

<b>Report to:</b>	<b>EXECUTIVE BOARD</b>
<b>Date:</b>	8 January 2020
<b>Executive Member/ Reporting Officer:</b>	Cllr Oliver Ryan– Executive Member (Finance and Economic Growth) Ilys Cookson Assistant Director – Exchequer Services
<b>Subject:</b>	<b>REVIEW OF APPOINTEE AND DEPUTYSHIP SERVICE</b>
<b>Report Summary:</b>	This report details the review of the Appointee and Deputyship service which support the financial arrangements for vulnerable adults with a care need identified by Adults Social Care. The review addresses increasing caseload, policy revision and increasing operating costs.
<b>Recommendations:</b>	It is recommended that consultation takes place from 23 January to 16 April 2020 as set out in Sections 8 and 9 of this report in relation to a proposed change to the charging model and increase in appointee costs, investments of capital and revised Client Finance Policy.
<b>Corporate Plan:</b>	The non-statutory Appointee and Deputyship scheme assists people to live independently while the Council manage their income, household bill payments, other expenditure and savings.
<b>Policy Implications:</b>	Provision of an Appointee and Deputyship Service is not a statutory function. Local Authorities have a duty of care, therefore any provision of an Appointee and Deputy Service must ensure that care is provided.
<b>Financial Implications: (Authorised by the statutory Section 151 Officer &amp; Chief Finance Officer)</b>	<p>The Council invests significant resource into the provision of an Appointee and Deputyship Service. This service is currently operating at a loss and placing pressure on the Council’s revenue budget. As caseloads have increased, and are expected to continue to increase, the revenue pressures are likely to grow under the existing charging regime.</p> <p>Whilst some charges are determined by statute, where the Council is responsible for determining the charges it must ensure that charges are reasonable but also reflect the cost of delivering services, and that these charges are fair and proportionate. This report sets out proposals to consult on changes to the charging model which are intended to reduce the cost of service provision.</p>
<b>Legal Implications: (Authorised by the Borough Solicitor)</b>	<p>Councils are required by law to have a balanced budget, reflecting reliance upon a financial plan that equates income with expenditure. A robust review of the charging options required to achieve a more equitable meeting of costs will ensure that the Council is meeting legal obligations, whilst protecting the financial wellbeing of the most vulnerable within the community. An open and wide ranging consultation will inform the preferred approach to be adopted for the charging of services provided.</p> <p>The Council is under an obligation to ensure that the substantial funds under management are prudently invested on behalf of service users, reliant upon the Council to make sound investment decisions on their behalf. Updated guidance has been issued as</p>

recently as May 2019 by the Office of the Public Guardian in relation to investments and related duties.

The Council will be required to ensure that they provide a quality assured service that is open, transparent and accountable in relation to a broad range of areas. The Council will be required to administer estates, deal with issues of probate, navigate family conflicts, liaise with related bodies whilst exercise their discretion in the best interests of the service user.

**Risk Management:**

The risks are as detailed in Section 10 of this report.

**Background Information:**

Further information is available by contacting the report author: Ilys Cookson, Assistant Director Exchequer Services.

The background papers relating to this report can be inspected by contacting



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## **1. BACKGROUND**

- 1.1 Exchequer Services administer an Appointee and Deputyship Service as part of the Adults Social Care Finance function. The Appointee and Deputy Service provides financial support by way of managing an individual's personal finances where a Social Care Assessment has determined that the individual cannot manage their personal finances themselves due to lack of mental capacity or physical disability, and there is no family member to undertake this role on their behalf.
- 1.2 An Appointee and Deputyship Service has operated in Tameside since 2005, prior to the service transferring to Exchequer Services in 2011. There is no statutory duty to provide the service, however the Council recognised the importance of supporting vulnerable people to effectively manage their finances and to safeguard them from potential (or actual) financial abuse.
- 1.3 The most recent Appointee and Deputyship policy was set by key decision in December 2013 and, as the monthly charge for appointeeships is discretionary a monthly administration charge of £28 per month was levied on the appointee service users with capital in excess of £1k. The monthly charge is not discretionary for deputyships and the rate of monthly fee is set by the Office of the Public Guardian in respect of cases where the Council acts as deputy. In the main local authorities administer the appointee and deputyship functions although a number of private organisations and solicitors do provide financial management services and act as appointee or deputy for vulnerable service users. The charge has increased by up to 2% each year from April 2014 and the current charge for the appointee service is £29.27.
- 1.4 A review of the service commenced in late 2018 against a background of rising caseload and costs and review of the appointee policy. There are currently 266 appointee cases and 26 deputy cases. It is considered good practice to review policies from time to time to ensure they remain reflective of current need.
- 1.5 This report details the findings from the review and makes recommendations on the way forward having considered alternative methods of service provisions. The proposal to consult service users on increasing charges is also detailed within the report.

## **2 INTRODUCTION**

- 2.1 An appointee is the term given to a person or authority who is appointed by the Secretary of State for the Department for Work and Pensions (DWP) to act on behalf of a benefit claimant who is unable to manage their financial affairs. This is usually because of mental incapacity or severe physical disability. This income from benefits or state retirement pensions is used to pay care fees, all household bills, such as utility, insurance, phone etc and to issue personal allowances to service users to spend how they wish (i.e. not as part of care fees), in addition to managing any savings that may accrue.
- 2.2 Deputy is the term given to a person or authority appointed by the Court of Protection where there is an ongoing need for decisions to be made on behalf of a person who lacks capacity to make such decisions on their own. Whereas appointees manage benefit income on behalf of service users, deputyship covers all financial assets and savings that a service user may have. Deputies can only make decisions that are authorised by the Court. The role typically involves payment of bills, managing bank accounts, state retirement and occupational pensions and other financial assets on behalf of the service user.

