket until reimbursed by financial services firms.
158. However, some respondents said that option 2 would be the safest option, as financial abuse could be reduced via direct payment to providers while enabling money to be traced. Other respondents argued that more security measures would be required to verify providers before funds were released.

Question 25a: What risks, if any, might the proposed approaches to payment/withdrawal have?

159. 72 respondents provided a free text response to this question. Over half of them believed that the

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proposed approaches could increase the risk of financial abuse.

160. Respondents explained that the money may not be used in the best interests of the vulnerable person and that it could be difficult to track misused funds. Some respondents highlighted that option 1 could be most vulnerable to abuse as the applicant would have independent control of finances. Others noted that cash payments could further increase risk due to the difficulty of monitoring cash spending.
161. However, some respondents pointed out that the risks depended on security checks and could be mitigated if sufficient safeguarding was in place. Others highlighted that the administration of the scheme may present risks of delay. A few respondents noted that the proposed approaches may not work for CTFs if there were limitations on accessing funds.

Question 25b: In relation to options 2 and 3, what risks, if any, might the proposed approaches to payment/withdrawal have?

162. 38 respondents provided a free text response to this question. The most prevalent themes centred

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around concerns over financial misuse, finance services administering the scheme and the limitations around payment methods.

163. On the limitation of the payment methods, many respondents found option 2 too restrictive due to the exclusion of direct payments. Some respondents noted that this was not appropriate for day-to-day expenditures and would not be suitable where there was an urgent need.
164. Other respondents highlighted that both options 2 and 3 could increase the burden to financial services firms, due to the need to process the payments between the firm and providers. A few respondents were concerned that the added work could increase administration and payment errors.
165. Some respondents noted that regardless of the payment option, there would always be a risk of money being misspent.

Question 26: In relation to option 2 (payments made directly to the provider) and option 3 (money paid to the applicant and to the provider), should there be a higher spending limit on payments (greater than £2,500) made directly to providers of goods and services?

Yes	No	Don't know	Total responses
69 (39%)	63 (35%)	46 (26%)	178

166. Responses to this question were mixed, with 39% of respondents (69 of 178) in favour of, and 35% of respondents (63 of 178) against, a higher spending limit when money is paid directly to providers of goods and services.

167. Those in favour of higher spending limits said that £2,500 was insufficient to cover most goods and services likely to be purchased via the scheme, such as household goods or disability equipment. Others felt that direct payments to goods and services providers would have less risk of financial abuse.

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168. Some respondents suggested adding a limit to payments, while others recommended a clear audit trail to provide extra security. The most common payment limit suggestion was £5,000.
169. Respondents who were not in favour of increasing the limit thought that a deputyship would more appropriate for this kind of payment. Some respondents stated that the risks associated with the scheme would increase with higher payments, and therefore greater safeguards would be needed. Others argued that this would increase complexity, the risk of delay and costs.
170. A few respondents suggested higher spending limits could be applied on a case-by-case basis.

Audit of spending

Question 27: Should applicants be required to keep receipts of all spending in the event of future objections?

Yes	No	Don't know	Total responses
117 (60%)	61 (31%)	18 (9%)	196

171. The majority of respondents (60% of 196) agreed that applicants should be required to keep receipts when they spent money released via the small payments scheme. The most common reason provided was that keeping receipts was good practice and an essential safeguard. Respondents thought this would confirm that money was being used in the account holder's best interests and that it would reduce the risk of money being misused.
172. Respondents suggested the requirement did not need to be too onerous, but that a basic record of receipts should be kept. Many thought this was essential to maintain an audit trail should spending have to be reviewed in the future – for

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example, if concerns arose about how the money was spent or if the person regained capacity.

173. Some respondents thought this requirement would reduce allegations of abuse, as there would be a transparent record of the use of the money. Others noted that it was standard practice for those managing other people's money to keep a record, and that those using this scheme should not be exempt.
174. Those against keeping receipts thought the administrative burden would be too onerous, particularly when juggling caring responsibilities. They considered it unfair and discriminatory to place the requirement on applicants. Others felt it was disproportionate to keep receipts for small sums of money. A few noted that it should not be necessary to keep receipts, as electronic bank records should be sufficient. On this point, it is worth noting that an electronic record will not be possible if all the money is immediately withdrawn in cash.

Question 28: If money is paid directly to the applicants, should there be a requirement to report back to the financial services firm how the money was spent, using receipts to evidence this?¹¹

Yes	No	Don't know	Total responses
60 (32%)	100 (53%)	27 (14%)	187

175. 53% of 187 respondents said that applicants should not report to financial services firms how they had spent the money.

176. The main reasons related to concerns about the administrative burden on banks and applicants. Many respondents questioned how banks would be expected to administer this and monitor spending. Additionally, they argued that the requirement would be too intrusive and disproportionate when taking into account the small funds involved.

¹¹ Response percentages sum to less than 100% due to rounding.

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177. Some others suggested that this reporting would only offer a limited safeguard as the money would have already been spent at this point. Instead, they were keen to ensure that there were sufficient checks before the money was released to be assured that money would be spent in the account holder's best interests. Others raised questions about the enforcement action financial services could reasonably take if reporting requirements were not followed and questioned the role of financial services firms in policing such a requirement.
178. In contrast, those in favour of this requirement suggested it was a good safeguard that increased transparency and accountability, particularly as the applicant was spending someone else's money. They suggested that this would reduce the risk of abuse and provide extra security.
179. A few respondents suggested that some discretion should be applied, and that records should only be requested where there were concerns or where large purchases had been made. A discretionary approach or spot checks

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were considered less burdensome while still acting as a deterrent to financial abuse.

