Court Funds Office

Court Funds Rules consultation

Response to consultation carried out by the Court Funds Office.

About this consultation

To:	This consultation was aimed at regular users of the Court Funds Office (CFO) including members of the legal profession, the judiciary, professional and lay deputies, litigation friends and staff of CFO and Her Majesty's Courts and Tribunals Service (HMCTS).
Duration:	From 1 February 2011 to 26 April 2011.
Enquiries (including requests for the paper in an alternative format) to:	Ben Luscombe Court Funds Office 22 Kingsway London WC2B 6LE DX: 149780 Kingsway 5 Tel: 020 7947 7943 Fax: 020 7073 4761 Email: Ben.Luscombe@justice.gsi.gov.uk

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Introduction and contact details

This document is the post-consultation report for the Court Funds Rules informal stakeholder consultation paper.

It will cover:

- the background to the consultation exercise;
- a summary of the responses to the consultation exercise;
- a detailed response to the specific questions raised in the consultation paper;
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting Ben Luscombe at the address below:

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Background

Under the Administration of Justice Act 1982 (AJA), the Court Funds Office (CFO), acting on behalf of the Accountant General of the Senior Courts, provides investment and banking administration services for clients whose money is held under the control of the civil courts of England and Wales, including the Court of Protection.

CFO currently administers around 140,000 client accounts worth approximately £3.3 billion. Money held by CFO originates from three main sources:

- Damages awarded to children as a result of civil legal action in a county court in England or Wales or the High Court of Justice. These assets are held on their behalf until the child reaches majority (18 years of age);
- Assets belonging to people who lack the capacity to manage their own financial affairs where the Court of Protection has appointed someone else to manage their affairs;
- Cases where money is held in court pending settlement of civil court action, or on behalf of dissenting shareholders, widows and other clients whose funds are held under a variety of different statutes.

CFO is working in partnership with National Savings & Investments (NS&I) to modernise the service it provides to clients. The new Court Funds Rules have been drafted as part of this modernisation work. There are a number of reasons for re-drafting the Rules - they have not been reworked since they were originally drafted in 1987, there have been a number of amendments since that time, they are outdated and drafted in difficult and old language. The re-draft reduces and simplifies the Rules so that they are clearer, less confusing and more user friendly. The overall policy aim has been to restate, clarify and modernise the Court Funds Rules rather than to alter their substantive effect.

An informal consultation exercise seeking views on a draft version of the new Court Funds Rules was undertaken from 1 February 2011 to 26 April 2011. This report summarises the responses, including how the Rules have been developed having regard to the comments received during the consultation process.

The consultation paper did not contain an Impact Assessment (IA) as the proposals are not likely to lead to additional costs or savings for business, charities, the voluntary sector or the public sector.

Summary of responses

The consultation document was distributed to a range of interested parties. Fourteen responses were received to the consultation from a wide variety of stakeholders including the judiciary, members of the legal profession, investment advisers, the Office of the Public Guardian, the Court of Protection, Her Majesty's Courts and Tribunals Service, CFO staff and a member of the public. A complete list of respondents is at Annex A.

On the whole, respondents supported the proposals and agreed that the new Rules provide a clear framework for the management and investment of funds in court. Many of the responses related to technical and drafting points. This report provides a summary of the main responses to the consultation paper and, where appropriate, explains how certain issues raised have influenced the final shape of the Rules.

Responses to specific questions

1. Do you agree with the structure of the new CFR and the title of each Part?

Four respondents answered this question and all agreed with the proposed new structure of the Rules.

"*Yes it will make the Court Funds Rules simpler to access and follow which will be of benefit to practitioners*".

"*For most of the general population contact with the Court Funds Office is an infrequent event and even for many legal practitioners is not an everyday occurrence. It is therefore extremely desirable for the CFR to be readily accessible, well structured and easily understandable. Bringing the existing rules together in the form of the proposed new version meets those objectives and the proposed simplified structure of the Rules facilitates ease of reference and we approve the new structure*".