### 3 PROCESS

- 3.1 The process is such that a Social Worker in Social Care and Health will undertake the care assessment for an individual to determine the care needs that are required and whether the person has capacity to manage their own finances. A means tested financial assessment is undertaken in relation to income, savings, capital and assets held to determine the amount of money the person can afford to pay for their care. A charge is then raised in respect of care whether that is home care, residential care or care of the individual's finances. A charge is levied in respect of each care service received. If the person is unable to manage their own financial affairs a referral may be made by the Social Worker for the Council to act as appointee.
- 3.2 In the case of Exchequer acting as an appointee, following receipt of a referral from the Social Worker a financial assessment is completed by the service user. The service user has to agree that the Council will become their appointee and manage their financial affairs. The request is then made by Exchequer Services to the Department of Work and Pensions (DWP) to request that income from benefits is paid direct to the Council. The DWP visit the service user to verify the information provided and then, if satisfied, approval is granted. Exchequer Services then set up payment of all household bills such as gas, electricity, water, household insurance, TV licensing, broadband providers, telephone and mobile telephone providers etc. The service user is left with a small amount of personal allowance for daily living expenses such as food and toiletries and any excess income is held by the Council for additional requests for expenditure such as at birthdays and Christmas or take a short break.
- 3.3 In the case of acting as a deputy, Exchequer Services require a completed financial assessment after receipt of referral from the Social Worker. However where a deputyship is requested, the Council seeks approval from the Office of Public Guardian. This is because the Council is applying for approval to control all of the persons finances including capital and savings, and so the service user is relinquishing all control over their financial affairs as they do not have the capacity themselves to do so. Again a small amount of income is provided to the service user for personal items such as toiletries.

### 4 ISSUES IDENTIFIED

- 4.1 Since the policy came into effect in 2013 there have been a number of significant changes which have impacted on the safe and effective provision of the Appointee and Deputyship Service as follows:
- Ageing population increasing demand for service.
  - Appointee capital increasing
  - Administration of deceased estates
  - Service operating at a loss
  - Policy review required
- Ageing population increasing demand for service:**
- 4.2 With an increasing ageing population with increased needs, there has been a steady rise in referrals received from Social Workers. Referrals are accepted where the applicant satisfies the eligibility criteria as set out in the 2013 Policy. Table 1 highlights the increase in caseload.

**Table 1: Increase in caseload**

	2006	2012	2018
<b>Appointee cases</b>	30	165	276
<b>Deputyship cases</b>	5	42	26
<b>Total cases</b>	35	127	302

- 4.3 Prior to the service being transferred to Exchequer from Adults Social Care in 2011 'complex cases' were transferred to an external solicitor to manage the affairs of clients, however at that time the eligibility criteria was not clear. Cases have not been transferred to an external solicitor for a number of years.
- 4.4 The 2013 policy set out that complex cases could not be considered particularly in relation to property, significant capital or family disputes and that such cases should be referred to Citizens Advice Bureau, who will signpost such cases to local solicitors who have necessary skills and experience to address these matters. This is because there is not the in-house expertise to advise on such matters of providing property services, investment advice or resolving family disputes as many of these factors are apparent in complex cases.
- 4.5 A number of extremely resource intensive referrals are being made to the Appointee Service where the service user has debts accrued due to mental health problems associated with dependencies on drugs or alcohol. Such cases require more resource than other cases as the Council must attempt to contact the creditor and negotiate a suitable repayment plan on behalf of the service user. Many organisations such as Virgin media, mobile telephone operators and credit card companies do not recognise that the Council is the official appointee for the service user and that we can lawfully act on their behalf. This often results in many hours of telephone calls and written communications and can take months for resolution.
- 4.6 The rise in caseload has to be considered against the clear responsibilities in place as directed by the Office of the Public Guardian in respect of deputyship cases in that every service user must be visited at least once per year and property must be maintained i.e. ensure gas safety checks are carried out in a timely manner. Many deputyship service users however reside in residential care.
- 4.7 There are also clear responsibilities for public authorities appointed by the Court of Protection to manage the finances and property of people who lack mental capacity and are obliged to act in accordance with the Mental Capacity Act 2005, its associated regulations, and the Mental Capacity Act Code of Practice.

**Appointee and deputy capital increasing:**

- 4.8 With an increasing caseload the amount of savings money held by the Council on behalf of service users has also increased over time. At the present time the total capital held and average per service user is as follows:

**Table 2: Total capital held by the Council and average per service user**

	Total capital held	Average per service user
<b>Appointee cases</b>	£3.079m	£11,843.25
<b>Deputy cases</b>	£378k	£13,500.61

- 4.9 The OPG state that Council should '*seek independent advice to maximise the return on the client's savings, investments and any other assets*' in the case of deputyships. The current practice is that monies are held in the Council's bank account used for regular income and

expenditure and day to day activity for appointees and deputies accruing interest at the rate of 0.50%.

**Administration of the estates of deceased:**

- 4.10 In addition to the above points, the service has also taken on the responsibility for administering the estate of any deceased service users; a task which was previously undertaken by the Co-op Probate Service when the Council banked with the Co-op Bank, prior to the transfer of all corporate banking activity to Barclays.
- 4.11 Barclays do not provide a probate service, therefore the tasks associated with winding up the estates of deceased have fallen to Exchequer Services. This can be a particularly resource intensive and involves the following tasks:
- Establishing if there is a will and next of kin
  - Where there is no will or next of kin check all available in-house systems for information
  - Determine value of funds held by the council as this determines approach for payments
  - Contact DWP to stop all payments from date of death
  - Notify Office of Public Guardian
  - Advise Council Tax Service and Benefit Service
  - Stop all payments to and from the bank account from date of death
  - Notify utilities, insurance companies, private pensions providers, mobility companies, telephone and entertainment providers, TV licensing, landlords and anyone else that may be owed money
  - Administer funds to pay outstanding debts having been given authority by the executor and distribute remaining balance to executor or solicitor.
  - Liaise with the Duchy where appropriate monies held by the council and bills outstanding and no next of kin.

**Policy review required:**

- 4.12 It is clear that the policy put into place in 2013 requires review as the landscape of provision has changed since its introduction, and such review is necessary to ensure the policy continues to provide clarity. It is against this backdrop of issues identified that the service commenced a review of policy, operation and costs in late 2018 due to the emerging risks due of rising caseload, complexity and staffing levels.

**Service operating at a loss:**

- 4.13 Due to the additional requirements of the service which have emerged over time it is perhaps not surprising that the service is operating at a loss. The annual fees and charges increase for appointee charges does not cover the cost of service provision. The current charge of the appointee service is £29.27 per month and the charge has increased by up to 2% each year from April 2014. Consideration must be given to the reasonableness of fees in relation to the appointee service user. Deputyship charges are set by the Office of the Public Guardian.

