

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

PRACTICE NOTE 1/2024

INVESTMENT OF AWARDS MADE TO PATIENTS BY
THE HIGH COURT (KING’S BENCH DIVISION) AND THE COUNTY COURT

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1. Introduction

1.1 This Practice Note sets out best practice and procedure to be followed to meet the expectations of the Court where a compensation award is made for an adult under a disability.

1.2 The Practice Note revokes and replaces the Protocol for Investment of Awards made to Patients dated 14 February 2018.

2. Aims

2.1 The objectives of this Practice Note are:

(i) expediting the appointment of a Controller and the investment of compensation monies for a person who has been deemed mentally incapable of managing their affairs under Part VIII of the Mental Health (NI) Order 1986 (‘the 1986 Order’) and

(ii) facilitating efficient use of Court time and resources by setting out for practitioners the requirements of the Court and the Office of Care and Protection when dealing with an award made by the High Court or the County Court in respect of an adult under a disability.

3. Scope

3.1 This Practice Note applies where a High Court Judge or a County Court Judge directs an award to be invested in court by the Accountant General on the Plaintiff’s behalf under Part VIII (Articles 97 to 99) of the 1986 Order.

3.2 Part VIII of the 1986 Order, at Article 97(1), provides that the functions of the High Court shall be exercisable where, after considering medical evidence, the court is satisfied that a person is incapable by reason of mental disorder of managing and administering their property and financial affairs. The term 'mental disorder' is defined in Article 3 of the 1986 Order. The incapable adult under Part VIII is referred to as 'the Patient.' The person appointed by the Court to manage the Patient's financial affairs is called 'the Controller.'

4. Capacity Proofs Required

4.1 In cases where a Part VIII capacity determination is required, practitioners should ensure that a capacity assessment is conducted and the capacity medical evidence is filed in the Court Office no later than 7 days prior to the trial date.

4.2 The **capacity** medical evidence should be submitted in the form of:

- (i) a medical report; or
- (ii) a medical certificate, which must include an assessment of the Plaintiff's life expectancy. A medical certificate should be in Form F5 which is available here: <https://www.justice-ni.gov.uk/publications/forms-becoming-controller>. This should be fully completed, signed and dated by a medical practitioner.

There is no prescribed format for a medical report provided under 4.2(i) above, however, at a minimum it should contain the information required in the medical certificate template referred to at 4.2(ii) above. If this is not provided, the medical report will be returned.

4.3 The Court will not make an order for an award to be invested under Part VIII of the 1986 Order unless the relevant capacity medical evidence has been submitted.

4.4 At the approval hearing and /or in advance of any award being made by the Court, the plaintiff must confirm the following to the Court in writing:

- (i) that the investment of the Patient's award and associated procedures, including an application for controllership and provision for relevant Court fees including fees associated with the Court Funds Office have been considered.
- (ii) the identity and full contact details of the person (whether a solicitor or personal applicant), who will be making the application to be appointed as Controller (the "Controllership Applicant") and the proposed Controller(s)' full name(s). The controllership application form and accompanying guidance note are available here:

<https://www.justice-ni.gov.uk/publications/forms-becoming-controller>

5. Court Order

5.1 If at the conclusion of the litigation the Plaintiff is deemed to be mentally incapable of managing their property and financial affairs and the capacity medical evidence referred to at 4.1 above has been filed, the court order will include the following clause to provide for the award to be paid into court.

“That the sum of Exxxxxxx be lodged in Court within xx days and placed on Court Funds Account in the interim and thereafter be dealt with pursuant to the provisions of Part VIII of the Mental Health (NI) Order 1986.”

5.2 The court order will also include the following standard directions:

“The [Central Office] [County Court Office] shall on the date the order is confirmed, send a copy of the court order and capacity medical evidence to the Office of Care and Protection.

“The Office of Care and Protection shall within 3 days of receipt of the order send notification to the Controllership Applicant(s) of the date and time of the Investment Interview.

The Controllership Applicant(s) shall file a Controllership Application and First Investment Checklist with the Office of Care and Protection at least two weeks in advance of the date of the Investment Interview.”

6. Controllership Application and First Investment Interview

6.1 Upon receipt of the court order and the capacity medical evidence, OCP shall, within 3 days:

- (i) set a date for the Investment Interview which shall be no later than eight weeks from the date of confirmation of the court order;
- (ii) notify the Controllership Applicant(s) of the date and time of the Investment Interview and send to them a Controllership Application Pack, First Investment Checklist and Questionnaire; and
- (iii) send notification of the date for the Investment Interview to the Court Funds Office ('CFO').

6.2 The Controllership Applicant(s) must complete and return the Controllership Application Form and the First Investment Checklist to OCP at least two weeks before the date of the Investment Interview.

6.3 Where the Controllership Applicant(s) is unable to comply with the timescale at 6.2, they must submit their reasons and any alternative proposals in writing for consideration by the Master (Care and Protection) at the earliest opportunity and before the expiry of the prescribed time limit. The Master will provide directions including, where appropriate, a revised timescale.

6.4 If the requisite paperwork is not filed within the prescribed timeline and no correspondence is received, OCP will refer the case to the Master for directions. If a Controller is not appointed within 3 months of the date of confirmation of the court order, in the absence of the Master's express authority for an extension of time, OCP will initiate a tender process to invite submissions and appoint an independent solicitor to act as Controller.

6.5 OCP will inform CFO of any change to the Investment Interview date and provide CFO with a copy of the completed First Investment Checklist within two days of receipt. CFO will arrange for representatives from their Office and from the contracted Investment Manager to attend the Investment Interview.

7. Subsequent lodgement of significant funds

7.1 If a practitioner becomes aware of a subsequent lodgement due (e.g. as a result of a recalculation of damages), they should make OCP aware of this at the earliest opportunity.

7.2 CFO will advise OCP at the earliest opportunity whenever a subsequent lodgement is received in relation to an existing case.

7.3 OCP will consider if a subsequent investment interview is required, and if so, will invite the relevant parties within 2 weeks of the additional funds being received.

This Practice Note shall take effect on 19 January 2024.



Signed this 18 day of January 2024