"*Yes. The proposed structure is clear and concise*".

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2. Are there any other types of proceedings that should be included in rule 2?

No respondents identified any additional proceedings to be included in rule 2.

"*We consider the scope of proposed rule 2 to be comprehensive in relation to the sources from which funds are deposited within the ambit of the Senior Courts Act 1981*".

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3. Do you have any comments in relation to the rules in Part 1 generally?

One respondent commented on the use of the expression "person under a disability".

"*The expression "Person under a disability" is no longer used in the courts since the CPR and more recently the FPR 2010 and is thus inappropriate in these Rules. It only appears in three instances in rule 13 and "disability" alone in rule 12(3). It should be replaced by "child or person who lacks capacity*".

<u>CFO response</u>: The rules have been amended in line with this suggestion.

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4. **Are the requirements for depositing funds into court clear and correct?**

The four respondents who answered this question all thought that the rules were clear and correct.

"*Yes they seem very clear - no further comments*".

"*We consider the proposed rules to be clear and, so far as it lies within our experience, correct*".

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5. **Do you have any comments in relation to the rules in Part 2 generally?**

One respondent queried whether cheques could be made payable to the "Court Funds Office" rather than the "Accountant General of the Senior Courts".

CFO response: We were unable to make this change as this would require an amendment to the Administration of Justice Act 1982 which requires the bank account to be held in the name of the Accountant General.

Three respondents thought that the rules should allow for funds to be deposited electronically.

"*While the requirements for depositing funds are quite clear they do not take into account the anticipated phasing out of cheques by the major banks in the not too distant future. It would therefore seem appropriate to incorporate in the rules the possibility of depositing funds electronically by whatever system the banks adopt when cheques are no longer in use*".

CFO response: Although rule 7(1)(b) allows the Accountant General to direct that funds be paid into court by BACS, the general rule is that funds must be paid into court by cheque or banker's draft. This is because the Accountant General is unable to accept a payment into court without the necessary authority to do so (i.e. the deposit schedule or other documentation required under rule 6). The Accountant General is also required to refuse to accept a payment into court where the payment schedule or written request has not been properly completed or where the Rules have not been complied with. It would therefore not be practicable to accept the majority of payments into court by BACS. We are aware of proposals to phase out the use of cheques by October 2018 and understand that alternative payment methods are being developed which we will need to consider closer to the time.

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6. **Is the range of investments available to the Accountant General suitable?**

Two respondents replied to this question who thought that the available investments were suitable.

"*Yes, we agree that the range is limited to the basic account, special account and the common investment fund - currently the Equity Index Tracker Fund*".

"*The vast majority of the funds invested at the CFO via the courts are relatively small and the making of investment decisions by litigation friends and judges is assisted by limiting the range of investments available whilst seeking to ensure that they protect the interests of beneficiaries. We believe that the range of investments proposed meets those requirements but also ensures that appropriate investment avenues are available to cater for the larger funds for which income, as well as growth, is required*".

One respondent thought that the range of investments should be widened.

"*We would recommend that a range of other investment options is considered in addition to the EITF (a fixed tracker) and the Special Account (floating cash rate at 0.5%). Other options such as bonds and gilts (including index linked gilts) could also be considered. Investment into an EITF may not always be suitable for larger portfolios over £100,000 in value. Larger amounts could be referred to an FSA regulated firm to ensure that the beneficiary has a full range of options available*".

<u>CFO response</u>: The Administration of Justice Act 1982 envisages that the Accountant General will operate interest bearing accounts and a common investment fund. The CFO has, in the past, made investments outside of the common investment fund. These investments generate a disproportionate level of cost and resource to administer and manage. There are also a number of risks associated with operating a specialist, but not frequently used service, given CFO staff have limited expertise in this area. The market also provides viable alternatives. The court retains the jurisdiction to order funds be invested, out of court, in accordance with advice from an FSA regulated firm where it considers it appropriate to do so given the particular circumstances of a case.