Question 29: Should account holder and applicant details be stored on a central register?

Yes	No	Don't know	Total responses
103 (53%)	42 (22%)	49 (25%)	194

180. 53% of 194 respondents thought that account holder and applicant details should be stored on a central register.

181. Those in favour recognised the importance of a register to prevent access to multiple accounts and keep track of repeated applications. They suggested that a register was a good safeguard against financial abuse and would increase accountability and transparency. Some thought the central register should be linked to the Office of the Public Guardian's lasting power of attorney and deputyship register so that banks could also find out if the applicant had had a lasting power of attorney or deputyship revoked in the past.

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182. Despite the support for a register, several people raised concerns about the complexity of managing it. Some thought it would be too expensive, time consuming and disproportionate for small sums. Others were concerned about the additional demand that managing a register would place on the Office of the Public Guardian and thought this would add to delays in accessing the funds. A few others raised concerns about firms and the Office of the Public Guardian exchanging sensitive personal data to update and check the register.

Question 30: If yes, it is likely a cost would apply. Is it proportionate to charge an application fee in order to cover oversight costs related to maintaining the central register and conducting checks, which financial services providers might choose to pass on to applicants?

Yes	No	Don't know	Total responses
48 (27%)	116 (64%)	17 (9%)	181

183. The majority of respondents (64% of 181 responses) said that a fee should not be charged.

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184. Most thought that charging a fee would be excessive or disproportionate and would introduce an additional barrier for accessing small sums of money, especially CTFs. They said a fee would unfairly penalise account holders without mental capacity, and that it was not fair to charge a fee since the money belongs to them.
185. Some suggested that any cost should be recovered through other means, with suggestions including that firms might choose to absorb running costs, or that the costs could be subsidised by savings in the CoP. Some respondents suggested that all costs should be covered by the government as the body introducing the scheme.
186. Those who responded 'yes' suggested that charging a fee could deter malicious applications, and that it was reasonable to charge a fee to make the process more transparent and secure. They suggested that fees should be capped and kept relatively low to cover the administrative costs of running the register but acknowledged that this would be lower than costs associated with CoP applications.

Question 31: Should there be a limit on how many different people’s accounts that one individual can have access to at any given time?¹²

Yes	No	Don’t know	Total responses
120 (63%)	43 (23%)	28 (15%)	191

187. The majority of respondents (63% of 191 responses) thought there should be a limit on the number of accounts that one applicant could access.

188. Those in favour suggested that this would be a good safeguard against fraud and would reduce the risk of abuse. A few respondents thought that the CoP would be more appropriate for individuals wishing to access multiple individuals’ accounts, suggesting that checks should be more robust for these applicants.

189. Some suggested the limit should normally be set at two accounts, allowing up to four to cover

¹² Response percentages sum to more than 100% due to rounding.

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instances where a family may have multiple children lacking mental capacity. Others suggested that any limit set should be flexible to allow for exceptional cases. For example, care workers may make applications for several different people's accounts with justified cause. Some respondents said that in cases of applications to multiple accounts, applicants should justify why it was necessary. A few responses suggested that there should be more leniency towards applications from family members or appointees.

190. Those against imposing a limit were mainly concerned that restrictions might exclude families from applying where they had multiple members who lacked mental capacity. There was also concern that setting a limit would require oversight so it was not exceeded, which would increase the administrative burden of running the scheme.

Question 32: If any, what further fraud prevention measures that are not already listed here do you think are needed?

191.29 respondents provided a free text response to this question. The most prevalent themes arising from these are listed below.

- **Background checks:** Similarly, to earlier responses (see questions 19 to 21), some respondents suggested that applicant background checks should be required, such as Disclosure and Barring Service checks, criminal record and fraud history checks, and identity verification, as well as checks to confirm that they had not previously been discharged as a deputy or attorney.
- **Professional statements or witness attestation:** As suggested in responses to question 21, some suggested that applications should be supported by a statement from a professional confirming the validity of the application. This could be a letter from a social care worker or doctor and would be in addition to an independent practitioner confirming lack of capacity.

- **Reporting spending and decision-making:** Some suggested that spending should be reviewed annually, with one suggestion that court officials should administer these audits. There was also a suggestion that decision-making at each stage should be recorded and filed for future reference. This would provide an audit trail that decisions were being made in the account holder's best interests.

192. Other suggestions included adding an indemnity clause to the application (discussed in question 6), spot checks on random applicants and home visits, and scrutiny of documents to ensure they were legitimate.

Question 33: Should the Office of the Public Guardian be given powers to investigate fraudulent access to the scheme?

Yes	No	Don't know	Total responses
145 (76%)	20 (10%)	26 (14%)	191

193. The majority of respondents (76% of 191) thought that the Office of the Public Guardian

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should be given powers to investigate fraudulent access to the scheme, which would be an important safeguard.

194. A few respondents noted that this would be appropriate as the Office of the Public Guardian is already set up to investigate fraud in relation to registered powers of attorney.
195. Contrary to this, other respondents thought that the banks or police should investigate using their own fraud procedures.
196. Other respondents thought that giving the Office of the Public Guardian powers to investigate fraudulent access would be disproportionate to the small sums involved. Some respondents were also concerned about the added costs and resources required.

Question 34: If yes, there is likely to be a cost implication. How should this be covered?

Application fee, charging a third party each time they want to raise an objection, or other?¹³

Application fee	Charging a third party	Other	Total responses
29 (32%)	16 (18%)	46 (51%)	91

197. The majority of respondents (51% of 91) voted ‘other’ and were therefore not in favour of an application fee or charging through a third party.

