



**Response by TISA to - Mental Capacity Act: Small
Paymernts Scheme Conslutation**

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About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry**. We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **MiFID II, CASS, ESG/RSI, operational resilience, Cyber Risk, SM&CR** and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings, Investments & Pensions**. This reflects TISA's commitment to open standards and independent governance.



TISA welcome the opportunity to respond to this consultation. Having played a significant role in the introduction of the 'Fair Access' process adopted by the industry for the maturing Child Trust Funds (CTFs), we feel well placed to contribute towards what would make a successful small payments scheme. Given, the likelihood that the largest volume of beneficiaries of the scheme would come from both CTFs and Junior ISAs (JISAs), TISA recommends that the final scheme follows closely the approach adopted for the process in place that balances the level of risk with the amount being paid out.

1. In your View, is a small payments scheme needed? Please give your reasons. Yes/No/Don't know

It is our view that a small payments scheme is needed for those individuals with no capacity. The account holder is totally reliant on the applicant to access these funds and without a balanced scheme these funds will go unclaimed. The Child Trust Fund maturities issue has highlighted that without such a scheme, the only alternative route being going through the full Court of Protection route, these proceeds will remain unclaimed. We have had feedback from several The Carers/Parents who have indicated that the COP process is disproportionate to the amounts being claimed and they would not, therefore, go through this route. The average CTF maturity is around £1,500 although, where parents have contributed this value could be much higher. This is particularly true of Stocks and Shares CTF Accounts which include all Revenue allocated accounts and totals 1.7m accounts.

2. What effect do you think the proposed small payments scheme would have for those without mental capacity? Please give your reasons.

- **Positive**
- **Mostly Positive**
- **Neutral**
- **Mostly Negative**
- **Negative**
- **Don't Know**

TISA and its members believe that a small payments scheme can only provide a positive affect on those with no capacity. The proceeds, however small, will provide needed funds to improve wellbeing, purchase equipment, have experiences or simply cover costs. Some may still be reinvested.

3. In your view, what effect would the proposed scheme have for the parents, carers or guardians of those without mental capacity? Please give your reasons.

- **Positive**
- **Mostly Positive**
- **Neutral**
- **Mostly Negative**
- **Negative**
- **Don't Know**

The Parents, carers and guardians are faced with many challenges when supporting a person with no capacity. The current Court of Protection process is unwieldy, stressful and can also be costly. This is seen to be further complicated when small values are involved. The scheme can only have a positive effect, allowing more precious time to be spent with the person with no capacity.

4. What categories would funds acquired through a small payments scheme by a third party most likely be used for?

Although TISA cannot comment specifically on this question, feedback we have received has suggested that there could be unlimited categories and things the proceeds could be used for. What can be confirmed is that it would be used for the benefit of the person with no capacity and each need would be unique to the individual.

5. Should the scheme apply to individuals who have fluctuating or temporary loss of capacity? Please give your reasons

Yes/No/Don't Know

It is TISAs view that the scheme should seek to maximise the number of persons who can benefit from it where the lack of capacity currently prevents them from utilising the funds without going through a challenging court of protection process. This could include supporting emergency situations where someone is in an induced coma but is expected to recover, for example. Using this scheme as a framework for these situations can assist the industry in knowing what questions to ask and what information to obtain before releasing funds.

6. If yes, should there be a minimum period of time for which capacity must be lost? If no, why?

TISA cannot comment on the ideal length of time. However, as the example used above, the framework of the scheme can assist providers in all situations where capacity has been lost, however, short.

7. In your view, is £2,500 an appropriate limit for the value of payments made through a small payment scheme? Please give your reasons.

Yes/No/Don't know

If no, please specify a value that you think would be more appropriate, and why.

For the approach currently adopted by the industry for Child Trust Funds, £5,000 has been used. This higher figure does suit the majority of claims where parents approach a firm, not wishing to use the COP process. Whilst the average value of CTFs is around £1,500, this is skewed by the number of accounts where only the original government contribution has been made and nothing further contributed. Where parents and family have added to the account the figure, especially if in a stocks and shares account, the figure will exceed the £2,500 proposed limit. Feedback from the industry on CTFs is that should the scheme not match the £5,000 already being used then may not gain industry support and instead the current approach will continue to be used.

Its worth noting that one of the comments noted in the rationale for the proposed £2,500 was a figure suggested in the previous recommended scheme in 1995. That figure then was £2,000 and had that been adjusted to current figures this would have been over £7,000 according to Lord Young when he referred to this in one of his questions to ministers.

