

## **REPORT OF THE CHIEF EXECUTIVE**

### **NOMINEES FOR THE ADMINISTRATION OF ESTATES, AND DEALING WITH THE FINANCIAL AFFAIRS OF INDIVIDUALS LACKING MENTAL CAPACITY**

#### **Purpose of the Report**

1. To formally delegate authority to various post holders to:
  - a. act as the Council's nominee for dealing with the estates of deceased service users and their relatives or the estates of deceased relatives of looked after children or adults lacking mental capacity;
  - b. act or appoint someone to act on behalf of the Council as a trustee in appropriate cases;
  - c. act as the Council's nominated Deputy for an individual where it is necessary for the Council to deal with their property and affairs;
  - d. act as an appointee of the Department of Works and Pensions in order to deal with the benefits of service users who cannot manage their own affairs
2. To delegate to the Chief Executive the authority to make any similar such nominations in the future on behalf of the County Council as may be required for the efficient and effective conduct of service delivery.
3. To authorise the Council's Monitoring Officer to update the Council's Scheme of Delegation for Officers to reflect the above delegations.

#### **Administration of Estates**

4. Periodically, the Council is owed debts by the estates of deceased individuals where no person is willing or able to administer the estate. The reason for the Council being owed money is often the provision of care services in the deceased's lifetime.
5. Where there is no family member to deal with the deceased's estate, the Council, as a creditor, can seek to be appointed to deal with the estate administration. This involves an application to the Probate Registry for a nominated officer of the Council to be appointed as administrator of the estate.
6. The Probate Registry requires confirmation of the legal authority nominating the named officer/s of an organisation who apply to administer the estate of a deceased person.
7. Also, rarely, the Council might be appointed executor under someone's Will and wish to obtain a grant of probate in the person's estate.

8. In certain circumstances the Council is named as Corporate Parent of the minor children of a deceased person whose estate needs administering. If there is no one else entitled in priority the council may need to apply to the Probate Registry for a grant of representation in their capacity as corporate parent in order for the estate to be administered.
9. In order to provide the legal authority required by the Probate Registry a formal resolution nominating an officer is required and following various staffing restructures this now needs to be revisited. It is proposed that in all cases where a single nominee is required, the post holder who holds the office of the Council's head of the Legal Service should be appointed as the Council's nominee (currently this role is held by the Group Manager, Legal Democratic and Complaints). In cases where more than one nominee is required by the Probate Registry to apply for the grant, the second nominee appointed by the Council should be the Corporate Director of the relevant Service Department depending on whether the estate affects looked after children or vulnerable adults.

### **Appointment of Deputies**

10. There may occasionally be circumstances where a service user lacks the mental capacity to make certain decisions relating to their property and affairs. In those circumstances and if there is no other appropriate adult willing or able to perform such a role, the Council may need to nominate someone to apply to the Court of Protection to be appointed as a Deputy to act in their best interests.
11. The Council needs to have designated nominees to take on such roles without the need to report to Council on each occasion so that appointments can be made efficiently, and relevant decisions can be taken promptly when required.
12. It is therefore proposed that the relevant Corporate Director of the service department concerned (most likely to be Children's and Adults) be authorised to act as the Council's authorised officer for property and affairs deputyships of Nottinghamshire County Council granted by the Court of Protection.

### **Appointment of Trustees**

13. On occasion an appointed Court of Protection Deputy (a County Council Officer appointed under paragraph 12 above) may need to apply to the Court of Protection for one or more trustees to be appointed in order to complete the sale of a property owned by a service user. The trusteeship is discharged as soon as the property is sold.
14. It is proposed that the relevant Corporate Director of the service department concerned (most likely to be Children's and Adults) and the head of the Legal Service be delegated authority to act as nominees where required. In addition, the Council's scheme of delegation to officers will be updated to reflect the changes once approved.