198. 67 respondents provided a free text response to explain their choice. Over half of these were concerned about the cost to the applicant. Respondents thought that costs should not fall to the applicant as this could add a barrier to accessing the scheme. Some respondents suggested that government or financial services should cover costs as the providers of the scheme.

¹³ Response percentages sum to more than 100% due to rounding.

199. Contrary to this, few of the respondents who were in favour of the application fee (32% of 91) provided a free text response. Those who did thought that the fee should be proportionate. Some respondents suggested that all parties involved should be charged a small fee. A few others thought that the application fee would enhance the overall security of the process and deter fraudulent applications.

Question 35: From whom do you think redress should be sought in the event of fraud?

200. There were 98 free text responses to this question. Most commonly, respondents suggested that money should be recovered from the person committing the fraud, which in most cases was assumed to be the applicant. Some individuals also suggested that redress should be sought from the banks, government or the police. A few respondents suggested that money could be recovered via insurance or security bonds that should be taken out when making the application.

Question 36: If any, what are your views on how liability in the scheme could be managed?

201. 40 respondents provided a free text answer to this question. A few respondents started by saying this was the most complicating factor of the scheme. The most common suggestion was that liability should be managed by implementing a security bond or indemnity clause within the application process, which would be a means to recovering any money. Most respondents believed that liability should sit with the applicant. A small number of respondents suggested that liability could sit with either financial services firms or the government. However, some respondents suggested that liability should not sit with any financial firms who were following procedures correctly.

Simplicity

202. The consultation sought views on how straightforward and how quickly the proposed small payments scheme could be navigated and completed. Respondents were concerned that the scheme may reintroduce the barriers

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currently faced in the court application process. Financial services firms said that the scheme would be very difficult to administer and would require disproportionate effort given the low volume of applicants expected.

203. Many firms routinely release money to a family member, or direct to a care home or supplier in emergency situations to cover expenses where the account holder lacks mental capacity. They were of the opinion that they should still be able to make their own risk-based judgements to release small sums of money where there was an urgent need, without a central process.
204. 80% of respondents thought the scheme should enable the release of money within one week to a month, with 24% of them suggesting one week or less.
205. Analysis of responses showed that there was a clear tension between the need for security and simplicity.

Question 37: In your view, how effectively does the proposed process balance the trade-off between simplicity and security?¹⁴

Imbalanced toward security	Somewhat imbalanced toward security	Balanced effectively	Somewhat imbalanced toward simplicity	Imbalanced toward simplicity	Not sure	Total responses
19 11%	32 18%	63 36%	18 10%	5 3%	37 21%	174

206. Responses to this question were mixed, with no strong consensus. 36% of respondents thought that the scheme would effectively balance the trade-off between simplicity and security. They believed that the security measures were proportionate for the proposed value threshold of £2,500 and the six-month duration of the scheme, noting that these limits could prevent

¹⁴ Response percentages sum to less than 100% due to rounding.

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financial abuse. Overall, respondents agreed that the safeguards must balance accessibility and security, but views differed as to what qualified as sufficient security controls.

207. 29% of respondents (51 out of 174) thought the scheme was imbalanced or somewhat imbalanced towards security. They considered the security provision disproportionate to the small sums involved, reducing the simplicity of the scheme. They explained that as a result of the security measures proposed, the scheme was not a better alternative to processes already used, but instead was likely to add further cost and administrative burden on parties involved. Some respondents felt that the scheme would be restrictive and risked duplicating the barriers in the current CoP process.
208. Other respondents, especially parents with an interest in accessing CTFs, highlighted that as Department for Work and Pensions appointees they already managed larger funds on behalf of a vulnerable individual than proposed for the scheme, with fewer security measures. They explained that this role should enable them to

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withdraw small funds without further stringent checks.

209. On the other hand, 13% of respondents (22 out of 174) thought that the proposed scheme did not have enough security measures in place and was imbalanced towards simplicity. They thought that the scheme required more safeguards to prevent financial abuse, highlighting that individuals without capacity were most vulnerable to financial abuse. Some respondents also worried that financial services firms may be inconsistent in administering the scheme due to the lack of central management.
210. Other respondents noted that they required further information on how the scheme would work, to better understand the security and simplicity trade-offs.

Question 38: How simple do you consider this process for applicants?

Not simple enough	Not that simple	Neutral	Quite simple	Very simple	Not sure	Total responses
21 (12%)	42 (24%)	42 (24%)	34 (19%)	11 (6%)	26 (15%)	176

211. 36 %of 176 responses responded that the process was either ‘not simple enough’ or ‘not that simple’ for applicants. In contrast, only 25% considered that the scheme would be simple to complete.

212. 64 respondents provided a free text response to this question. Many respondents thought that that making the application accessible and easy to navigate would make the process simpler.

213. Respondents suggested that a single accessible form would be simpler than the current CoP process. Other respondents said that accessibility features should be implemented

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throughout the process to make the application accessible to all.

214. While some respondents thought that the proposed process would be simpler than the current CoP and power of attorney processes, others thought that the proposed safeguards contained too many security measures which would be disproportionate to the small sums involved. A few respondents highlighted that safeguards proposed made this scheme look similar to the CoP process (such as the need to obtain evidence of mental incapacity and the need to notify interested individuals). They were concerned that they would face the same challenges using this scheme as a result.
215. Contrary to this, others believed that the proposed process was too simple and that more security measures should be implemented to improve safeguards. Some noted that clear information would be required to support the applicant to navigate the scheme.

Question 39: How simple do you consider this process for financial services firms?