8. Is six months a suitable time limit for access to the small payments scheme? Please give your reasons.

Yes/No/Don't Know

There would be no need to place a time limit on the account withdrawal if, once approved the account is closed and the money paid to applicant. TISA sees no benefit, and it only complicates the process, if small amounts are allowed to be paid out from larger accounts whilst an application is going through the courts. There are already processes in place through the current court process to obtain emergency payments. We see no benefit in adding something into this process for a similar step. We, therefore, see no need for a time limit to access the scheme.

9. Do you think the scheme should allow for a single renewal (with no extension to the original £2,500 limit)? Please give your reasons

Yes/No/Don't know

If the application is approved, the account should be closed once payment has been made. There would be no need for any renewal.

10. Do you agree with the proposed list of financial products in scope of a small payments scheme?

Yes/No/Don't know

TISA believe that there should not be a limit on the product type. If, ordinarily, the account holder should be able to gain access to the funds had they had capacity, then they should be able to go through the small payments scheme. There maybe practicalities to work through to make it happen and therefore not all products can be accessed from day one. However, the regulations themselves should not prevent the access.

11. If any, which products do you think should be added or removed from the list?

See above

12. Should Financial Services firms be responsible for administering a small payments scheme?

Please give your reasons.

Yes/No/Don't know

Whilst it is logical for the day-to-day administration to sit with Financial Services, TISA believe that in order to retain a level of compliance and consistency, the MOJ or equivalent (OPG?) should retain the ability to audit payments made by the industry. That way, as a further control measure, the recipient will be aware that the claim and withdrawal could be checked in the same way that they would if the application had gone through the courts. As the scheme would represent a savings to the courts, this could be funded as an offset of the costs that would have otherwise applied had the court process been used.

There remains a question of liability should a challenge be made. TISA believe the overall responsibility of the process should remain with the MOJ. This adds authority to the approach and ensures the protection of the person with no capacity, in line with the Mental Capacity Act. Whilst a firm could be challenged for not following the process correctly, should they decide to refuse the application, thereby forcing the applicant down the court of protection route, that challenge should be automatically submitted to the MOJ where the experience in these matters lies. This further supports the need for the MOJ to retain oversight of the scheme and applications. Where a firm has not followed procedures then it follows that a complaint could be made. Once the MOJ has confirmed that procedures have not been followed then the complaint could still be passed to FOS to handle.

13. Which approach do you consider most appropriate for determining applicant suitability?

Approach A or Approach B? Why?

Approach B

Approach A, where there is a restriction of the applicant to those known to the provider, such as Registered contact or DWP appointee, seems a sensible approach when simply dealing with CTFs or JISAs. However, the intention of this scheme is broader than that and many other accounts may have no known links and therefore be too restrictive. TISA therefore believe approach B to be the most suitable. It is TISAs view that a degree of comfort is still required from the application process, regardless of the applicant's background and should be consistent for all applications.

14. How do you think applicants should demonstrate their suitability when applying to the scheme?

The form currently used by the industry asks the applicant to specify their relationship with the account holder and provide suitable background financial information. This includes whether they share the same address, whether they are already a DWP appointee and whether they were a



Registered contact on the CTF/JISA. In addition, there are Yes/No answers to whether they have been refused a COP application, been or are a bankrupt and if they manage any other financial affairs of the account holder. This provides a degree of comfort to the provider of suitability. A negative answer to a question does not necessarily mean a refusal although it will enhance any follow up to the application.

15. Do you think applicants should have to state their reasons for using this process as opposed to applying for a one-off or deputyship order from the CoP? Please give your reasons.

Yes/No/Don't know

The applicant should simply declare that they have considered the merits of the COP process and that given the value being within the small balance scheme believe this is the best approach for the account holder. Once the scheme is live it is likely that all small balances would be claimed this way and asking a more detailed question would not add any benefit.

TISA do not recommend that the scheme is used to remove small balances from larger accounts as this only complicates the process. Those accounts would require a Court of Protection application. As already mentioned, there is a means to claim emergency funds through this route and the Small Payments Scheme should not replace the current process. Therefore, with no other accounts and no other reasons to find it necessary to go through the COP route, the value would be the only reason to use the scheme approach.

16. Should applicants have to declare in their application what the funds will be spent on? Please give your reasons

Yes/No/Don't know

TISA do not believe the applicant should be explicit in what the proceeds be spent on but simply declare that it will be used for the benefit of the account holder. However, with the recommendation that MOJ retain the ability to follow up any claim, the applicant may wish to retain any such evidence that is deemed necessary to show how it was spent. TISA recommends that there should be a time limit of 2 years for such evidence to be retained.