## **5 ISSUES ADDRESSED**

- 5.1 At the start of the review it was clear that colleagues from Adults Social Care and Health would need to be involved, and that available best practice should be considered.
- 5.2 Regular meetings took place with Adults Social Care Finance staff and managers within Exchequer in addition to meetings to discuss progress between Assistant Directors of Exchequer Services and Adults Social Care and Health and progress updates reported to the Executive Members Meeting for Adults Social Care.

5.3 The following actions have been undertaken in response to the issues identified in Section 4, with regard to reviewing existing service provision:

- Revised application process
- Training provided to Social Workers on application process and policy
- Considered investment of appointees capital
- Reviewed administration of deceased estates
- Reviewed Appointee and Deputyship policy
- Reviewed cost of service

In addition to the above the review also conducted market testing of other potential service providers.

**Revised application process:**

5.4 Working with Social Care and Health colleagues the actual application process has been revised to ensure that all the information required to undertake the financial assessment and application to either the DWP, in the case of appointees, or the OPG in the case of deputys, is provided at the same time. The streamlining of the process has, in the majority of cases, improved application times subject to DWP and OPG timescales and saved resource for both services from chasing information.

**Training social workers on revised application process and current policy:**

5.5 In agreement with both Heads of Service, training on the revised application process and guidance on the policy was delivered to all social workers during September and October 2018. This has fostered better working relationships and a greater appreciation of roles in the application process. The training has proved to be positive in terms of efficiencies gained in the application process.

**Considered appointee and deputy capital**

5.6 Research has taken place across Greater Manchester and North West Councils with regard to how appointee and deputy capital is invested. Of those that chose to respond only 2 Councils had a clear policy and invested deputies money in anything other than a current account. One of the Councils used an independent financial advisor and detailed a mixed model of investment approaches comprising fixed year bonds, high interest savings accounts, five year plus investments and bespoke portfolio investments, however the overall capital held per person was significantly higher than in Tameside. The other Council gained independent financial advice from their Councils Section 151 Officer and invested monies in the Councils current account (which may have been the virtual account for client services purposes), National Savings and Investment (NS&I) and bespoke portfolio investments for capital over £100,000. NS&I is backed by HM Treasury and is considered a safe and low risk option.

5.7 The OPG state that Council should '*seek independent advice to maximise the return on the client's savings, investments and any other assets*' in the case of Deputyships. From the councils that were asked to provide information on investment strategies and the number that responded, suggests that the majority of Council do not have a specific investment policy. Appendix B details the respondents.

5.8 It is clear that with an increasing caseload and increasing amount of capital held for appointee and deputy services users that a transparent policy of investment is required. The highest value capital held is £75k for one individual. The remaining Deputies capital ranges from £500 to £29k. The Assistant Director of Finance and Section 151 Officer has agreed to provide financial advice on investments in accordance with Section 3(b) 4 of the OPG guidance. All monies are currently held in the Councils Adults Client Finance header account earning 0.5% interest. The account is protected by the Financial Services Compensation Scheme (FSCS) up to the value of £85k.

**Administration of deceased estates:**

- 5.9 As previously stated this is a particularly resource intensive aspect of work undertaken now and which was not undertaken prior to 2017 when the Council used the Co-operative Bank, as they provided a free probate service. Where the deceased had capital held by the Council, no monies can be paid from the date of death in accordance with legislation, even where the deceased may have been receiving care and invoices are due for payment at the time of death. The verification of information received and the administration of monies is particularly time consuming. In terms of review this involved revising processes first implemented when Barclays were appointed, however although this process has been reviewed it is in the main a statutory process and few efficiencies have been identified although significant amount of resource is required to fulfil statutory obligations.

**Reviewed cost of service:**

- 5.10 The cost of service has been considered in relation to service provided and it is clear that as demand has increased, resources have not, however the annual increase to date is insufficient to address the budget shortfall. The non-statutory service is not cost neutral and is operating at a loss of an estimated £111k pa, particularly when additional staff are being utilised to support this high risk area which in turn creates a resource pressure in other parts of the Adults Finance Service. The estimate does not include overhead costs and IT costs however these are minimal in relation to staffing costs. Table 3 below details current service costs

**Table 3: Current cost of service**

<b>Costs</b>	<b>2019/2020</b>	<b>£k</b>	<b>Total £k</b>
Expenditure			
Staffing costs		218	
Supplies and services		5	
			223
Income			
Income from Fees and charges		112	
			112
Deficit			111
<b>Total loss per annum</b>			<b>£111</b>

- 5.11 Payment for the service is deducted monthly from service users benefits however it is understood that this is lower than private sector providers.
- 5.12 Following consultation with other GM Authorities it clear that we are charging less than the majority. Three authorities do not charge any administrative charges for the appointee service and four operate a charging policy based on residential status and which is reflective of work involved for those living in the community and their own home setting and those residing in care.

**Table 4: Greater Manchester Councils weekly appointee administration charge for service users in the community and in residential care**

<b>Authority</b>	<b>Charge Frequency</b>	<b>COMMUNITY CLIENTS</b>		<b>RESIDENTIAL CLIENTS</b>	
		<b>Weekly charge</b>	<b>Annual charge</b>	<b>Weekly charge</b>	<b>Annual charge</b>
<b>Bolton</b>	No charge	Nil	Nil	Nil	Nil
<b>Manchester</b>	No charge	Nil	Nil	Nil	Nil
<b>Salford</b>	No charge	Nil	Nil	Nil	Nil
<b>Wigan</b>	Weekly	£15.00	£780.00	£15.00	£780.00
<b>Trafford</b>	Over 16k	£11.25	£585.00	£11.25	£585.00
	Under 16K	£7.69 (9.47)	£399.88	£7.69 (9.47)	£399.88

		average)	(492.49)		average)	(492.49)
<b>Rochdale</b>	Weekly	£11.07	£575.64		£6.92	£359.84
<b>Bury</b>	Weekly	£10.00	£520.00		£5.00	£260.00
<b>Oldham</b>	Weekly	£10.00	£520.00		£5.00	£260.00
<b>Stockport</b>	Weekly	£10.00	£520.00		£5.00	£260.00
<b>Tameside</b>	Weekly	£6.92	£359.84		£6.92	£359.84
<b>Average of charges*</b>		£10.35	£538.28		£7.61	£396.02

\*Excluding Councils that do not charge

- 5.13 Given that Tameside is charging the lowest in Greater Manchester of those authorities that do charge for the service, it will be necessary to consult service users, their representatives and/or carers and any other interested parties regarding any increase.