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7. Do you agree with the new investment framework for protected beneficiaries?

Three responses were received to this question and views in relation to the proposed framework for protected beneficiaries were split. Two respondents agreed with the framework.

"*We agree that it is important to ensure the consistency of investment in all cases and the proposed framework should achieve this*".

"*The proposed framework appears to protect beneficiaries by providing safeguards to prevent the abuse of funds and the framework appears to protect investment of funds on receipt of Form 212, in relation to "the general rule" percentage split to achieve the investment type objectives appear reasonable*".

One respondent suggested alternative category names and percentage splits:

"*We would suggest that the framework is reviewed regularly to ensure that it remains relevant to financial industry practices. We would also suggest that the framework is revised to the following, which also considers the more risk adverse nature of protected beneficiaries:*

Strategy	*Equity Component*	*Fixed interest content*
Emphasis on growth	*75%*	*25%*
Balanced return	*50%*	*50%*
Emphasis on income	*25%*	*75%*

We would also suggest that the three options be reviewed with the possibility of removing the absolute statements such as "capital growth only". Instead, strategies such as an "emphasis on capital growth" may be more appropriate.

CFO response: We confirm that the framework will be reviewed on a regular basis to ensure that the percentages remain appropriate. While we agree that these clients are likely to be risk adverse, we consider that the proposal to invest a maximum of 65% of an award in the common investment fund reflects this tendency more accurately than an increase to 75% as suggested. This is also consistent with the maximum amount of an award invested on behalf of a child. We will give further consideration to the names of each investment policy and publish details of any future changes appropriately.

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8. Do you have any comments in relation to the rules in Part 3 generally?

Part 3 generated the most number of comments from respondents. These are set out below.

One respondent commented on rule 15 (investment):

"*I am concerned to learn that the prospect for capital growth may only arise for sums in excess of £10,000 (rather than £5,000 as now) although I can accept the 5 year barrier. However, your statistics will show how relevant this is. Based on my experience in the county courts I would anticipate that a very high percentage of child funds are less than £5,000*".

CFO response: The £10,000 threshold was increased from £5,000 on 1 March 2009. This decision was made by the CFO Management Board and the Accountant General following advice from independent industry experts that sums of less than this amount are too small to risk in the stock market given the volatility which can be experienced. Including the £10,000 limit in the rules will formalise the criteria and make it more transparent.

The same respondent also commented on rule 16 (investments in securities):

"*I am concerned about large sums held for children as it appears that investment in securities is being phased out and only the common investment fund will be available. Presumably it is being left to the courts to direct other arrangements, but the lack of communication with litigation friends means that they will be unaware of the need to address this. The Court of Protection will be experienced in giving the appropriate investment directions*".

CFO response: As noted in the consultation paper, the Accountant General rarely invests in securities outside of the EITF. CFO currently manages non-EITF security holdings on behalf of only 18 children (out of a total client base of 112,000 children), 257 Court of Protection clients (out of a total Court of Protection client base of 15,000) and 193 miscellaneous accounts. As investments outside the EITF are uncommon and handled via a separate process to EITF investments, they generate a disproportionate level of cost and resource to administer and manage. These investments also have the risk associated with operating a specialist, but not frequently used, service given CFO staff have limited expertise in this area. CFO has a responsibility to provide adequate levels of protection for legally vulnerable clients. We do not believe that investing in individual funds outside of the EITF, on the open stock market, best fulfils our statutory obligations or provides adequate stability or security for our clients. The court retains the ability to allow funds to be invested outside of the CFO if it thinks fit. Market alternatives are available via specialist, FSA regulated companies. These companies are better placed to advise clients on suitable investments and managing the associated risks.

This respondent also pointed out that the rules did not make provision for payment out of a fund to a child who has attained majority.