### **Department of Work and Pensions**

15. It is also be proposed that the relevant Corporate Director of the service department concerned (most likely to be Children's and Adults) be delegated authority to act as an appointee of the Department of Works and Pensions in order to deal with the benefits of service users who cannot manage their own affairs.

## **Other Options Considered**

16. The appointment of different Council officer/s as nominee/s, trustees and deputies has been considered but the current proposals are thought to be most appropriate.

## **Reason/s for Recommendation/s**

17. In order to provide clarity regarding the authority for officers to act as the Council's nominee relating to the administration of estates, or appointee in respect of trusts affecting service users where no other suitable trustees outside the Council can be identified or as Deputies in respect of the Court of Protection matters, it is considered appropriate that the officers with the designations set out in this report be appointed on behalf of the County Council in respect of any such matters arising in the future.

18. In the event that similar circumstances arise in the future and which are not covered specifically by these nominations, it is proposed that the Chief Executive be delegated authority to nominate such post holders as he considers appropriate to undertake these roles in future.

## **Statutory and Policy Implications**

19. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

## **Financial Implications**

20. At this stage it is envisaged that any costs of administering an estate or managing relevant trusts will be met by the deceased person's estate or from the established trust funds. In respect of Deputyship arrangements under the Mental Capacity Act, it is envisaged that these will be contained within normal operational budgets relating to the needs of the relevant service user in respect of whose affairs the Deputy has been appointed.

## **Service User, Safeguarding of Children and Adults at Risk Implications**

21. In order to protect the interests of vulnerable adults and looked after children where no other appropriate individuals are available or willing to undertake these roles, the Council needs to be in a position to act promptly. The roles all come with specific obligations regarding how the duties are discharged and advice will be sought to assist relevant nominees on a case by case basis as necessary.

## **RECOMMENDATION/S**

1. To formally delegate authority to act as the Council's nominee/s for the purpose of administering the estates (including making an application to the Probate Registry for a

Grant of Representation) of deceased service users and their relatives or the estates of deceased relatives of looked after children or adults lacking mental capacity where necessary to:

- a. the Group Manager Legal, Democratic and Complaints (or any successor postholder having responsibility for the head of the Legal Service); and
  - b. the Corporate Director of the relevant service department (to act as an additional nominee in cases where two nominees are legally required).
2. To formally delegate authority to the Corporate Director of the relevant service department and the Group Manager Legal, Democratic and Complaints to act as a trustee in appropriate cases.
  3. To formally delegate authority to the Corporate Director of the relevant service department to act as the Council's nominated Deputy for an individual where it is necessary for the Council to deal with their property and affairs.
  4. To formally delegate authority to the Corporate Director of the relevant service department to act as an appointee of the Department of Works and Pensions in order to deal with the benefits of service users who cannot manage their own affairs.
  5. To delegate to the Chief Executive the authority to make any similar such nominations in the future on behalf of the County Council as may be required for the efficient and effective conduct of service delivery.
  6. To authorise the Council's Monitoring Officer to update the Council's Scheme of Delegation for Officers to reflect the above delegations which, for the avoidance of doubt, shall apply to the person from time to time holding the above posts or to any equivalent or replacement successor job titles to each of those posts.

**ANTHONY MAY**  
**CHIEF EXECUTIVE**

**For any enquiries about this report please contact: Marjorie Toward, Service Director, Customers, Governance and Employees**

#### **Constitutional Comments [HD 27/09/2019]**

22. Full council is the appropriate body to consider the content of the report.

#### **Financial Comments (SES 27/09/19)**

23. The financial implications are set out in paragraph 19 of the report.

24. It is envisaged that any costs of administering an estate or managing relevant trusts will be met by the deceased person's estate or from the established trust funds. In respect of Deputyship arrangements under the Mental Capacity Act, it is envisaged that these will be

contained within normal operational budgets relating to the needs of the relevant service user in respect of whose affairs the Deputy has been appointed.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

### **Electoral Division(s) and Member(s) Affected**

- All