## 6 REVIEW OF APPOINTEE AND DEPUTY POLICY

- 6.1 The actual Policy agreed in 2013 has been reviewed and while in the main the Policy is still relevant a number of clarifications are required in relation to the following:
- Eligibility and financial evidence required
  - Personal allowance payments
  - Investment of capital
  - What happens to finances upon death of an appointee or deputy service user.

## 7 MARKET TESTING:

- 7.1 As a result of budget discussions it became clear that alternative methods of service provision should be considered for these non-statutory services. Research carried out with other GM authorities confirmed that none contracted their appointee and deputy caseload to an external provider.
- 7.2 Consideration was given to transferring the service to the Integrated Care Foundation Trust (ICFT), however in essence the staff would move from the Council and perform the same function in the Trust. No savings were identified from the move and the Council would continue to carry the risks associated with the financial management of service users monies.
- 7.3 Consideration of local solicitors undertaking the deputyship cases was also considered. Although the number of deputy cases managed by the council is low, it was deemed appropriate to gauge interest from local solicitors. Market testing has been carried out and letters were sent to 17 local solicitors to gauge interest in providing services. A total of 7 responses were received with 6 confirming interest in providing a service. The Council cannot endorse the use of any particular service as the quality of service provision has not been established, however complex cases will continue to be referred to Citizens Advice Bureaux for consideration of appropriate solicitors to be used that have expressed interest.

**Table 5: Local solicitors who would be interested in providing deputy services:**

Bromleys	Sleigh Son & Booth
Garratts	Harrison Townend & Ormeshers
Harold Stock & Co	Thompson & Cooke

- 7.4 As a result of research carried out it was identified that the market for an external provider of both an appointee and deputyship service is extremely limited. Financial concerns were

raised following due diligence carried out in relation to one potential provider of three identified. A second provider would not provide any information on which to progress discussions which left one possible company – Liberata. Liberata are well known in the field of revenues and benefits administration in the provision of managed services or additional ad-hoc service provision. Liberata currently provide an appointee and deputy service on behalf of two local authorities. A service requirement document was provided to them listing the current offer by Tameside Council to ensure that they could offer the same provision and to enable a costings report to be considered.

- 7.5 Discussions with Liberata took many months however confirmation was received that the Councils current offer could be matched in terms of service provision and, in addition, Liberata could offer the management of investments and property. Liberata can also undertake annual visits to deputyship clients and take on the Councils existing caseload. A costing report has been provided which details the first year set up costs as being £32k along with the annual contract price of £185k.
- 7.6 The Council would still receive the appointee and deputyship charges collected and then pay the Liberata contract fees from that income. Whilst cost is a consideration when determining service provision it is important to consider all the positives and negatives of a potential change in service provider, please see below table. Critical to the consideration was the resource required to deliver the service and that the risks associated with service provision would remain with the Council as the Council would continue to be the appointee or deputy and not Liberata. Liberata would in effect be a processing arm and so on that basis the costs are high as Council resource would still be required. An additional concern was the capacity of Liberata to take on the work. Currently the service is provided for two neighbouring London Boroughs. While the service can be delivered remotely there may be logistical issues in undertaking the annual visits to deputies as required by the OPG, although Liberata were considering setting up a base in the north to expand business.

**Table 6: Advantages and disadvantages of outsourced service provision**

<b>Advantages</b>	
Full comprehensive service can be provided including management of properties and investments.	✓
Same IT systems in use.	✓
Take responsibility for current caseload.	✓
Management of customer contact	✓
Have proven and well-regarded appointee & deputyship service capability	✓
<b>Disadvantages</b>	
Tameside service delivery to be built from scratch with new office base set up in North and staff training exercise undertaken.	X
IT software hosting and licensing to remain with Council.	X
Current caseload includes a large number of cases which require joint working with Adult Social Care	X
Not locally based	X
Only 2 local authorities have contracted service	X
Council remain the Court appointed deputy for existing and new cases.	X

- 7.7 From discussions with Liberata it was clear that they have the capability to undertake the work, however concerns remain in terms of logistics of annual visits, costs and continued risks remaining with the Council. It is however prudent to continue to have a watching brief on the company particularly if a northern base is established in the future.

## 8 UNRESOLVED ISSUES AND NEXT STEPS

8.1 Following the extensive review of the service a number of issues remain in relation to

- Costs of service
- Investment of appointee and capital monies
- Review of current policy

8.2 With an increasing caseload which requires additional resource it is inevitable that costs will rise further. Based on current caseload, to recover existing costs, the charge for appointee cases would have to increase. The increase to be cost neutral for this non-statutory service is significant, however such a significant increase is unpalatable in terms of costs increase to be borne by appointees.

**Table 7: Estimated increase in costs required**

Current Annual Appointee Charge	Increase in Appointee charge required	Annual charge required to be cost neutral	% increase
£360.08	£293.35	£653.43 (12.56 per week)	81.47%

8.3 As any increase to costs other than the annual uprating of approximately 2% would require consultation, the following charging models have been considered following research with other GM Councils which is reflective of resource used, and which is proposed to be consulted upon. Although the annual uprating would still take place in April 2020, it is proposed that increases to be consulted on are as follows:

### Option A:

**Maintain the same charging model currently in place and charge all appointees the same rate and increase to £10.00 per week.**

Status	Current caseload	Charge per week	Estimated Income
All appointees	266	£10.00 per week	£138.3k

### Option B:

**Introduce a two tier model dependent on residential status and which reflects the resource required for appointees living in the community.**

Status	Current caseload	Charge	Estimated Income
Residential home	60	£7.50 per week	23.4k
Community	206	£10.00 per week	107.1k
			130.5k

8.4 The rationale to Option A is to continue to charge one rate for all appointees, which may be deemed to be fairer, however appointees living in the community tend to require considerably more resource due to the number of bill payments per household. This could also be considered to be reflective of the additional work required regarding the administration of deceased estates and is an average of weekly payments across Greater Manchester.