Very simple	Fairly simple	Neutral	Fairly difficult	Very difficult	Not sure	Total responses
12 7%	52 30%	33 19%	19 11%	10 6%	46 27%	172

216. This question received a mixed response across respondents, with 37% (64 of 172 respondents) considering the scheme to be simple. Some thought that financial services firms were used to administering similar processes. However, 13 out of 16 (81%) of the financial services firms who responded to this question said the scheme would be ‘fairly difficult’ or ‘very difficult’ to administer.

217. 41 respondents provided a free text response to this question, with many commenting that the process was too complex and disproportionate for financial services firms to operate. Respondents noted that the scheme would create an administrative burden for financial services firms and that the complexity of the

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scheme was disproportionate for the small sums involved.

218. Some respondents highlighted that demand for the small payments scheme may be low, which may not provide enough incentive for financial services to administer it.
219. Respondents also shared their concerns over inconsistencies in the way different financial services firms may implement the scheme. Some respondents noted that financial services firms' understanding of the MCA may not be comprehensive.
220. Other respondents noted that more information would be needed to understand the process further.
221. It is worth noting here that, following the consultation, some financial services firms expressed strong concerns about proceeding with a small payments scheme, including through written correspondence to ministers.

Question 40: Would this process be feasible for financial services firms to introduce?

Yes	No	Don't know	Total responses
92 (52%)	16 (9%)	68 (39%)	176

222. 52% (92 out of 176 respondents) agreed that the small payments scheme would be feasible for financial services firms to introduce. Out of the 21 financial services firms who responded, 52% believed it would be feasible to introduce while 24% believed it would not be. However, some who said it would be feasible once again highlighted the difficulties set out under question 39.

223. Those who agreed thought that the process would be simple as banks would be building on existing processes. Other respondents noted that this would be dependent on the volume of applications and resources needed to process the scheme.

224. Others explained that the process would be feasible for financial services firms to introduce

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with clear guidance from government on how to operate the scheme.

225. Contrary to this, some respondents noted that the proposed process would be more complex than the current processes for releasing funds. A few respondents highlighted that the proposals would need simplifying to be feasible.
226. Other respondents were concerned over costs which could be introduced if financial services firms administered the scheme, noting that costs to applicants would need to be kept at a minimum.

Question 41: If any, what elements would you add to or remove from the process?

227. 75 respondents provided a free text response to this question. Over half of them said they would like the scheme to refine its suggested security features, while some respondents had contrasting views on adding or removing certain security features entirely.
228. Those arguing to add more security elements to the process thought that this would provide more safeguards and reduce financial abuse. Some of

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these respondents suggested extra safeguarding features, such as additional applicant suitability checks.

229. Contrary to this, others suggested removing security checks to reduce barriers and make the scheme simpler.
230. Some respondents suggested reconsidering the mental capacity assessment to make the scheme more accessible by adding flexibility around what could be used as evidence for lack of mental capacity.
231. Other respondents thought that financial services firms should not profit from the scheme and suggested that any elements which could add costs to the applicant should be removed.

Question 42: How long do you think it should take to gain approval to make small payments/withdrawals on behalf of a person without mental capacity?

One week or less	Two weeks	Less than one month	Less than two months	Less than six months	Other	Don't know	Total responses
41 24%	30 17%	67 39%	18 10%	1 1%	5 3%	10 6%	172

232. This question received a mixed response, with 39% of respondents (67 out of 170) saying that the approval process should take less than one month.

233. Not many respondents provided a free text response to this question. Those who did thought that sufficient time was required to complete security checks and mitigate the risks.

The following three questions were for financial services firms.

Question 43: What new costs would you envisage from overseeing a formal small payments scheme as opposed to maintaining existing informal arrangements? If possible, please provide a quantified unit cost per applicant.

234. 11 financial services firms provided a free text response to this question. Over half of these said there would be additional costs to oversee the small payments scheme, ranging from staff costs to administration costs.

235. A few respondents said there would be costs to the applicant to access the scheme, such as the fees for the capacity assessment and potential legal costs.

236. Other respondents raised the point that more information was required to cost the implementation of the scheme.

Question 44: What proportion of unique account/financial product holders make use of informal arrangements related to mental incapacity at present?

237. 10 financial services firms provided a free text response to this question. Some respondents noted that less than 1% of unique account or financial product holders made use of informal arrangements. A few respondents highlighted that families and carers already informally managed funds on behalf of vulnerable individuals.

Question 45: What are the average product values for the following held by your organisation?

238. This question was included to assist with the impact assessment of this policy. Only two financial services firms responded to this question, so their answers have not been listed here.

Question 46: What more could be done to raise awareness of the Mental Capacity Act 2005 and the legal arrangements for managing the care and affairs of people without mental capacity?

239. 216 respondents provided a free text response to this question. Many respondents suggested awareness-raising campaigns, such as educational advertising campaigns on the MCA from charities, banks and media. Some suggested a TV and social media marketing campaign.
240. Some respondents suggested targeted government marketing campaigns to cascade MCA guidance to vulnerable adults. A few respondents suggested including the guidance in the Department for Work and Pensions' Personal Independence Payment appointeeship letter.
241. Other respondents thought that the financial services sector could raise more awareness by providing known vulnerable customers with guidance on mental capacity.
242. Others thought that existing guidance and resources on mental capacity could be simplified and made more accessible, through easy-to-

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understand material for carers and parents. Respondents did not provide references to specific pieces of guidance or materials.

243. Similarly, some respondents thought that the current processes should be simplified – for instance suggesting an online form to simplify the application process for an lasting power of attorney or deputyship.
244. Respondents also suggested using schools to raise awareness on mental capacity – for example, integrating information in the education and health and social care guidance and educating students directly.
245. Similarly, other respondents suggested training all parties involved in the small payments scheme, with some suggesting a training course targeting frontline staff.

