

EXECUTIVE BOARD MEMBER DECISIONS MEETING FOR SOCIAL CARE AND HEALTH

19TH JULY, 2018

Executive Board Member:	Portfolio:
Cllr. J. Tremlett	Social Care & Health

RELEASING SERVICE USERS FUNDS WITHOUT THE NEED FOR GRANT OF PROBATE

Purpose:

To Increase the limit for release of sums to family members without the need for Grant of Probate from £5,000 to £20,000.

Recommendations / key decisions required:

It is recommended to increase the threshold from £5,000 to £20,000 without the need for Grant of Probate.

Reasons:

The thresholds within the statute were last increased in 1984 (by the Administration of Estates (Small Payments) (Increase of Limit) Order 1984), an increase now would be reflective of inflation and current levels set by financial institutions.

Directorate Communities Name of Head of Service: Lyn Walters Report Author: Rhys Page	Designation Senior Business Support Manager Business Support Manager	Tel No. 01267 228768 01267 228729 E Mail Address: dlwalters@carmarthenshire.gov.uk rjpage@carmarthenshire.gov.uk
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Declaration of Personal Interest (if any):

None

Dispensation Granted to Make Decision (if any):

N/A

DECISION MADE:

Signed:

DATE: _____

EXECUTIVE BOARD MEMBER

The following section will be completed by the Democratic Services Officer in attendance at the meeting

Recommendation of Officer adopted	YES / NO
Recommendation of the Officer was adopted subject to the amendment(s) and reason(s) specified:	
Reason(s) why the Officer's recommendation was not adopted:	

EXECUTIVE SUMMARY

EXECUTIVE BOARD MEMBER DECISION MEETING FOR SOCIAL CARE & HEALTH

19TH JULY, 2018

RELEASING SERVICE USERS FUNDS WITHOUT THE NEED FOR GRANT OF PROBATE

The Issue

When an individual who has been resident in a care home passes away, there are occasions when the Authority holds money in safekeeping, for example when there has been an accumulation of minimum income amount (a payment made to residents under the Social Services and Well-Being Wales Act 2014 for personal items) or where the Authority has acted as appointee with the Department for Work and Pensions and there has been accumulation of benefits.¹

Although the Administration of Estates (Small Payments) Act 1965 and subsequent Administration of Estates (Small Payments) (Increase of Limit) Order 1984 do not apply in such a situation, it is believed that the current sum of £5000 derives from this legislation; this is the amount that the Local Authority has historically agreed to release to families without insisting upon probate, with the proviso that they sign an indemnity form so that the Authority has protection from liability should any entitled beneficiaries come forward subsequently.

In the majority of cases, the sums held will be less than £5000 and there is no issue.

However, in recent years there have been increasing numbers of larger sums of money held by the Authority, most likely when the Authority is appointee. The Business Support Unit has been under increasing pressure from families to release those sums without the requirement for probate.

The stance taken by other organisations

Upon carrying out research into how financial institutions deal with monies held in the accounts of deceased clients, it appears that most exercise discretion when deciding their threshold, with the majority of organisations having a limit of around £50,000.

¹ This is not an exhaustive list

However, banks and building societies are necessarily less risk averse than local authorities given the types of services they provide compared to the services that local authorities have a duty to provide together with the obligation on local authorities to protect the public purse.

The balance sheet

Pros of increasing limit	Cons of increasing limit
Reduced pressure on the BSU	Should funds be wrongly shared the quantum of risk will be higher
Reduced cost for families	
Reduced pressure for bereaved families	
Improved relationships with families	

The indemnity

There has always been a risk when distributing funds over the £5000 small payments limit without the family first obtaining probate. When these payments are made, the Authority has always required the family members concerned to sign a form of indemnity to minimise the financial risk to ourselves (if a more entitled family member should come forward).

Clearly should the threshold be increased in such circumstances, then the quantum of risk will also increase.

The Authority’s legal services section has recently reviewed and redrafted the form of indemnity (Annex A) to strengthen the Authority’s position should such a claim be made. It should be noted that this form of indemnity is intended to be used for any distribution of funds over the £5000 statutory threshold.

It is not suggested that we use our discretion to reflect the thresholds applied by the financial institutions in the region of £50,000. However, given that the thresholds within the statute were last increased in 1984 (by the Administration of Estates (Small Payments) (Increase of Limit) Order 1984), an increase now would be reflective of inflation.

It is therefore recommended that a threshold of £20,000 would be reasonable given that many other organisations are on average £30,000 and some up to £50,000.

DETAILED REPORT ATTACHED?

Yes – Appendix A – Form of Indemnity