8.5 The rationale for Option B is to introduce a charging model dependent on residential status, and again which reflects differential in day to day resource required between those living in the community and those in residential care. The weekly amount of £7.50 would be

payable for those residing in residential care reflecting level of benefit in payment and £10.00 would be proposed for appointees living in the community. Both of the above models would increase the weekly payments and would require consultation.

- 8.6 With a rise in caseload of deputies and an associated rise in capital held by the Council a clearer investment process is required to comply with the requirements of the Care Act 2014, and the OPG guidance which is detailed at Appendix D. Section 3(b)(4) makes clear that there must be '*access to specialist advice for example a financial accountant either internally or externally*'. Therefore the Service would seek the advice of the Councils Section 151 Officer where advice on investments is required, unless the Court of Protection instructs otherwise on a case by case basis. Appointee's capital is not managed by the Council as the Client Finance Service role for appointees is to manage income from benefits and bill payments only.
- 8.7 The maximum capital held for any one person at present is £76k. Other capital held for Deputies ranges from £500 to £29k at the present time. The total monies held currently is £363k and all monies are currently held in the Councils Adults Client Finance header account earning 0.5% interest. The account is protected by the Financial Services Compensation Scheme (FSCS) up to the value of £85k. All information / documents requested by the Office of the Public Guardian will be available on request.
- 8.8 As very few Deputies ever have in excess of £50k it is proposed that where an individual has capital in excess of £50k that capital is invested as detailed below. The threshold is based on the level of funds which may be required for instant access such as for care fees or living costs. The protection by the FSCS would remain in place and the investment strategy is considered to be a low risk and secure option.

Type of account	Organisation	Purpose of Account	Interest Rate	Council suggested limit	Protected limited by FSCS
Current virtual bank Account	Barclays	Regular income and expenditure for instant access and day to day activity	0.50%	up to £50,000	up to £85,000
Direct Saver account	NS & I	Surplus savings for funds not required immediately in the current account, but may be required in the short term future.	1.0%	£50,000 up to £2 million	Backed by HM Treasury 100% secured

The Council reserves the right to close other savings accounts subject to Court Orders to invest monies as above.

- 8.9 The review work and the proposal to change bank accounts for capital in excess of £50k has given rise to clarity being required in respect of the actual Client Finance Policy. Revisions are therefore proposed to the Policy and which would require consultation.

## 9 CONSULTATION

- 9.1 Consultation will be required as detailed in Section 8 of this report on the following:

- Proposal to change charging model
- Proposal to invest deputies capital in excess of £50k in a higher interest, low risk account

- Proposal to amend the Client Finance Policy to reflect the changes

The consultation would take place with service users, representatives and members of the public and is proposed to take place over a 12 week period. The consultation will be via the Big Conversation however considering that some affected by the changes have limited capacity a number of focus group sessions will be planned with colleagues from Adults Social Care.

- 9.2 A full Equality Impact Assessment will be undertaken in relation to the changes proposed. The changes will affect existing service users with an appointee or deputy as well as potential future appointees or deputies. The proposed consultation timetable is detailed here:

<b>CONSULTATION TIMETABLE</b>		
	Decision to consult by Executive Cabinet	22 January 2020
	Consultation – focus groups, Big Conversation 12 weeks	23 Jan to 16 April 2020
	Analysis of findings	16 April to 7 May 2020
	Executive Board	3 June 2020
	Exec Cabinet	24 June 2020

## **10 RISKS**

- 10.1 Although a considerable amount of work has been undertaken by way of review to address the management of the caseload and its associated risks, it is clear that the financial safety of vulnerable service users in the Borough must be considered at all times.
- 10.2 In order to continue to deliver a safe and effective service risk management must be considered both in the short and long term. An increasing ageing population and service users with mental health needs is unlikely to yield a reduction in cases being referred to the appointee and deputy service, therefore staffing is expected to continually increase as caseloads rise. As staffing costs increase, so too does the cost of service. This upward spiral of caseload, resources, costs and risk is likely to continue to rise indefinitely
- 10.3 Careful consideration must be given not only to cost of service but to the extreme vulnerability of the service user and any unintended consequences arising from any changes to service provision.
- 10.4 No procurement framework exists for appointee services which in itself is a risk as the Council would have to draft a specification for the service should further consideration be given to outsourcing the service. The Office of Public Guardian suggests that Local Authorities are best placed to act as deputy for vulnerable service users in the majority of cases. The Council would continue to carry risk should any external provider be appointed and rigorous contract monitoring would be required on the administration and investment of service users finances.
- 10.5 It is a risk if consultation and associated Equality Impact Assessment is not carried out prior to any changes to service provision or policy, investments of monies or proposed increase in administration costs.

## **11 CONCLUSIONS**

- 11.1 The review of the appointee and deputy service has taken place and considered:
- Increasing demand for service

- Capital increasing
- Administration of deceased estates
- Service operating at a loss
- Reviewed 2013 Policy