Question 47: What more could be done to improve understanding of and engagement with the CoP?

246. 136 respondents provided a free text response to this question, with responses focusing on accessibility, marketing and investing in the CoP.

247. Many respondents thought that improving the accessibility of the CoP process and guidance would improve understanding and engagement with the CoP. Respondents suggested using simplified and easy-to-understand language, an accessible and easy-to-navigate website, and clearer guidance.
248. Respondents also suggested raising awareness through a government-led marketing campaign, which would inform people on what the CoP does.
249. Other respondents suggested investing in the CoP, which would include training staff to improve their services, enabling them to upskill and raise awareness among others.

Question 48: If any, what do you think are the barriers in the CoP process?

250. 111 respondents provided a free text response to this question. The most common barriers raised by respondents were in relation to the complexity of the CoP forms, application process, the time involved and costs.

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251. On complexity, respondents thought the forms needed to be reviewed as there were too many forms, with complex language and difficult formats which meant people needed to seek support to complete them. Others said that the lack of a digital form was also a barrier.
252. On time, many said that the time taken by the CoP to consider applications and issue orders was a barrier. Additionally, some thought the time required to complete the forms was too long.
253. Finally, on costs, many raised the need to seek a solicitor's help with completing the forms as a barrier due to the associated costs. Others also raised the CoP application fee as a barrier, as well as ongoing related costs.
254. It was clear from the responses that many respondents were not aware that there was a CoP fee remissions and exemptions process for those who needed support with fees, particularly for CTFs.
255. Other barriers raised included concerns about a lack of resource in the CoP, which affected its engagement with applicants. Additionally, some

respondents said that the public perception of the CoP was a barrier, as the word 'court' can be quite daunting and lead to people feeling they have done something wrong, putting them off applying. Similarly, some argued that a lack of knowledge and awareness of the CoP created a barrier, which contributed to the intimidation that some people felt when applying for a deputyship.

Equalities

Question 49: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform set out in this consultation document? Please give your reasons.

256. 33 respondents provided a free text response to this question.

257. Some respondents suggested that the scheme would have a positive impact on protected groups by improving their quality of life and giving them access to their CTFs. However, others were concerned that it would have a negative impact on vulnerable individuals and the elderly due to the reduced safeguards and risk of abuse.

258. A few commented that women were most likely to be impacted by any scheme as they were most likely to be carers and take on the administrative burden.

Question 50: Do you agree that we have correctly identified the range and extent of the equalities impacts under each of the proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

Yes	No	Don't know	Total responses
50 (36%)	17 (12%)	72 (52%)	139

259. 36% of respondents out of 139 answered 'yes' to this question. Over half were unsure.

260. Only 12 respondents provided a free text response to explain their answer. Most of these comments were not related to equalities impacts but provided feedback on the scheme already covered elsewhere in the response. For example, comments were made on the balance between

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security and simplicity, and concerns that the scheme would put too many controls in place.

261. Comments linked to equalities mainly focused on the risk of financial abuse to disabled and vulnerable individuals, and concerns about removing rights from vulnerable individuals.

The government response

262. The government is very grateful for the many responses submitted to the consultation.
263. The consultation allowed government to examine the case for a small payments scheme – referred to in past consultations as a release of payments scheme – and to test our proposals.
264. While there was widespread support for a scheme that resolved barriers faced in the CoP process, there was a lack of consensus on the exact nature of the scheme, in particular the safeguards required and whether the scheme would be simpler than existing processes.
265. The majority of respondents (87%) thought a small payments scheme was necessary to address problems in the current system of making applications to the CoP, namely complex application forms, costs and lengthy court processes. They also thought a limit of £2,500 was too low to offer genuine value and suggested this should be raised to £5,000 to cover a larger number of CTF accounts and other immediate payments, such as invoices for care fees.

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266. There was a lack of consensus on the safeguards needed to prevent abuse, including the use of referees, background checks and central oversight of the scheme by the Office of the Public Guardian.
267. Respondents recognised the importance of robust safeguards to minimise fraud and abuse, but disagreed on what safeguards were necessary and whether those being proposed were proportionate to the small sums of money being withdrawn. Some were concerned that the proposed scheme might be too complex and bureaucratic. It is important to remember that while the scheme would permit access to relatively small funds, these may be the sole assets of a vulnerable individual and should therefore be suitably protected against fraud and abuse.
268. Many financial services firms who responded have suggested that the scheme would be difficult to administer and require disproportionate effort given the low volume (1%) of customers

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who are likely to use the scheme.¹⁵ Many firms are of the opinion that banks should be able to continue to make their own risk-based judgements to release small sums of money where there is an urgent need, without a central process. They also advised that the small payments scheme would not be appropriate for the majority of urgent requests they receive, which although not high in volume, are often for releasing larger sums of money.

269. The consultation has provided us with detailed evidence showing there is no simple, safe and speedy way of resolving this issue. Satisfying all and building in the relevant safeguards quickly leads to a process that looks like the existing CoP one. Having considered this issue in detail, considering the current matters and concerns raised through the lens of the MCA, we acknowledge that the government has ultimately come to a similar conclusion to that reached in 1997. The 1997 green paper 'Who decides' referred to the 'practical problems' of implementing the access to funds scheme

¹⁵ Percentage provided by a respondent to the consultation.

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proposed by the Law Commission in their reports of 1992 and 1995.

270. As a result, the government will not seek to legislate for the introduction of a small payments scheme.

Developments at the CoP

271. The CoP plays a vital role in upholding the principles of the MCA. It exists to make decisions for and on behalf of adults who lack the mental capacity to make their own decisions and is essential in upholding the principles of the MCA.

