



Comisiynydd Pobl Hŷn Cymru Older People's Commissioner for Wales

Vulnerability Policy Unit – Mental Capacity Policy

Ministry of Justice
Family and Criminal Justice Directorate
7th Floor
102 Petty France
London
SW1H 9AJ

By email: MCAsmallpaymentsconsultation@justice.gov.uk

12 January 2022

To whom it may concern,

Thank you for this opportunity to respond to the consultation on the introduction of a 'Small Payments Scheme' within England and Wales. As Older People's Commissioner for Wales, I routinely scrutinise those policies and practices with the potential to impact the lives of older people. I am pleased to see that the rights of older people are being considered as a part of the 'Small Payments' proposal.

Assets and finances are critical to the wellbeing of older people because they help to promote independence, provide a sense of security and increase levels of choice over service provision¹. It is therefore very concerning that some older people are unable to access their money when they lose the mental capacity for financial decision-making and when formal arrangements for asset management have not been put in place. I strongly agree with the need to identify strategies in addressing these difficulties. Whilst I appreciate the intentions behind the 'Small Payments' proposal (to simplify the system and to make it easier for third parties to access monies), I also have several concerns about the proposals for the 'Small Payments' Scheme as currently outlined:

The Risk of Financial Exploitation and Abuse

Stopping the abuse of older people is one of my key priorities in my role as Older People's Commissioner. Research suggests that the levels of abuse experienced by older people are significantly higher than currently reported² and that financial abuse is the second most prevalent form of abuse experienced by older people in the UK³

03442 640 670

Rydym yn croesawu galwadau yn Gymraeg

Adeiladau Cambrian
Sqwâr Mount Stuart
Caerdydd CF10 5FL

Cambrian Buildings
Mount Stuart Square
Cardiff CF10 5FL

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

It is imperative that any system introduced in respect of asset management, is embedded with robust, protective mechanisms and that these mechanisms are not compromised for the sake of simplicity and ease of access. Whilst the sum of money applicable to the 'Small Payments' scheme is relatively small; it must be recognised that this sum of money might represent the whole of life savings for some older people.

I acknowledge the intended safeguards outlined within the proposal (e.g. 'identity checks'; confirmation that an existing LPA does not exist; questions related to expenditure). I am concerned however, that these checks are likely to be limited in their scope to affirm the suitability of potential applicants. Suitability (and risk) is far better determined within the context of relationship. The impersonal nature of many high street banks means that it is unlikely that all staff will have the kinds of knowledge needed to make an informed decision. To make such decisions well, discussions would also be needed with those front-line staff (e.g. care workers, health care staff) who are in regular contact with older people and their families.

Increased Administrative Burden for the Financial Services Sector

The checks outlined are likely to be time consuming and to create significant administrative burden for the high street banks. I trust that the consultation process includes discussions with the financial services sector as to the practicalities of their role in administering the scheme.

Avoid Undermining the LPA Process

The consultation document makes clear that the scheme is not intended to replace 'Lasting Powers of Attorney'. I agree that this is very important. The scope of an LPA is clearly much broader than that of a 'Small Grants Scheme' (covering issues of 'Health and Welfare' as well as 'Finance and Property'). Importantly, LPAs are made by individuals ahead of a loss of capacity, meaning that older people can choose their own attorneys from amongst those whom they know and trust to act in their best interests. It is important that continued efforts are made to raise public awareness regarding LPA and the benefits to future decision-making processes.

I hope that the information provided within this paper is useful and that the points made are of value to the ongoing consultation process. Should you require any further information, please do not hesitate to contact me.

Yours sincerely,



Heléna Herklots CBE
Older People's Commissioner for Wales

¹ Tilse, C., Wilson, J., Rosenman, L., Morrison, D. and McCawley, A.L. (2011). Managing older people's money: assisted and substitute decision-making in residential aged-care. *Ageing and Society* (31), pp. 93-109.

² Older People's Commissioner for Wales (2021). *Support Services for Older People Experiencing Abuse in Wales*. Available at: https://www.olderpeoplewales.com/Libraries/Uploads/Support_Services_for_Older_People_Experiencing_Abuse_in_Wales.sflb.ashx

³ Manthorpe, J., Samsi, K. and Rapaport, J. (2012). Responding to the financial abuse of people with dementia: a qualitative study of safeguarding experiences in England. *International Psychogeriatrics* 24(9), pp. 1454-1464.