- 11.2 Working with Social Care and Health colleagues a revised application process has been put in place which has streamlined the process in the majority of cases, improved application times subject to DWP and OPG timescales, and saved resource for both services from chasing information. Training for social workers has taken on revised application process and policy which has proved positive in terms of efficiencies gained in the application process.
- 11.3 With an increasing caseload and increasing amount of capital held for deputy services users a transparent policy of investment is required. The highest value capital currently held is £75k for one individual. The remaining Deputies capital ranges from £500 to £29k. The Assistant Director of Finance and Section 151 Officer has agreed to provide financial advice on investments in accordance with Section 3(b) 4 of the OPG guidance. A new model of investment is proposed which requires consultation to invest any capital held for an individual in excess of £50k be invested in NS&I or in accordance with advice from the Councils Section 151 Officer.
- 11.4 The service has also taken on the responsibility for administering the estate of any deceased service users; a task which was previously undertaken by the Co-op Probate Service when the Council banked with the Co-op Bank, prior to the transfer of all corporate banking activity to Barclays. Barclays do not provide a probate service, therefore the tasks associated with winding up the estates of deceased have fallen to Exchequer Services and which, in addition to rising caseload is a resource pressure.
- 11.5 The cost of service has been considered in relation to service provided and as demand has increased, resources have not, however the annual increase to date is insufficient to address the budget shortfall. The service is operating at a loss of an estimated £111k, particularly when additional staff are being utilised to support this high risk area. An option for a new charging model is proposed following research with other councils and which better reflects resource used and which is proposed to be consulted upon. The new model differentiates between resource required to manage accounts for service users living in the community and those living in residential care.
- 11.6 A review of the 2013 appointee and deputy policy has taken place, and while in the main the Policy is still relevant a number of clarifications are required in relation to the following:
- Eligibility and financial evidence required
  - Personal allowance payments
  - Investment of capital
  - What happens to finances upon death of an appointee or deputy service user.
- 11.7 Market testing has also taken place and consideration has been given to transferring the service to the ICFT which would reap no saving or reduce risk. A total of 17 local solicitors have been surveyed as to interest to administer deputy cases. A total of 6 expressed interest. The Council cannot endorse the use of any particular service as the quality of service provision has not been established however complex cases will continue to be referred to Citizens Advice Bureaux for consideration of appropriate solicitors to be used that have expressed interest. A private company, Liberata, has been considered to administer the entire appointee and deputy service and which currently operates in 2 neighbouring London Boroughs. The Liberata offer was comparable to current service provision however concerns remain in terms of logistics of annual visits, costs and continued risks remaining with the Council. It is however prudent to continue to have a watching brief on the company particularly if a northern base is established in the future.

- 11.8 Consultation is required on the following matters and which would take place with Adults Social care colleagues via focus groups, and the Big Conversation.
- Proposal to change charging model
  - Proposal to invest deputies capital in excess of £50k in a higher interest, low risk account
  - Proposal to amend the Client Finance Policy to reflect the changes

## **12 RECOMMENDATIONS**

- 12.1 As set out on the front of the report.

## Draft Client Finance Policy for consultation



## Client Finance Policy

Tameside Council Exchequer Services administer an Appointee and Deputyship Service. The function of the Appointee and Deputy Service is to provide financial support by way of managing an individual's personal finances where a social care assessment has determined that the individual cannot manage their own personal finances. This is usually due to lack of mental capacity or physical disability, and where there is no family member to undertake the role on their behalf.

The Council are not able to consider any case which is deemed to be complex, for example where there is ownership of a property in whole or part, where there is family dispute, dispute over an estate or there is significant capital held which is deemed to be in excess of £23,250.00. Such cases must be referred to a solicitor of choice as the Appointee and Deputyship service does not have the expertise to provide a service in such cases.

The policy refers to both Appointeeships and Deputyships unless otherwise stated.

### Eligibility Criteria

Applications will be considered where the individual:

- Is in receipt of care and support after a care assessment has undertaken by Tameside Council
- Lacks the mental capacity to manage their financial affairs
- Does not have more than £23,250 in capital
- Does not own or part own any property or land
- Does not have an Appointee, Deputy or Lasting Power of Attorney in place at the time of application
- Does not have family or friends with capacity to act on their behalf or associates or access to organisations to support them with their finances
- Must agree that they want the Council to manage their financial affairs on their behalf

The individual must provide evidence of all financial affairs, including bank account numbers, copies of all bills, debts outstanding and ownership of any assets, bonds or trusts. Evidence must be provided of all other sources of support that have been explored and why none are considered appropriate for the individual.

Where an application is rejected the applicant will be notified in writing.

### Referrals

For all cases the appropriate referral forms must be completed with a Social Worker. In the case Deputyship referrals the COP3 Mental Capacity Assessment must be completed by a qualified Social Worker, Community Psychiatric Nurse (CPN) or Mental Health Practitioner.

## Costs

All Appointeeship cases with capital over £1000.00 will be charged in accordance with the annual uprating of Council Fees and Charges or as notified in writing during the year.

Deputyship cases will be charged in accordance with the Court of Protection's Fixed Costs structure.

Fee exemptions under hardship may be applied upon evidence and demonstration of hardship and will be awarded on an individual case by case basis for a specific period of time.

## Personal Allowance

Each individual will be permitted a weekly personal allowance for expenditure and cash cards will be provided for this purpose where applicable. The card is used to access personal allowance monies, one off additional payments and make any required purchases. The amount and frequency of the personal allowance will be determined by the Appointee/Deputy's Social Worker or CPN and any additional payments will also be authorised by the Social Worker/CPN. Social or Support Workers provide quotes for purchase in excess of £100.

## Capital

Where any Appointeeship case has capital in excess of £16,000 a Deputyship will be considered. Where any Deputyship case has or accrues capital in excess of £50k which is the protected amount by Barclays Bank, monies will be invested in a better interest account as directed by the Councils Section 151 Officer.

## Safeguarding

Any concerns identified in relation to financial abuse or any other kind of abuse upon the vulnerable adult will be immediately referred to the Councils Safeguarding Adults Team.

## Relinquishments

Requests for a relinquishment for an Appointee case should be made in writing by a Social Worker or CPN. Exchequer Services will write to the Department for Works and Pensions to confirm the relinquishment.

## Deaths

Appointeeships and Deputyships cease from the date of death. Executors of the deceased must liaise direct with the Councils Bank or NS&I depending on amount of capital held. Client Finance cannot enter into any communication with Executors other than to confirm there are sufficient funds available to arrange a funeral.

Client Finance cannot make payment of any kind from the estate other than to pay for death certificates or the funeral.

Monies remaining in the estate are finalised by liaison with Executors or where a person dies intestate, the Duchy.

