

THE **LAW SOCIETY**
OF NORTHERN IRELAND



RESPONSE TO PROPOSED FEE STRUCTURE FOR COURT FUNDS OFFICE

**Law Society of
Northern Ireland**

96 Victoria Street

Belfast BT1 3GN

Tel: 02890 23 1614

Fax: 02890 232606

Email: info@lawsoc-ni.org

Website: www.lawsoc-ni.org

Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,700 solicitors working in approximately 530 firms, based in over 74 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor's profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

September 2015

The Role of the Court Funds Office: Proportionality and Flexibility

- 1.1 The Society stresses the importance of effective stewardship of the funds handled by the Court Funds Office (CFO). As the Consultation Paper makes clear, the vast majority of holdings are exercised on behalf of those who, whether by virtue of lacking the age of majority or mental capacity, are unable to exercise control over their own assets. On that basis, there is an important duty on the CFO to manage funds carefully and efficiently in the interests of those who cannot protect themselves. Consequently, the Society will frame our response to the Consultation Paper by acknowledging ongoing funding pressures on the Department but also by pressing for any proposed fees structure to be fair and equitable and connected with a broader focus on good governance within the CFO.
- 1.2 The Consultation Paper makes the case that in the context of ongoing low interest rates, it is unsustainable to avoid making charges from the capital amounts held by the CFO. However, the Report does not mention the possibility of any new fee arrangement adjusting in light of higher interest rates. The Society emphasises the importance of arriving at a flexible model which ensures that any requirement to fund administration does not unnecessarily erode the capital resources held on behalf of often vulnerable clients by setting in stone a rigid system. This involves an assessment of various competing needs including those of clients in a lifecycle based investment approach tailoring risk to demographic profile, any liquidity requirements in terms of withdrawal and delivering services in a cost-effective manner.

Charging Principles

- 1.3 Accordingly, some thought should be given to a cost-efficient mechanism to look at how cost recovery is reviewed in the longer term on an ongoing basis with the aim of preserving the integrity of the funds managed by the CFO. The general principle should be that any charges levied should be no more than what is necessary to meet the administrative outlay, with any surplus redistributed to funds through a fair formula. This is consistent with the primary obligation placed on the Accountant General. The Society makes clear that any adjustment should remain broadly consistent with the principles of proportionality and the elimination of cross-subsidisation developed in our response.
- 1.4 The Society suggest that any charging system, whether from capital or accrued interest is regularly reviewed to ensure it imposes the lowest possible burden on funds held within the CFO. This includes the appropriateness of the charging levels/any bands adopted, both to keep pace with inflation and to take account of efficiencies achieved over time. This could be added to the set of principles outlined at paragraph 4.4 and be included as part of annual review against effectiveness. In addition, the Society submits that any shortfall in funding which arises due to inaccurate forecasting should be met by the

core Department in year in order to ensure charging is transparent and equitable.

Wider Picture of Strengthening Governance

- 1.5** The Society stresses that in tandem with the Consultation Paper's commitment to more effective and efficient working practices, efforts should be made to ensure that investment performance of the CFO is appropriately monitored and reviewed. This follows the observations made in the Northern Ireland Audit Office (NIAO) and Public Accounts Committee (PAC) Reports, with the PAC Committee noting that assurances about investment performance could not be accepted without having a system of effective monitoring in place. The fact that the CFO has only comparatively recently brought its practices into line with general public procurement standards illustrates this point. Whilst it is appropriate that the cost of running the service is met through funds held, it is important that every effort is made to ensure that maximised investment performance can offset these costs where possible.
- 1.6** Elements of the modernisation of the CFO include increasing the provision of independent advice and developing the skills base of CFO staff in order to allow informed scrutiny of investment performance, setting measurable and challenging service targets and continuing communication with clients/clients' representatives on performance and charging. It is clear therefore that addressing the funding framework for the CFO is only one priority amongst a more systemic set of reforms. As a result, it would be useful to receive information on progress against the other issues flagged in the NIAO and PAC Reports. Whilst certain elements of modernisation such as increasing the skills base within the CFO and procuring an improved IT system entail a short-term outlay, the focus should remain on the longer-term dividends in terms of cost-saving such measures should produce. An important step was taken with the establishment of the Judicial Liaison Group and this expertise should be built on in making long-term improvements to the governance model.
- 1.7** This could be done in the form of tailored reports weighting progress against targets in the initial stages and annual reporting thereafter which should help to address the concerns about delay in implementation expressed by the PAC. A broader value for money audit of the CFO as these reforms are implemented will go some way in terms of setting proportionate administration costs against improved performance and greater transparency. In line with the NIAO's recommendation, the Society agree that it is important that efficiency targets are specific to the CFO rather than being incorporated into general targets within NICTS. This forms part of the tighter, client-focused approach which is recommended by the PAC Report.