17. Should Financial Services Firms be requesting information on the applicant's financial history (e.g. bankruptcy, insolvency, debt)? Please give you reasons.

Yes/No/Don't know

Yes

TISA believes that by being required to declare their financial background, the applicants will demonstrate their ability to manage the money on the account holder's behalf. In our current application there are simple Yes/No answers to such questions and the industry does not seek further information. However, the information given allows the provider to build a picture of the applicant and their suitability.



The current Fair Access process incorporates a declaration confirming that all information is true, and that the applicant understands that any information provided could result in further evidence being required.

**18. Are there any instances in which you think money should not be released to individuals?
Yes/No/Don't know. If yes, please give examples**

Should the applicant meet the requirements of an application then there should not be any reason to refuse to pay out.

Clearly, if it is felt the applicant is attempting to defraud the account holder, the value exceeds the limit in a significant way or the name appears on a register of previous applications held by MOJ then these reasons might lead to a refusal.

**19. Do you think that applicants should have to provide contact details of a referee known to the account holder when applying to a small payments scheme? Please give your reasons.
Yes/No/Don't know**

A referee detail should be collected but not necessarily followed up in all cases. The relationship of the referee to the account holder could also be collected. This information could be used by MOJ to follow up after completion if deemed necessary. A provider would only follow up if they suspected fraud. We acknowledge that the information provided may be fraudulent but the act of requesting it might deter potential fraudsters.

Again, the declaration is helpful and should ask the applicant to confirm they understand that any information contained within the application may be followed up, including the referee. The declaration must also confirm that the referee has been made aware that their details have been provided.

20. Should financial services firms be required to contact named referees in all cases before making payment? Please give your reasons. Yes/No/Don't know

As mentioned above It is not felt that the referee should be contacted in all cases, only those where further information/comfort is required or the MOJ contacts them as part of their own post completion checking.

**21. Should the named referee be required to sign a declaration in the application process to confirm they know both the account holder and applicant, and understand the purpose of the scheme?
Please give your reasons. Yes/No/Don't know**

The applicant should confirm that they have informed the referee that their name has been included, that they agree to be included and that they may be contacted either by the provider or MOJ as part of the application or sometime in the future.

The provider could validate the name and address of the referee as part of the process.

- 22. Is a two-week notification period appropriate/long enough for the account holder or referee to raise an objection? Yes/No/Don't know If no, please specify a period of time that you think would be more appropriate, and why.**

On the basis that the application asks for confirmation of the account holder's lack of capacity from a Practitioner and the referee is not generally contacted unless the firm wishes to explore further, there should be no delay in making the payment once the application has been approved. The referee being contacted would be part of the approval process.

- 23. What risks, if any, might this approach to notification of referees and account holders have?**

The provider would only contact the referee if they had any doubt and therefore would hold up payment until a satisfactory response is received. The OPG will contact after payment so this would not affect the timescales. It is always possible that the referee is fraudulent if the application is also fraudulent.

- 24. Which mechanism for payment/withdrawal do you think the scheme should adopt and why?**

TISA believe this should be kept as simple as possible. Therefore, the payment should always be paid to the applicant. Anything else just adds complications for the provider. This works perfectly for the process currently adopted by the industry. Child Trust Funds do not allow payments to third parties to happen without legislative changes anyway.

- 25. What risks, if any, might the proposed approaches to payment/withdrawal have?**

None if adopted as above.

However, if third party payments are allowed the level of risk increases and may discourage providers from using the scheme. Paying a third party should only allowed where the firm feels comfortable to do so. It should not be formally part of the regulations.

- 26. In relation to option 2 (payments made directly to the provider) and option 3 (money paid to the applicant and to the provider): Should there be a higher spending limit on payments (greater than £2,500) made directly to providers of goods and services? Yes/No/Don't know If yes, please specify a value you think would be more appropriate, and why**

The industry does not support this. However, if payments were allowed to a third party then it may be advisable to specify that the third party is a provider of relevant goods and services, in which case TISA sees the logic in allowing a higher value. However, this does complicate matters further in overall management of the scheme and may be perceived to be unfair.

27. Should applicants be required to keep receipts of all spending in the event of future objections? Please give your reasons. Yes/No/Don't know

Applicants should be advised that any claim could be followed up by MOJ/OPG and therefore evidence should be kept of how the money has been spent. TISA recommends a time limit of two years for records to be retained.