Policy Revisions	Date of Revision	Responsible	Status
Version 1	2013	M.Bowler Service Unit Manager	Implemented - Effective from 01 April 2013
Version 2	Nov 2019	M. Chadderton Operations	Draft – For

		Manager	consultation
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## APPENDIX B

### Respondents with an appointee and deputy investment policy

<b>Council</b>	<b>Investment policy in place</b>
Blackburn Council	No
Blackpool Council	No
Lancashire Council	No
Manchester Council	Yes
Oldham Council	Yes
Rochdale Council	No
Stockport Council	No
Tameside Council	No
Trafford Council	No
Warrington Council	No

# APPENDIX C

## DUTIES REQUIRED BY THE OFFICE OF THE PUBLIC GUARDIAN

### OPG Deputy Standards

<b>Standard 1: Secure the client's finances and assets</b>
1a (1) Search for, identify and secure assets, savings and investments at the earliest opportunity.
1a (2) Notify banks and financial institutions, where the client is known to hold an account, of the court order.
1a (3) Where there are other sources of income, for example, private pensions, notify the provider of the court order.
1a (4) Identify, review and secure all benefits the client may be entitled to. Submit claims and lodge appeals at the earliest opportunity.
1a (5) Seek independent financial advice, where appropriate, to maximise the return on the client's savings, investments and any other assets.
1a (6) Seek recovery of any money or assets owed to the client, by the way of debts and/or loans, for example rent from lettings or utility accounts in credit.
1a (7) Ensure scrutiny of and, where appropriate, payment of any liabilities by the client, for example utility bills and care home bills.
1a (8) Where Public Authority care is being provided, ensure that a financial assessment has been progressed and that charges are accurate and are based on up to date financial information.
1a (9) Open a deputyship account in the client's name with the deputy named as such on the account. Ensure that all funds held for the client are held in accounts and/or investments in their name and kept separate from the funds of the deputy or other parties.
<b>1b: Benefits/assets/liabilities – when you receive a deputyship</b>
1b (1) Carry out benefit and public authority funding reviews at least once a year, ensuring any changes in the client's assets are reported promptly.
1b (2) Ensure that staff hold appropriate skills and knowledge of benefits through regular training and updates (including criteria for eligibility and how to apply).
1b (3) Carry out reviews of savings and investment portfolios at least once a year. Seek expert and independent advice when necessary.
1b (4) Demonstrate responsible use of assets rather than asset preservation
<b>1c: The client's property (if they don't live there) – when you receive a deputyship court order</b>
1c (1) Determine the ownership entry recorded at HM Land Registry, for example, sole ownership, joint tenants, Or tenants in common.
1c (2) Where there is no other living owner able to do so, gain access to the property and carry out a visit to ensure it is secure.
1c (3) Complete an inventory of contents. Consider what the property and its contents say about the client. This includes likes, dislikes, interests and family photos.
1c (4) Consider whether it is appropriate for items of sentimental value to be provided for the client where they now reside. For example, clothes, sentimental items, DVDs, CDs.
1c (5) Ensure appropriate buildings and contents insurance are in place and familiarise yourself with the terms of the policy.
1c (6) Get post redirected and maintain ongoing provision of utilities, if applicable.
1c (7) If the property is owned by the client, liaise with the client, any joint owners and/or the client's family, where appropriate, to decide the best course of action. Act accordingly – for

example sell, let or maintain.
1c (8) If the client is in public authority funded care, give consideration to a deferred payment arrangement.
1c (9) If the client's property is let, ensure that notice is given to terminate the tenancy, where appropriate, and in good time.
1c (10) Consider pre-existing arrangements of any family residing in the client's property and whether it may be appropriate for regular payments to be made to or from the client.
<b>1d: The client's property (if they don't live there) – ongoing</b>
1d (1) Ensure that the property is secured and maintained appropriately.
1d (2) If let, ensure the correct legal tenancy agreement(s) are in place and maintained. Consider seeking specialist property law advice if required.
1d (3) If let, take reasonable steps to ensure that tenants maintain the property in good order and take appropriate action if they are in breach of the tenancy agreement.
1d (4) Undertake regular reviews of the client's needs and undertake an evaluation of the decision to let or sell as appropriate.
1d (5) If selling the property, prepare the property for sale, engaging an agent and obtaining a minimum of three separate valuations.
1d (6) Ensure appropriate buildings and contents insurance are in place and familiarise yourself with the terms of the policy.
1d (7) If let, ensure gas check certificates are obtained for gas fires, boilers and appliances.
<b>1e: The client's property (if they live there) – when you receive the Deputyship Order</b>
1e (1) Review the client's needs and the suitability of the property.
1e (2) Review any tenancy or mortgage agreements, securing any deeds of ownership.
1e (3) Ensure appropriate buildings and contents insurance are in place and familiarise yourself with the terms of the policy.
1e (4) Ensure gas check certificates are obtained for gas fires, boilers and appliances.
1e (5) Review or commission a care plan or occupational therapy report and commission any aids/adaptations necessary to ensure that the client's needs are met.
1e (6) If the client is responsible for household bills, agree any contributions to be made from, or to, other household members where necessary.
<b>1f: The client's property (if they live there) – ongoing</b>
1f (1) Regularly review the condition of the property and ensure it is adequately maintained.
1f (2) Regularly review the suitability of the property for the client and commission updated care plans.
1f (3) Regularly review arrangements with other occupiers.
<b>1g: Care Arrangements - when you receive the Deputyship Order</b>
1g (1) Contact the care providers, tell them of your appointment as deputy and provide your contact details.
1g (2) Ensure any level of care (including any supplementary therapies or treatments) is relevant to the client, good value for money and appropriate to the level of funds available.
1g (3) Arrange for the client to receive a personal allowance, relevant to their needs.
<b>1h: Care arrangements – ongoing</b>
1h (1) Arrange for the client to receive a personal allowance, relevant to their needs.
<b>Standard 2: Gain insight into the client to make decisions in their best interests</b>
2 (1) Ensure capacity assessments in respect of specific decisions have been carried out when receiving the case and as future decisions are required.
2 (2) Maintain records of decisions made, including gifting, who was consulted and the reasons for any decisions.