CFO response: A new rule has been added to rectify this omission (see rule 22(5)).

Two respondents had concerns about rule 18 (authority to direct investments):

"*I have some reservations about rule 18(3)(a) which provides that the Accountant General can act in accordance with written instructions from an investment manager. An investment manager is defined in rule 3 as a person appointed by a deputy to make decisions about investments of funds in court. I think this is inconsistent with the [Mental Capacity Act] Code of Practice (chapter 8 paras 8.61 - 8.62) and the common law of agency which says that an agent (the deputy) may not delegate his authority or duty in whole or in part except with the authority and consent of the principle (P). As P cannot consent then the Court of Protection must authorise the deputy to delegate. I do not think that a deputy can appoint an investment manager, unless the court authorises him to delegate that part of his decision-making authority, and therefore I do no think that the Accountant General can take instructions from an investment manager except where the deputy has authority to appoint*".

CFO response: We agree that the Accountant General may only take instructions from an investment manager where the Court of Protection has authorised a deputy to appoint an investment manager and note that rules provide that the Accountant General shall refuse to comply with a direction given by an investment manager if a deputy appointed the investment manager without authority to do so. The deputyship order, which the deputy is required to provide to CFO to open an account, will confirm whether or not the deputy has authority to appoint the investment manager. Before accepting a direction from an investment manager CFO will check that (i) the deputyship order grants the necessary authority and (ii) the deputy has provided written authority for the investment manager to give directions and confirmation of their contact details as required by rules.

One respondent expressed concerned about rule 17 (foreign currency):

"*There should not be a requirement for a payment schedule or written directions to be received by the Court Funds Office before the funds start earning interest for the benefit of the child or protected party*".

CFO response: Rule 17 is consistent with current practice under existing rule 39(1) which provides that interest on a foreign currency account shall accrue interest from the date the court directs or the date of placing it to the account, whichever is later. The suggestion that children and protected parties should start earning interest on foreign currency from the date of lodgment would mean a change to procedure. The overall policy aim of the new Rules has been to restate, clarify and modernise the Rules rather than to alter their substantive effect and any major changes to the Rules were identified within the consultation paper. This proposal has not been consulted on and it is likely that others would query why interest was not credited to all foreign currency accounts immediately. As such, we do not propose to make this change.

One respondent asked if a further paragraph could be added to rule 13 (transfer between accounts):

"*We would ask you to consider adding a further paragraph (5) to say that the Accountant General shall transfer funds to a Court of Protection account on receipt of an order from the High Court directing such a transfer and an order from the Court of Protection appointing a deputy to manage the financial affairs of the claimant. This would speed up the process of transferring funds up as it would not require the authentication of a payment schedule at the originating court which we find often delays the carry over of funds to a Court of Protection account*".

CFO response: The Accountant General will transfer funds from a Queen's Bench Division account to a Court of Protection account on receipt of either: a payment schedule signed and authenticated by the Queen's Bench Division directing the transfer; or a written request from the deputy together with a sealed copy of the deputyship order. In these cases, the fund would already be placed on a special account if they were paid into court under an order made by the QBD for the benefit of a person who lacked capacity. It would not be necessary to transfer from a basic to a special account in these cases.

One respondent said it would be helpful if the CFR provided a procedure for the consideration of applications to remove funds from court for the purpose of investment elsewhere, for example, to obtain CFO's view on the alternative investment proposal.

CFO response: Section 38(7) of the Administration of Justice Act 1982 allows the Lord Chancellor, with the concurrence of the Treasury, to make rules as to the administration and management of funds in court. In our view, it is beyond the remit of the Rules to set out a procedure for the consideration by the court of applications to withdraw funds from CFO to invest elsewhere. This type of procedure would be better placed within the Civil Procedure Rules 1998 which

govern the practice and procedure of the civil courts, for example, in Part 37 which contains miscellaneous provisions about payments into and out of court. Whilst the CFO is happy to assist with any judicial enquires about funds held in court, CFO is unable to provide advice in relation to the merits of an application for payment out to invest funds elsewhere or investment advice generally. CFO staff are civil servants and not financially or legally qualified and to provide such advice could leave CFO open to challenge.

