# EXECUTIVE BOARD MEMBER DECISIONS MEETING FOR SOCIAL CARE AND HEALTH

19<sup>TH</sup> JULY, 2018

<b>Executive Board Member:</b>	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	Designation	Tel No.
Name of Head of Service:	Senior Business Support	01267 228768
Lyn Walters	Manager	01267 228729
Report Author:		E Mail Address:
Rhys Page	Business Support Manager	dlwalters@carmarthenshire.gov.uk
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Declaration of Personal Interest (if any): None  Dispensation Granted to Make Decision (if any): N/A		
Signed:	DATE: EXECUTIVE BOARD MEMBER	
The following section will be comple at the meeting	eted by the Democratic Services Officer in attendance	
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 <b>not adopted</b> :		

## **EXECUTIVE SUMMARY**

## EXECUTIVE BOARD MEMBER DECISION MEETING FOR SOCIAL CARE & HEALTH

19<sup>™</sup> 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. <sup>1</sup>

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.

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
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## **IMPLICATIONS**

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report: **Lvn Walters** Senior Business Support Manager Signed: Policy and **ICT** Organisational Physical Legal Finance Risk Crime & Development Management Assets Disorder Issues NONE YES YES NONE YES NONE NONE

### 2. Legal

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.

#### 3.Finance

The implications on the authority will be that we will no longer be holding individual's money while we await probate. There is a risk when releasing amounts held that the money is released to the wrong beneficiary, but there are established processes to minimise the authority against this risk.

## 5. Risk Management Issues

The risk when releasing money is that money is released to the wrong beneficiary, but checks are established to minimise the authority against this risk. The process of checks will not change, and we retain the ability to invoke the probate process for any amount held.

### CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below Signed:

Lyn Walters

Senior Business Support Manager

- 1. Scrutiny Committee N/A
- 2.Local Member(s) N/A
- 3. Community / Town Council N/A
- 4.Relevant Partners N/A
- 5. Staff Side Representatives and other Organisations N/A

Section 100D Local Government Act, 1972 – Access to Information List of Background Papers used in the preparation of this report:

THERE ARE NONE

