

DPE 022/30/2015

21st April 2016

Circular: 07 /2016

To: Accounting Officers

**Minute of the Minister for Public Expenditure and Reform in response to the
Committee of Public Accounts Report on the Wards of Court**

A Dhuine Uasail,

1. I am directed by the Minister for Public Expenditure and Reform to enclose, for your information and guidance, a copy of the Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Wards of Court.

Issues raised

2. The Minute addresses a number of issues, including:
 - Investment of funds held for the Wards of Court; and
 - Management of Client Services.

Enquiries

3. Enquiries in relation to this Circular can be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571, LoCall: 1890 661010 or email: govacc@per.gov.ie.

Mise le meas,



Robert Watt
Secretary General

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Wards of Court

The Minister for Public Expenditure and Reform has examined the Committee's Report and has taken account of its conclusions. In relation to the Committee's recommendations, his response is as follows:

Chapter 1 – Investment of Funds Held for Wards of Court

Recommendation 1.

The management and performance of the Wards of Court growth fund in the period from May 2007 to January 2009 should now be subject of an independent review having regard to the dramatic fall in the value of certain individual funds which have become severely depleted to the point where they may be a danger that the funds will run out.

The Minister for Public Expenditure and Reform notes this recommendation and is informed by the Department of Justice and Equality and the Courts Service that these funds are subject to external audit since 2002. In addition, the performance of the Court fund strategies has been kept under constant review by the Investment Committee established by the Courts Service. This Committee oversees the implementation of the arrangements for the management and investment of court funds. The Committee has a representative from the National Treasury Management Agency and an external member with investment expertise, and it is also supported by independent investment advisors. The Minister for Public Expenditure and Reform has been advised by the Courts Service that it is actively considering what could be done to bring further independent oversight, in addition to what is already in place, in order to meet the concerns of the Public Accounts Committee.

Recommendation 2.

The Ward of Court fund should be subjected to periodic independent assessment in respect of the investment performance of the fund and such reviews should be published.

The Minister for Public Expenditure and Reform notes this recommendation and is informed by the Department of Justice and Equality and the Courts Service that these funds are already subject to independent review in the form of external membership on the investment committee. As stated above in relation to recommendation 1, it is actively considering what could be done in addition to what is already in place.

Recommendation 3.

The funds held in trust for wards of court and any funds held in trust under the proposed Office of Public Guardian should be audited by the Comptroller & Auditor General and legislative amendments to facilitate this should be brought forward by the Minister for Finance and/or the Minister for Justice & Equality.

The Minister for Public Expenditure and Reform is informed by the Department of Justice and Equality that it is committed to examining the proposal in order to make a proper assessment of its feasibility taking into account the substantial constitutional, policy and technical issues related to this proposal. Section 5 of the C&AG Act, 1993 precludes the Comptroller and Auditor General from auditing a fund under the control of the Courts.

The Minister for Public Expenditure and Reform is also informed by the Department of Justice and Equality that the Office of the Public Guardian has been replaced with a Decision Support Service under the Assisted Decision Making Capacity Act, enacted in Dec 2015. The Office will primarily involve provision of a regulatory role and not a funds management role, except in exceptional cases.

Chapter 2 – Management of Client Services

Recommendation 1.

The Courts Service should draw up a customer charter to facilitate its management of the relationship with Wards of Court

The Minister for Public Expenditure and Reform is informed by the Department of Justice and Equality and the Courts Service that this recommendation is accepted.

The Courts Service has a Customer Charter which covers all interactions with court users and other stakeholders. This is applied as appropriate to dealings the Wards of Court Office has with representatives of wards of court and others who make contact with that office. This charter will be reviewed to ensure, as far as possible, and in so far that it does not do so already, that it addresses the concerns raised by the Public Accounts Committee.

In addition, the Assisted Decision Making (Capacity) Bill was enacted in December 2015. The Act, addresses the customer charter and other issues. Most of the provisions of the Act will be commenced in the latter half of 2016.

Recommendation 2.

An annual statement which contains the sum remaining in the fund at year end and the investment performance for the previous year should be provided to each Ward of Court.

The Minister for Public Expenditure and Reform is informed by the Department of Justice and Equality and the Courts Service that this recommendation is accepted. The Courts Service has the capacity to produce these statements and will undertake to do this as soon as possible. The distribution of these statements to individual wards of court is a more resource intensive administrative task and the Courts Service will actively consider how best to organise this.