28. If money is paid directly to the applicants, should there be a requirement to report back to the financial services firm how the money was spent, using receipts to evidence this? Please give your reasons. Yes/No/Don't know

The industry does not see any benefit in this. The Provider should not have to make a judgement on the information provided. As mentioned in the previous answer, the MOJ/OPG could follow up and therefore receipts should be retained.

29. Should account holder and applicant details be stored on a central register? Yes /No/Don't know

TISA believe that the MOJ/OPG should be responsible for a register. It can be used by the industry to check multiple applications and for MOJ/OPG to follow up a number of the claims if appropriate.

30. If yes, it is likely a cost would apply. Is it proportionate to charge an application fee in order to cover oversight costs related to maintaining the central register and conducting checks, which financial services providers might choose to pass on to applicants? Yes/No/Don't know

The applicant should not be charged for this. This could end up being a deterrent and is discriminatory to these account holders who would receive a lower value as a result. The scheme would represent a saving to the Court of Protection process as these applications would otherwise need to go through this route. This cost saving should offset the cost for a register. It would be possible to use technology to reduce the cost and maximise the efficiency.

31. Should there be a limit on how many different people's accounts one individual can have access to at any given time? Please give your reasons Yes /No/Don't know

Where the applicant is not a blood relative then there should be a process to determine the reasons for access to multiple accounts and a restriction applied if appropriate.

32. If any, what further fraud prevention measures that are not already listed here do you think are needed?

For small payments it is about getting the controls v payment balance right. Following a similar process, the application form used for the current industry Child Trust fund maturities can be used as an example. Principle 5 of the Mental Capacity act requires that actions to be taken are less restrictive of the persons rights and freedom of action. We believe this gets the balance right.

33. Should the OPG be given powers to investigate fraudulent access to the scheme? Yes/No/Don't know

There should be responsibility for an audit process to be in place for a sample number of applications to be checked whether there is concern of Fraud or not. TISA would support the OPG having those powers and responsibilities.

34. If yes, there is likely to be a cost implication. How should this be covered? Application fee; charging a third party each time they want to raise an objection; other

As referred to previously, any cost for this should be offset against the savings made through a smaller number of cases going through the courts. Any costs charged to an applicant will act as a deterrent and may be discriminatory.

35. From whom do you think redress should be sought in the event of fraud?

If the firm has followed the scheme approach, then it should be the MOJ who should redress, if the fraudster is not caught or cannot repay the amount paid out. This scheme should be treated as if the firms are acting on behalf of MOJ. If the case had gone through the courts then the MOJ would take responsibility.

36. If any, what are your views on how liability in the scheme could be managed?

If the provider is at fault, then they will carry the liability. In any other circumstance, then MOJ/OPG would be deemed liable.

37. In your view, how effectively does the proposed process balance the trade-off between simplicity and security?

- a. Imbalanced towards security
- b. Somewhat imbalanced towards security
- c. Balances effectively
- d. Somewhat imbalanced towards simplicity
- e. Imbalanced towards simplicity
- f. Not sure

If the changes proposed are adopted, then c. If the proposed changes are not adopted, then b.

38. How simple do you consider this process for applicants?

- a. Not simple enough
- b. Not that simple
- c. Neutral
- d. Quite simple
- e. Very simple
- f. Not sure

If the changes proposed are adopted, then c. If the proposed changes are not adopted, then b

39. How simple do you consider this process for financial services firms?

- a. Very simple
- b. Fairly simple
- c. Neutral
- d. Fairly difficult
- e. Very difficult
- f. Not sure

If the changes proposed are adopted, then b. If the proposed changes are not adopted, then d

40. Would this process be feasible for financial services firms to introduce? Please give your reasons. Yes/No/Don't know

Financial Services already have a process in place that is not dissimilar to that proposed. With the tweaks recommended, the industry should be capable of implementing this scheme. The key change recommended will be to match the limit to that already adopted of £5,000.

41. If any, what elements would you add to or remove from the process?

For the industry to adopt this scheme, it is important for the process to be as simple as possible. This means:

- Paying direct to the applicant
- Limiting the follow ups to Referees
- Not charging applicants
- Only accounts whose value is below the agreed limit in scope i.e not allowing larger value accounts to have a partial withdrawal pending a COP application.
- Limit to match the current industry process of £5,000

42. How long do you think it should take to gain approval to make small payments/withdrawals on behalf of a person without mental capacity? • One week or less • Two weeks • Less than one month • Less than two months • Less than six months • Other [please specify] • Don't know

TISA believe it should be possible to gain approval within two weeks for, a straight forward case.