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9. Are the rules in relation to payment out clear and correct?

We received four responses to this question all of which indicated that these rules were clear. One of these respondents suggested a possible amendment:

"*The general format of the proposed rules is clear. However, we see the potential for confusion in relation to the references to "deputy" bearing in mind the definition of the words "Deputy" and "deputy" in rules 3(2) and 3(3). It may be helpful to emphasis the need for deputies to act in accordance with their terms of appointment to prevent applications being made by one deputy in relation to a particular fund in cases where there is more than one deputy and their terms of appointment require concerted action*".

CFO response: Rule 3(3) provides that if two or more deputies have been appointed they must act jointly if and to the extent that joint action is required by the terms of their appointment so no changes were considered necessary.

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10. Do you have any comments in relation to the rules in Part 4 generally?

One respondent pointed out that rule 24 (payment to representative of a deceased person) also needed to make provision for cases where the deceased died intestate and two personal representatives have been appointed but only one wishes to act.

CFO response: The rule has been amended to include a requirement to provide the written consent of each person named as a personal representative in the grant of representation in these circumstances.

One respondent suggested amending rule 23 (documents required for payment out) so that, where a request for payment is made by a deputy, either a sealed copy of the court order authorising the payment or the court order empowering the deputy to make the request is required.

CFO response: This suggestion was not adopted because an empowered order authorises a deputy to request the release of any amount from the fund in court.

One respondent queried why rules 25 (payment of funeral expenses) and 26 (payment of inheritance tax) were not also applicable on the death of a child. Another respondent suggested that the rules allowing funds to be made

available following the death of a person who lacked capacity be widened to include all reasonable expenses incurred up to the receipt of the grant of representation.

CFO response: These rules only relate to Court of Protection clients because the Court of Protection is unable to give a direction in relation to funds held in court once a person who lacks capacity has died. In all other cases, the court still has authority. Prior to the implementation of the Mental Capacity Act 2005, the Court of Protection was able to provide for the payment of funeral expenses and inheritance tax out of any funds in court standing to the credit of the deceased. This power was not replicated in the Court of Protection Rules 2007 so the Court Funds Rules 1987 were amended to enable the Accountant General to do so instead. This is because funeral expenses and inheritance tax take priority over all other debts of the estate. While we understand the difficulties deputies face following the death of a client, it is not for these Rules to extend their jurisdiction and allow them to continue to manage the deceased person's affairs until such time as a grant of representation has been issued. This would be inconsistent with the Mental Capacity Act and probate law.

One respondent suggested that rule 29 (time for making payments) specify a time frame in which the Accountant General shall make a payment and proposed a period of five working days.

CFO response: This suggestion was not adopted as there will always be cases where it is not possible to comply with a five day timeframe. This would mean that the Accountant General is acting illegally every time that a payment is made outside of that timeframe. However, CFO aims to make payments within 5 working days of receipt of a properly completed payment request.

One respondent said it might be helpful to indicate when notification of interest accruals might be expected by litigation friends and deputies.

CFO response: Rule 43 provides that account statements shall be sent to all children and people who lack capacity who are entitled to funds in court on an annual basis and at such other times as the Accountant General considers appropriate. The CFO website clarifies that these statements are sent in Spring (April/May) for all Court of Protection clients and children's cases and that a further statement is issued in Autumn (October/November) for all Court of Protection clients and children's accounts that hold funds of £100,000 or more.

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11. Are the new rules in relation to unclaimed funds clear or have any steps been missed out?

The two responses that we received to this question both thought that the new rules in relation to unclaimed funds were clear. No responses were received which indicated that any steps had been missed out.