272. We were keen to understand the barriers to individuals making applications to the CoP.

273. Questions 46 and 47 of the consultation examined these barriers. The most consistent feedback was that CoP process for obtaining a deputyship was disproportionately time-consuming and expensive, with lengthy and complex forms raised as a particular concern. There was also a general lack of awareness among parents about the MCA, despite the likelihood that they (or other individuals caring for

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someone who lacks capacity) will probably eventually need wider and longer lasting legal authority to make a range of decisions about health, welfare and finance. That will require an application to the CoP. So, while a small payments scheme may appear attractive, it would not necessarily be a complete solution in any event.

274. Despite this, aside from parents concerned with access to matured CTFs, many of the respondents recognised that the CoP offers the right level of expertise and protection. They considered a property and affairs deputyship as the most appropriate route for long-term management of funds, multiple accounts or larger sums of money.
275. Of its own volition, the CoP has been keen to modernise and improve its processes and turnaround times. In the summer of 2021, software was made available to the CoP which enabled it to start looking at ways to improve processes by digital means. The CoP began by reviewing the property and affairs application

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process and looked at stages that created delays.

276. A pilot was launched in autumn 2021 with a small group of court users. At its height, the pilot had over 166 users.

277. Both CoP users and the CoP have quickly seen the benefits that the software has brought to the property and affairs deputyship application process. These include:

- ease of use
- less paperwork to complete
- higher accuracy in the completion of applications
- faster turnaround times for the issue of court orders
- quicker engagement with relevant people, reducing objections to applications

278. Many of the highlighted benefits provide solutions to the criticisms of the CoP made by respondents in their answers to questions 47 and 48.

279. The CoP's aim is to continually improve the digital application process by reducing the number of forms and repetition across them. The

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digital service is under continual development, with the overall aim of people being able to directly feed relevant information into an online portal rather than completing and uploading forms. However, the CoP will retain the paper application process to ensure that no one is excluded from accessing it.

280. The pilot ended in December 2022, with the digital service being made available to professional court users applying for property and affairs deputyships from January 2023, and the general public from February 2023.
281. Government will continue to liaise with the chief executive of HM Courts and Tribunals Service and with court users to receive reports, monitor these developments and provide support.

Awareness raising

282. In addition to responses to the consultation, other stakeholder engagement has told us that although the MCA has been operational since 2007, many people are not aware of its existence or consider that it is only relevant to the elderly. There is a widespread but misplaced belief that

certain family relationships, such as being the 'next of kin' to someone, gives you the right to make decisions on their behalf should they lose or lack mental capacity.

283. We are particularly aware of the difficulties experienced by the parents of young people who lack mental capacity and who may not have been prepared for the legal implications of their young person reaching adulthood. At age 18, parental responsibility ends and young people are presumed to become adults with the capacity to make their own decisions. Many parents are unaware of the change in the legal status of their child and that, where the child lacks mental capacity, legal authority is needed to make decisions on their behalf. This issue was explored by the National Mental Capacity Forum in the webinar 'Preparing for the cliff-edge of 18'.¹⁶

284. In the last two years, many parents with a child who lacks mental capacity have only become

¹⁶ <https://autonomy.essex.ac.uk/covid-19/rapid-response-webinars>

aware of the MCA following the maturity of a CTF and the realisation that they cannot automatically access the account.

Raising awareness of the MCA

285. We will continue to work with other government departments such as the Department for Education and the Department for Work and Pensions, the National Mental Capacity Forum, the financial sector, charities representing the elderly, representatives from the learning disabilities sector, and the public to develop guidance and information to raise awareness of the MCA.

Annex A: List of respondents

Organisations that responded to the consultation

AJ Bell

AGE UK

Alzheimers Association

Association of British Insurers

Association of British Credit Unions

Association of Financial Mutuals

Bank of Ireland

Bath and North East Somerset NHS

BLMK CCG

BMO Global Asset Management

Brethertons LLP

Building Societies Association

Caroline Bielanska Consultancy

Citizens Advice Liverpool

Court of Protection Bar Association

Court of Protection Practitioners Association

Contact

Dementia UK

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Forresters Financial

Flint Bishop LLP

Hargreaves Lansdown

Keech Foundation

Keech Hospice Care Lanyon Bowdler

Law Society

Learning Disability England

Lloyds Banking Group

mfg Solicitors LLP

MENCAP

Midland Partnership Foundation Trust

NHS North Lincolnshire

One Family

Retail Banking Santander

Solicitors for the Elderly

Talbots Law

TISA

Annex B: Equality statement

Introduction

286. This analysis examines the potential equality impact of the response to the consultation outlining proposals for a small payments scheme and should be read in conjunction with the relevant impact assessment and the equality statement in the original consultation document.
287. The consultation proposals concerned a new process in England and Wales for authorising the release of small payments from an account belonging to an individual lacking mental capacity without the need to obtain either a lasting power of attorney or an order from the CoP as currently provided for in the MCA.
288. In cases where an adult lacks mental capacity, the MCA provides the framework for them to grant legal authority by appointing a lasting power of attorney while they still have mental capacity, or for third parties to obtain legal authority through applications to the CoP.

289. Since coming into force in 2007, the MCA has been a vital piece of legislation, protecting individuals without mental capacity and supporting families in preparing for the future.

Policy proposals summary

290. While there was support for a small payments scheme, there was no consensus around the necessary and appropriate scope and safeguards required for such a scheme. It was clear that the safeguards envisaged by some would result in a scheme very similar to current court processes, while others supported wider scope which introduced a higher level of risk around the assets of the person lacking capacity.