The following questions, 43-45, are only for response by Financial Services Firms:

- 43. What new costs would you envisage from overseeing a formal small payments scheme as opposed to maintaining existing informal arrangements? If possible, please provide a quantified unit cost per applicant.**

There will be a cost of setting up and maintaining the register which we see being borne by the MOJ.

Some firms may wish to make changes to their systems to improve workflow and capture appropriate data not currently collected (Referee details for example).

A three page application form and separate practitioner form already exist for the process the industry currently uses. Using the Small Payments Scheme would require little change to the documentation currently in use.

- 44. What proportion of unique account/financial product holders make use of informal arrangements related to mental incapacity at present?**

Volumes of take up of the current process for Child Trust Fund maturities, where a person lacks capacity, are around 10% of those that could take it up. It is not clear whether this is because the parent is unaware of the process, or even of the CTF itself. This compares with less than a tenth of 1% of those eligible going through the courts.

- 45. What are the average product values for the following held by your organisation:**
- a. Current accounts**
 - b. Savings accounts**
 - c. Children's savings accounts**
 - d. Investment accounts**
 - e. Children's investment accounts**
 - f. E-money**

Prior to September 2020 the average value of the Child Trust Funds was around £1,500. This would include all of the Revenue allocated accounts where there had been little interest in the product and it had been opened by HMRC. After the first year the average value of those that have been claimed was over £2,400. Given this is an average and TISA would expect the scheme to support around 80% of applications this average value would support a higher limit for qualifying accounts.

46. What more could be done to raise awareness of the Mental Capacity Act 2005 and the legal arrangements for managing the care and affairs of people without mental capacity?

A focused approach aimed at those parents/guardians and carers is needed. A leaflet designed by MOJ could be provided to those individuals to ensure the information is provided and that the message is clear and consistent. Other options could include:

- Leaflets when DWP correspond with those Individuals receiving payments on behalf of people with no capacity
- Use of charity routes who represent this cohort
- Use of the government gateway, to promote, for those representing this cohort
- Provide information in hospital and other places used by this cohort
- Use social media to provide links to videos or podcasts that inform
- The website needs to be simpler with less pages of information to go through. More diagrammatic representation. It's daunting to see over 100 pages of information and forms to go through to apply

47. What more could be done to improve understanding of and engagement with the CoP?

AS mentioned previously simplify the website and any information provided. There needs to be a simpler way for a person to get the information they need, perhaps through a decision tree, rather than trawling through over 100 pages.

48. If any, what do you think are the barriers in the CoP process?

There are many barriers to the COP process:

- There are too many forms that try to cover all eventualities rather than having simple forms for the majority of applications. For example, there could be a set of forms that are for an application with basic requirements, similar to a Child Trust fund.
- The timescales. Current process times take around 6 months. Although there is a fast track for certain cases, the majority of the applications would not apply. TISA believe that the Small Payments Scheme discussed in this paper would provide payment in about 2 weeks for a standard case
- Whilst CTFs are exempt from costs generally, the forms are too complicated. If you consider the lack of time a person who cares for someone with no capacity has, then the stress of going through the process points towards involving a professional to guide them through. This cost tends to be prohibitive, certainly for lower value accounts.
- There has been talk of support available to guide you through the process. However, experience has shown that this is not easy to access either online or by phone.
- Some of the requirements seem to be disproportionate to the risk involved.

49. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform set out in this consultation document? Please give your reasons.

The Mental capacity act principle 5 suggests not putting unnecessary barriers in the way that would not otherwise be there for a person who has capacity. Providing a simpler way to access the money without noticeably increasing the risk of fraud reduces the barriers to access. Charging to access this money does not, however.

The areas highlighted in this response that need to be altered, if they were to remain, will only serve to restrict access that would otherwise been straight forward. One such example is limiting the access to £2,500.. Limiting access to this figure will see parents not applying at all for the proceeds, as we saw before the industry process was implemented for Child Trust Fund Maturities

50. Do you agree that we have correctly identified the range and extent of the equalities impacts under each of the proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

The basic premise of the scheme serves to provide a risk based approach to gaining access to lower value accounts. The areas identified that needed consideration are appropriate. There is, however, still too great an emphasis on security and risk in its current form to strike the right balance. TISA, in supporting and delivering the 'Fair Access' process currently in place, believe the balance achieved with its design and operation could be used as an effective example. We feel that a solution based around this will benefit the wider audience.