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12. Do you have any comments in relation to the rules in Part 5 generally?

One respondent queried why the funds of a child are treated as unclaimed after 10 years if the child's date of birth is not known.

CFO response: Prior to 1 April 2010, if a child's date of birth was not known, the period of ten years did not being to run until 18 years had elapsed since the account was opened. This meant that some accounts remained open for 28 years. In order to simplify the management of these accounts CFO informally consulted on a proposal to amend the rules to allow the ten year period to run from the date of lodgment where a child's date of majority was not known. In most cases, the date of majority is provided by the court via the Form 212. If the date of majority is not shown on the Form 212 then CFO will attempt to obtain it from the court, the litigation friend or any other appropriate person. As a result, only very few cases exist where the date of majority is not known and these are usually old cases that were received prior to the implementation of these procedures. Improved technology and search techniques have meant that only a very small number of these children now remain untraceable. If CFO cannot obtain a date of birth for a child it usually means that the child cannot be found. Having to keep an account open for 28 years places a large administrative burden on CFO when it is clear that the child can not be traced. As such, we do not propose to revert to the pre-April 2010 version of this rule.

One respondent commented that rule 38 (unclaimed county court funds) does not read well.

CFO response: We have redrafted this rule and attempted to make this rule clearer.

One respondent noted that there is no provision being made in the rules to notify clients of the intention to reclassify funds as unclaimed and suggested that a notice should be sent to the last known address prior to the transfer of unclaimed funds. The respondent also queried whether the ten year period should be reduced, for example, to five years.

CFO response: Where the value of an unclaimed account is worth less than £400 the money is transferred to the unclaimed balances account without any investigation. Where the value of an unclaimed account is worth £400 or more all reasonable steps are taken to locate the beneficiary before the money is transferred. This includes contacting any solicitors involved in the proceedings, using tracing software to obtain a current address for the client, making enquires with the court of origin and checking the file for correspondence containing a different address. The most typical reason that an account becomes unclaimed is where an account holder has failed to notify CFO of a change of address. Where a statement or letter is returned stating that the recipient is no longer at that address, the same searches are undertaken to obtain a new address for the client.

CFO also holds money under a variety of legislation that allows payments into court to be made where the person entitled to the money is not known or cannot be located (for example, the Compulsory Purchase Act 1965, Landlord and Tennant Act 1987 and Leasehold Reform Act 1967) or where sufficient

discharge can otherwise not be obtained (for example, the Trustee Act or the Life Assurance Companies (Payment into Court) Act 1896). It is not possible to contact the beneficiaries in these cases before the funds are transferred to the unclaimed balances account.

The original version of the Court Funds Rules 1987 allowed the Accountant General to carry over an unclaimed fund to the account of unclaimed balances after five years of inactivity. This period was extended to ten years in 2000 because funds were regularly being paid out of the unclaimed balances account under the original rule. We also note that the Dormant Bank and Building Society Act 2008, an account is considered dormant if there has been no customer initiated transactions for the last 15 years. In our view, a ten year period strikes a good balance between the two.

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13. Should any of these rules be placed elsewhere?

One respondent suggested that rule 44 should be moved to before or after rule 13.

CFO response: We have retained rule 44 (transfer between courts) in Part 6 of the new Rules as it relates to cases that have been transferred from one court to another. Part 3 of the Rules deals with investment options and rule 13 (transfer between accounts) specifically relates to the transfer of funds from one type of interest bearing account to another.

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14. Do you have any comments in relation to the rules in Part 6 generally?

One respondent commented that under rule 45 (National Debt Commissioners) the CFO could pay a low rate of interest thereby making a profit and pay such a profit to the Commissioners.