291. Having analysed the responses to the consultation, we do not intend to take forward proposals for a small payments scheme. But we will undertake a programme of awareness raising to encourage individuals to use the existing processes and safeguards provided for in the MCA, such as appointing a lasting power of attorney or making an application to the CoP for deputyship. In relation to criticisms regarding the

court application process, we will continue to support proposals to improve court processes and efficiency, including further roll-out of a digital application process which has been successfully piloted and become available to professional court users in January 2023 and all court users making property and affairs applications in February 2023. To facilitate the changes, both digital and paper versions of the court forms are being reviewed to streamline and simplify content and remove duplication wherever possible. This is an iterative process, and forms will be tested and continuously reviewed to make improvements based on feedback received.

Public Sector Equality Duties

292. This equality statement records the Ministry of Justice's analysis to fulfil the requirements of the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010.

293. This places a duty on ministers and the department, when exercising their functions, to have 'due regard' to the need to:

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- eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010
- advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not)
- foster good relations between different groups (those who share a relevant protected characteristic and those who do not)

294. While developing our policy proposals, we have considered to the nine protected characteristics:

- race
- sex
- age
- disability
- sexual orientation
- religion or belief
- pregnancy and maternity
- gender reassignment
- marriage or civil partnership

295. This equality analysis assesses the expected impacts of the proposals on those individuals with protected characteristics in England and Wales. The analysis also assesses the expected impacts

on other affected or disadvantaged groups in England and Wales.

Engagement and involvement

296. Before the consultation, engagement with stakeholders demonstrated that we should particularly consider the impacts on those with the protected characteristics of age, disability, race and sex, to ensure the small payments scheme is accessible to all.

297. We received 225 responses to the consultation, and 223 of these were analysed (2 were either blank or duplicate responses). In addition, we engaged with stakeholders during the consultation period to gain further evidence of the effect of the consultation proposals on individuals with the protected characteristics

Evidence and analysis

298. The application process for any type of bank account or financial investment collects very limited information on the demographic characteristics of customers.

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Information is currently limited to:

- the age of the customer, based on their date of birth

Information is not currently collected on:

- race or ethnicity
- disability
- sexual orientation
- religion or belief
- pregnancy or maternity
- gender reassignment
- marriage or civil partnership

299. However, CoP data provided some evidence of the possible impact of a small payments scheme on those with some of the protected characteristics, and we hoped to gain evidence through the responses to the consultation.

Consultation responses

300. We encouraged respondents to the consultation to highlight any equality issues and point to any available data and evidence that quantifies the impact. These responses have been considered and are summarised below.

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301. Out of the 223 responses we analysed, 33 provided an answer to **question 49**: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed option for reform set out in this consultation document? Please give reasons.
302. Respondents had concerns about the negative impact on vulnerable individuals and the elderly due to the reduced safeguards and the risk of abuse.
303. Respondents were divided in their response. Some suggested that the scheme would have a positive impact on protected groups by improving their quality of life and giving them access to funds. Others were concerned about the impact on women, who they viewed as most likely to be carers and would therefore have to take on the administrative burden of applying for the release of a small payment.
304. **Question 50** asked: Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons

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and supply evidence of further equalities impacts as appropriate.

305. 36% of respondents out of 139 answered 'yes' to this question. 12% answered 'no' and 52% of respondents replied 'don't know'.
306. Rather than providing evidence of specific impacts on the protected characteristics, respondents who answered the equalities questions used them to articulate their thoughts about the possible impacts of the proposals on the rights of vulnerable individuals and the opportunities that the scheme presented for financial abuse.

Analysis

Age

307. In relation to proposals regarding the scheme, some respondents were concerned that the scheme presented opportunities for financial abuse of the elderly and that better protection was given by obtaining the correct legal authority either through a lasting power of attorney or a CoP order.

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308. Engagement with stakeholders during the consultation period revealed that financial services firms suspected that many unofficial ways of accessing the funds of older people were occurring, such as sharing debit card PIN numbers instead of obtaining the appropriate legal authority. Firms also mentioned customers asking to access funds on behalf of elderly relatives and having to be informed about the need to have an order from the CoP.
309. This, together with evidence from consultation respondents, confirmed that awareness of the MCA is low among older people and that awareness raising and improvements to the court application process would better address this issue, rather than introducing a new scheme to enable access to small-value assets. We will continue to explore ways to raise awareness of the MCA to ensure that all people aged 18 and over prepare for the future, such as by appointing a lasting power of attorney.

Young adults

310. Many campaigners for a small payments scheme raised concerns specifically around access to

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CTFs on behalf of their adult children. CTFs are long-term, tax-free savings accounts set up by government in 2002. The first of these accounts matured in 2020, when the oldest account holders turned 18. Many parents and carers of young adults who lack capacity to deal with financial affairs were then advised of the need to either have a lasting power of attorney or CoP order to access the account. They felt that the process of applying to the court is too slow, onerous and disproportionate in relation to the small balances held in mature CTF accounts.

311. Many parents of young adults responded to the consultation. While in favour of the scheme, they did not agree with the proposed safeguards favouring a simple administrative system for accessing funds. However, we consider that introducing a scheme which does not have sufficient safeguards would negatively impact this age group who lack capacity, as it would not sufficiently protect their assets and could leave them more vulnerable to abuse or misuse of funds.

312. Responses to the consultation confirmed evidence gained pre-consultation that awareness of the MCA, the CoP and lasting powers of attorney among parents and carers of 16-to-18-year-olds with a learning disability is low, which is a broader underlying issue regarding access to CTFs.¹⁷ Many parents are not aware that they can apply to the CoP before their child turns 18 to have money released from an account once it matures.
313. Instead of legislating for a small payments scheme, we will look to raise awareness of the MCA with parents of young adults, special educational needs and disabilities schools, charities representing the learning disability sector, and CTF providers.