Chapter 3 – Contingency Provisions

Recommendation 1.

Given the increased vulnerability of those wards of court where their fund has become depleted, special measures, including legislative provisions if necessary, should now be put in place to provide lifelong care of these individuals. These special provisions should also provide that the remaining portion of each fund be disregarded for assessment of medical card cover and for disability payments from the Department of Social Protection.

The Minister for Public Expenditure and Reform notes this recommendation and is informed by the Department of Justice and Equality and the Courts Service that the Courts Service is not a party to the legal process of determining the value of the sum of damages awarded by the Courts.

There are many factors which could impact on the sum awarded to wards of court and the extent to which this is sufficient. These include the level of expenditure incurred, medical and general inflation, investment performance and the duration and nature of care involved. In some cases the award may be reduced because of a finding of contributory negligence on the part of the plaintiff. Given the multitude of factors involved, it is unlikely that under the current arrangements for determining the amount of damages awarded or approved by the Courts in any case of a Ward of Court, that the sum awarded could be guaranteed to meet the needs of the Ward of Court for their lifetime.

The introduction of periodic payment order legislation as an alternative to lump sum payments will help address the limitations of the current lump sum award system, in ensuring as far as possible that the compensation awarded by the Courts is sufficient to provide for the care of the Ward of Court for their lifetime, where that is the intention of the Court. This is because periodic payments allow for regular payments to the beneficiary instead of a once off award. However, it is not proposed that legislation will apply retrospectively or apply to existing Wards of Court whose funds have become depleted. The General Scheme of a Bill to amend the Civil Liability Act 1961 to provide for the introduction of Periodic Payment Orders was published in May 2015. The Bill takes account of the 2010 Report of the High Court Working Group on Medical Negligence and Periodic payments. The text of the Bill is now being drafted in the Office of the Parliamentary Counsel and will be published as soon as possible.

With regard to the recommendation relating to cases where a Ward of Court's fund is at risk of depletion and that any remaining portion of the fund be disregarded for social welfare means assessment purposes the Minister for Public Expenditure and Reform is informed by the Department of Social Protection that a person who is a Ward of Court is assessed for

means purposes by the Department of Social Protection in the same manner as any other claimant.

There are a number of issues to consider in relation to this recommendation. They are as follows:

- In the case of social insurance payments, such as Invalidity Pension, means are not assessable. As such, this issue only arises in cases where a person is claiming a means-tested scheme. In the case of means-tested payments, claimants are assessed on any cash income, property other than the home, and investments. Within all means-tested schemes, there is an initial amount of capital that is disregarded for means purposes; in the case of Disability Allowance, this disregard is €50,000. This means that a Disability Allowance claimant with €50,000 in savings (and no other means) can be assessed as having nil means and, as a result, receive the maximum rate of Disability Allowance.
- While there is provision for certain sources of compensation to be disregarded for means purposes, as a result of legislation provisions for same (e.g. all income derived from compensation awarded by the Hepatitis C and HIV Compensation Tribunal, or by the Residential Institutions Redress Board), these disregards apply to all relevant claimants of the scheme. Many of the Department's customers are vulnerable. From the Department of Social Protections perspective, there is no justification in treating a person who is a Ward of Court differently to others in relation to means assessment.
- Claimants of Disability Allowance, and indeed other social welfare payments, can ask for a review of their welfare entitlement at any stage. Should the value of a claimant's funds have decreased, this may generate an entitlement or an increase to a social welfare payment.

The Minister for Public Expenditure and Reform is informed by the Department of Health and the HSE that the HSE can award medical card eligibility where undue hardship arises for a person in arranging health services. In relation to the medical card assessment process where persons have or receive significant income - e.g. pension or redundancy lump sums, compensation awards through court proceedings etc. such funds are not treated as income under the medical card assessment process but as savings. Savings up to €36,000 for an individual and €72,000 for a couple are disregarded and only interest earned on any savings above these thresholds are reckoned for medical card assessment purposes.

Given under the Official Seal of the Minister for Public
Expenditure and Reform on this the 21st day of April,
2016.



L.S.

A handwritten signature in black ink that reads "Robert Watt". The signature is written in a cursive style with a large initial 'R'.

Robert Watt

Secretary General

Department of Public Expenditure and Reform