CFO response: Section 39(1) of the Administration of Justice Act 1982 allows the National Debt Commissioners to invest, in such manner as prescribed by regulations made by the Treasury, money transferred to them under the Court Funds Rules. The effect of subsection (2) is that the interest earned on those investments is used to fund the payment of interest on client accounts as well as CFO's administration costs. Any excess interest earned by the Commissioners must be paid into the Consolidated Fund. It is also worth noting that if there is a shortfall, the difference must be paid from the Consolidated Fund.

Interest rates are set and regularly reviewed by the Lord Chancellor with the concurrence of the Treasury. In reviewing the rate paid the Lord Chancellor takes into account a number of factors including - the amount of interest received on funds against the amount of interest paid to clients, the level and mix of funds held by the CFO and administration costs. Taking into account all of these factors the Lord Chancellor sets the level of interest paid on funds held in court.

The reason for lowering the interest rate paid from 6% to the current rate of 0.5% was to reflect the level of interest earned on client funds and to avoid the use of taxpayer's money. It does not create a saving (or profit) for Government.

We do not believe that generating a profit for the National Debt Commissioners is what the CFO was set up to do, nor what it is expected to do. We also doubt whether generating a profit or creating a saving in this way would be within the spirit of the legislation.

One respondent suggested that we include some explanatory note about the Commissioners for the Reduction of National Debt / National Debt Commissioners / Debt Management Office in the definitions section.

CFO response: Section 5 of the Interpretation Act 1978 states that the "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt. The Administration of Justice Act 1982 refers to the National Debt Commissioners which is why this terminology is used in the Court Funds Rules. As the Rules do not mention the Debt Management Office we do not see a need to include reference to that office in the definitions section.

One respondent thought it would be helpful to reference rules 41 and 42 at the appropriate places in Parts 3 and 4. This respondent also suggested that rule 44 should provide for notice to be given to the litigation friend or deputy as well as the Accountant General as the transfer of funds from one county court to another is sometimes necessitated by court closures of which those concerned may be unaware.

CFO response: We do not consider it appropriate for these rules to impose an obligation of this nature on the courts.

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15. Do you believe that any of the proposals promote a greater or lesser equality of opportunity or access for any of our client groups?

Two responses were received to this question.

"*In relation to the proposed new version of the CFR we do consider that they promote a greater equality of opportunity or access for client groups when compared with the existing Rules*".

"*It is our view that the proposals on the whole simplify the current provisions and should therefore improve access to funds to our vulnerable clients*".

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16. Do you have any questions you would like to ask us relating to these proposals?

No questions were received.

Conclusion and next steps

1. Following consultation, an amended version of the Rules was submitted to the Minister to be made under the powers conferred by section 38(7) of the Administration of Justice Act 1982. The Rules are subject to the negative resolution procedure in Parliament and will come into force on 3 October 2011. The new investment framework for protected beneficiaries will also be implemented on that date.

2. We would like to take this opportunity to thank all respondents who took the time to provide comments about the draft Rules. Those responses were very helpful in guiding our thinking and in determining the final draft of the Rules, which can be found at Annex B.

Consultation Co-ordinator contact details

If you have any comments about the way this consultation was conducted you should contact the Ministry of Justice Consultation Co-ordinator at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Consultation Co-ordinator
Legal Policy Team, Legal Directorate
6.37, 6th Floor
102 Petty France
London SW1H 9AJ

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Consultations should take place at a stage where there is scope to influence the policy outcome.

2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Mark Harrington, Employment Appeal Tribunal

Jill Martin, Office of the Public Guardian

District Judge Ashton

James Batey, Court of Protection

Geoff Finch, Department for Transport

Jonathan Wood, Her Majesty's Courts and Tribunal Service

The Association of Personal Injury Lawyers

Richard Uzupris, Gerrard Investment Management Ltd

Jonathan Taylor, Rensburg Sheppards

Kevin Carlin, Court Funds Office

Martin Duffell, UK Debt Management Office

Daphne Perry

Julia Lomas, Irwin Mitchell Solicitors

Association of District Judges