Setting a Minimum Charging Level and Apportioning Charges

- 1.8** In relation to the broad structure of the fees proposed, the Society agree with the proportionate split between Patients and Minors in order to ensure that charges reflect the proportion of contributions to administrative costs. In addition, the Society agrees in principle that a *de minimis* level should be set at which charging is not applied in order to preserve the value of smaller holdings. It is difficult to determine with any certainty whether £5,000 is the appropriate amount in the absence of greater details in terms of at what level administration costs begin to take effect. However, we agree in principle with a *de minimis* approach being set at a level which allows full recovery of administration costs and avoids injustice to smaller holdings.
- 1.9** In terms of the one-off set up and closing fee of £20 and £40 respectively, it is important that these levels are kept to a minimum, as they are being applied as flat charges across all holdings. In the event these costs rise to a level which impacts unduly on smaller holdings, this approach should be revisited and the possibility of a graduated approach applied. This is consistent with a proportionate approach being applicable which protects client funds above a minimum threshold.

Options Provided for Fee Structures

- 1.10** The Society cautions against the application of a flat fee on all holdings as proposed in Option A, due to its regressive effects. For example, a holding of £5,001 would be subject to a £775 levy whilst under Options B and C this would be approximately £75 and £18 respectively. Indeed, if one looks at this in percentage terms, the flat fee option would reduce a holding of £5,001 by 15% in contrast to 1.5% under Option B for example. Under Option B only a holding in excess of £25,000 would attract a fee approaching £775. Weighing this in the round, Option A should be ruled out as too blunt and inequitable an approach.
- 1.11** If one is seeking to take a proportionate approach, Option C would seem to be the most equitable means of spreading the burden in line with means. In practice, this means that holdings in excess of £500,000 should shoulder most of the burden in terms of funding the CFO. The NICTS declares in the Consultation its preference for the banded fee approach within Option B, without providing any specific rationale as to why this is favoured over Option C.
- 1.12** Option C does not for example produce the inequities associated with the breadth of the bands of charging in Option B, which mean for example that an account of £10,001 is charged at the same rate as one holding £25,000. It may be that administration costs impact at a much lower level than the highest brackets and do not increase substantially in higher brackets, suggesting a

different balance in terms of fairness. In the absence of a clear picture, it is logical to assume that cost directly follows the size of the holding and the most proportionate model would reflect this. In addition the Consultation Paper does not detail any substantive difference in terms of the costs of administering the different options set out, which again supports the most proportionate approach should be taken all things remaining equal. Subject to the caveats set out in terms of any other relevant considerations which may arise, the Society supports Option C.

- 1.13** The Society has set out views on the proposed charging structures in view of the principles of fairness, proportionality and transparency. We have also sought to emphasise that a fair funding model forms part of the wider trajectory of reform ongoing within the CFO which will focus on delivering returns on funds invested for vulnerable people within our Society. We look forward to engaging with the NICTS on further reforms as outlined.

Conclusion

The Society welcomes the opportunity to submit a response in respect of the consultation on the Proposed Fee Structure for the Court Funds Office.

We trust our contribution is constructive and we are happy to meet with the NICTS to discuss any of the issues raised in our response.

We would like to be kept informed of any subsequent proposals formed as a result of this consultation and also any changes to the overall policy direction of the topic under discussion along with a stated rationale.