2 (3) Discuss and record the client's feelings, wishes, beliefs and interests, both past and present, with the client, their family and care providers.
2 (4) As appropriate, discuss any decisions to be taken with the client's family and care providers according to the client's wishes.
2 (5) Maintain regular contact with the client/carers/family members and conduct visits to the client at least once a year.
2 (6) Carry out regular reviews of the client's needs, expenditure and their capacity to handle money. For example do they receive benefits or a weekly cash allowance?
2 (7) Actively demonstrate protection of the client from exploitation of financial abuse (for example, through registration with credit protection agency).
2 (8) Use appropriate ways to communicate with the client, for example, in his or her preferred language.
<b>3a: Governance Standards</b>
3a (1) Establish clear and effective governance between the named deputy and staff delegated to carry out the day-to-day functions of the role.
3a (2) Maintain a clear record of all staff delegated the authority to carry out tasks by the deputy, including a list of signatories.
3a (3) Demonstrate sufficient senior internal supervision of the overall deputyship process.
3a (4) Where a level of decision making is delegated, ensure the criteria for decision making requiring the sanction of the deputy are clearly defined and understood..
Need 3 a (5) Ensure documented agreements and of accountability are in place for any duties performed by staff outside the public authority (that is, outsourced). Carry out appropriate oversight and monitoring and clearly show that the named Deputy remains fully accountable for decision taken in respect of clients.
3a (6) Ensure that all necessary financial, security, management, organisational and quality control systems are in place with regard to: <ul style="list-style-type: none"> <li>• accounting systems</li> <li>• controls over cash handling, banking and access to bank accounts</li> <li>• separation of clients' funds</li> <li>• IT security and information assurance</li> <li>• separation of clients' funds</li> <li>• IT security and information assurance</li> </ul>
3a(7) Maintain clear policies on <ul style="list-style-type: none"> <li>• data protection</li> <li>• business continuity</li> <li>• Banking and money handling.</li> </ul>
3a (8) Maintain confidentiality on individual client matters.
3a (9) Keep client records up to date by regularly reviewing and recording the client's capacity, capability and support they need.
3a (10) Carry out regular billing of deputy's costs in line with the fixed costs practice direction.
3a (11) Review the ratio of staff to cases.
3a (12) Document referral criteria for deputyships widely disseminated this to Social care staff within the public authority.
3a (13) Ensure accounting and audit processes are in place within the public authority.
<b>3b: Office Culture and Customer Service Standards</b>
3b (1) Ensure that opportunities exist for members of staff to hold case discussions with peers or senior supervisor/manager.
3b (2) Ensure there is adequate cover during holiday/absence periods.
3b (3) Ensure access to the services of translators and interpreters, where necessary.
3b (4) Have access to specialist advice, for example, a financial accountant, either internally or externally.
3b (5) Ensure that all parties have access to a copy of the documented complaints handling procedure and the options for resolving disputes.
3b (6) Ensure that all decisions taken are free from any conflict of interest, be it personal or

organisational.
3b (7) Ensure that the deputy's or case supervisor's contact details are provided to all relevant parties.
<b>3c: Safeguarding</b>
3c (1) Ensure all staff are aware of procedures to follow in handling safeguarding issues. The deputy should know how to make a referral to the relevant authority.
<b>Standard 4 - Have the skills and knowledge to carry out the duties of a Deputy.</b>
4 (1) Ensure the deputy and all members of staff delegated with deputyship responsibilities understand the Mental Capacity Act (MCA) and its Code of Practice.
4 (2) Ensure the deputy and all members of staff delegated with deputyship responsibilities understand how the five statutory principles of the MCA are applied within their working practices.
4 (3) Ensure the deputy and all members of staff delegated with deputyship responsibilities understand Court of Protection practice and procedures.
4 (4) Ensure the deputy and all members of staff delegated with deputyship responsibilities know about the role of the Public Guardian and his role in supervising deputies.
4 (5) Ensure the deputy and all members of staff delegated with deputyship responsibilities know how to get appropriate advice and expertise on Social Security benefits, including eligibility criteria.
4 (6) Ensure the deputy and all members of staff delegated with deputyship responsibilities know how to access appropriate advice and expertise on NHS Free Nursing Care and Continuing Health Care funding or funding under section 117 of the Mental Health Act 1983.
4 (7) Ensure the deputy and all members of staff delegated with deputyship responsibilities know about public authority funding and charges for care, and how to access appropriate advice and expertise.
4 (8) Ensure the deputy and all members of staff delegated with deputyship responsibilities know about promoting the ongoing allocation of a care professional when the client doesn't have any family, carer or friend who could speak on their behalf.
4 (9) Ensure the deputy and all members of staff delegated with deputyship responsibilities have access to appropriate advice and expertise on investments, savings and property.
4 (10) Ensure the deputy and all members of staff delegated with deputyship responsibilities have access to appropriate advice and expertise on inheritance tax planning and trusts, including how to apply for a statutory will.
4 (11) Ensure the deputy and all members of staff delegated with deputyship responsibilities have access to appropriate advice and expertise on personal tax returns.
4 (12) Ensure the deputy and all members of staff delegated with deputyship responsibilities have awareness or experience in managing family conflict/mediation.
<b>Standard 5 Health and Welfare Standards</b>
5 (1) Adhere to the personal welfare court order and its limitations under the Mental Capacity Act – for example, when deciding where the client should live. If self-funding the deputy can choose any accommodation they wish as long as it meets the client's needs. If the client is not self-funding, the deputy must work alongside the funding provider and come to a mutual agreement in the best interests of the client.
5 (2) If carers are employed, ensure appropriate Disclosure Barring Service (DBS) checks are in place and that the number of carers meets the client's needs.
5 (3) If a Deprivation of Liberty (DoL) order exists for the client, the deputy must ensure it is relevant and current.
5 (4) Carry out a health review/assessment at least once a year to ensure the client's needs have not changed and are still being met.
5 (5) Deputies should be aware of the Care Act, where wellbeing is paramount, and act accordingly.
5 (6) Notify all involved in the client's network, such as clinicians, care provider and other professionals, and send copies of the court order.



## APPENDIX D

Care Act 2014 and OPG guidance on investment of appointee and deputy capital

OPG guidance Section 4 (9) states:

*4 (9) Ensure the deputy and all members of staff delegated with deputyship responsibilities have access to appropriate advice and expertise on investments, savings and property.*

*1a (5) Seek independent financial advice, where appropriate, to maximise the return on the client's savings, investments and any other assets.*

The Care Act legislation states:

*A reference in this Part to having or lacking capacity, or to a person's best interests, is to be interpreted in accordance with the Mental Capacity Act 2005.*

*(3) A reference in this Part to being authorised under the Mental Capacity Act 2005 is a reference to being authorised (whether in general or specific terms) as—*

*(a) a donee of a lasting power of attorney granted under that Act, or*

*(b) a deputy appointed by the Court of Protection under section 16(2)(b) of that Act.*