¹⁷ Evidence was provided by the National Mental Capacity Forum webinar ‘Approaching the cliff edge’, which aired on 15 June 2021. Registrants for the webinar highlighted poor understanding of the MCA among children’s services and the great difficulty parents experience when they discover they no longer have parental responsibility for decision-making when their child turns 18.

314. The developments in the CoP property and affairs deputyship application process should result in faster processing of applications for court orders to enable access to CTF accounts.
315. Our conclusion is that these proposed actions would have a more positive impact on this age group, and the issues faced regarding CTFs, than introducing a scheme with safeguards which may be very similar to the current court process.

Sex

316. CoP data estimates that between 2011 and 2021, 57,384 applications for property and finance deputyship related to women while 42,853 related to men. This may be because women have a longer life expectancy so are more likely to lose capacity to make certain decisions because of older age-related conditions, including dementia.¹⁸ Therefore, the proposals put forward in the consultation and in our

¹⁸ Office for National Statistics (2020). National life tables – life expectancy in the UK. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/lifeexpectancies/datasets/nationallifetablesunitedkingdomreferencetables>

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response could have a greater impact on women than men. In addition, some respondents mentioned that as women were more likely to be carers than men, women are more likely to try to access funds of a person lacking capacity, and therefore affected by proposals in two ways.

317. The proposal in the consultation response will maintain the current safeguards within the MCA and will ensure that women are not negatively impacted by any different levels of protection provided by a separate scheme. The introduction of a digital application process at the CoP and the ongoing work of streamlining court forms should have a positive impact on women who are most likely to be applicants.

Race

318. No respondents mentioned impacts on race. However, we are aware that ethnicity plays a role in people's financial lives and that there are differences in the use of some retail products and services by ethnicity.¹⁹

¹⁹ Financial Conduct Authority insight report / Financial Conduct Authority financial lives 2020

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319. The Office of the Public Guardian is aware that people from ethnic minority backgrounds are less likely to have a lasting power of attorney. This indicates a low awareness of the MCA. It also means that they, or rather their relatives or carers, are potentially more likely to need to use the current court process for obtaining an order that allows access to funds.
320. Our current view is that not implementing the scheme will not have a negative impact on people with the protected characteristic of race compared to other groups, because the safeguards in the MCA will be maintained. However, we will engage with third sector organisations that deal specifically with ethnic minority communities to raise awareness of the MCA, which in turn should provide overall benefits and protections to those who identify under this characteristic.

Disability

321. No respondents mentioned impacts on disability. Disability can either be physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal

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daily activities. The financial sector does not collect data on disability, so we do not know the number of account holders with this characteristic. The MCA provides support and empowerment to people who lack mental capacity, as well as allowing people to plan ahead for a time in the future when they may lack capacity.

322. The proposal in the consultation response will maintain the current safeguards within the current MCA and will ensure that disabled people are not negatively impacted by any different levels of protection provided by a separate scheme. Government considers that increased awareness raising of the MCA will produce better outcomes and protections for those who identify under the disability characteristic rather than pursuing a legislative solution through a small payments scheme, given the conclusions reached about such proposals in the consultation response.

Religion or belief

323. No responses identified a possible impact on religious customs and cultural norms among minority religions.

Other characteristics

324. No respondents mentioned impacts regarding sexual orientation, gender reassignment, pregnancy, maternity, or marriage and civil partnership.

Equality considerations

Direct discrimination

325. We do not consider that the decision not to introduce a small payments scheme would result in people being treated less favourably because of a protected characteristic. The MCA framework for appointing a lasting power of attorney or for obtaining legal authority to access the property of another adult who lacks capacity will continue to apply.

Indirect discrimination

326. We believe that older people and women lacking mental capacity are over-represented.

327. All individuals lacking mental capacity will continue to benefit from the provisions of MCA. We believe the decision not to introduce a small payments scheme will not impose a greater disadvantage for older people and women, which

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could amount to indirect discrimination. Increased awareness raising of the MCA, together with the court process reforms, represents a proportionate response to the issues identified and ensures better recognition of the rights and protection of all individuals lacking mental capacity, including these groups.

Discrimination arising from disability and duty to make reasonable adjustments

328. In so far as the decision not to introduce a small payments scheme extends to disabled individuals lacking mental capacity, we believe that the policy is proportionate and has regard to its aim. Improvements in the CoP to the application process for obtaining property and affairs deputyships will result in faster support for individuals lacking capacity.

Harassment and victimisation

329. We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

Advancing equality of opportunity

330. We have considered how not introducing the small payments scheme impacts on the duty to advance equality of opportunity by meeting the needs of individuals lacking mental capacity who share a particular characteristic, where those needs are different to those who do not share that particular characteristic. In our view, the MCA and the principle of obtaining the correct legal authority via a lasting power of attorney or a CoP deputyship are better methods for protecting people lacking mental capacity.

Fostering good relations

331. Consideration of this objective indicates it is unlikely to be of particular relevance to the proposals.

Conclusion

332. We will continue to consider the equality impacts of raising awareness of the MCA and the improvement work at the court. This is important to ensure that individuals with protected characteristics are not hindered in the future.

Annex C: Welsh language impact test

333. Of the 225 responses to the consultation, one of these was from an organisation which said it was based in Wales. The response raised similar points to those seen from respondents in England, that the scheme could potentially water down the effectiveness of the MCA. No comment was made in relation to impacts on Welsh service users, the provision of a Welsh service or Welsh language provision.

Impact assessment

An impact assessment has been produced and will be published alongside this response.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

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