



Iain Stewart MP  
House of Commons  
London  
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**MoJ ref:** MC108569

18 September 2023

Dear Iain,

### **CHILD TRUST FUND CAMPAIGN**

Thank you for your email dated 22 August, addressed to HM Treasury, on behalf of a number of your constituents regarding access to Child Trust Funds (CTFs) and Junior ISAs of young adults who lack mental capacity. Your email has been transferred to the Ministry of Justice and I am responding as the Minister with responsibility for the Mental Capacity Act (MCA) 2005, the legislation that affects this issue.

This is an important and sensitive issue, to which significant thought, consultation and study has been given over recent years. The starting-point is the long-held principle that an adult must have proper legal authority to access or deal with property belonging to any other adult – whatever the latter's ability or disability. Put another way, an adult who lacks capacity is not, and ought not to be treated as, a child. To do so would subvert adult autonomy. This fundamental principle runs as a thread through modern disability legislation and has been upheld by the courts.

The MCA provides the framework to support and empower vulnerable people who lack mental capacity. The underlying philosophy of the MCA is to assume that everyone has some level of capacity and should be involved in their own decision making wherever possible. It encourages those who care for individuals who lack mental capacity to support them to make their own decisions or help them express their wishes so others can make decisions for them.

The Government places a high degree of importance upon protecting and supporting those who lack the mental capacity to make decisions for themselves. For that reason, if a young person lacks mental capacity, and as a result cannot handle their finances, a parent or guardian must have legal authority to manage these funds on their behalf. This vital safeguard exists to protect vulnerable people from fraud or abuse. They are not specific to CTFs but apply in general to the affairs of vulnerable people.

The Government fully appreciates that some parents, who will have made decisions for their children throughout their childhood, may be unaware that they need to be legally authorised to make such decisions once their child reaches adulthood at 18 and see the need for legal authority as an impediment.

That's why the MCA contains a number of processes in place to legally confer financial decision-making powers for a person who lacks mental capacity to someone else. Anyone aged 18 or over, with the mental capacity to do so, can make a Lasting Power of Attorney (LPA). Some young adults, for instance those with a learning disability, may not have the capacity to fully deal with their financial affairs but will be aware that they need assistance and are capable of choosing a person to help them by making decisions on their behalf. In these circumstances an LPA and the appointment of an attorney would be appropriate instead of an application to the court.

If the person lacks mental capacity to make an LPA, then an application will have to be made to the Court of Protection to appoint a deputy to manage their financial decisions. This process has been designed in a way that means the family does not have to visit the court in person, neither do they need to seek legal advice, unless they choose to.

To assist families and carers in making their application the Government announced in December 2020 that Court fees would be waived:

<https://www.gov.uk/government/news/child-trust-fund-court-fees-waived-for-parents>

There is also a sample Court of Protection application form specifically for use where the CTF is the sole asset:

<https://www.gov.uk/government/publications/apply-to-make-decisions-on-someones-behalf-property-and-finance-form-cop1a>

In the case of CTFs, parents do not have to wait until their child is 18 to make an application. The Government encourages parents to do this in advance, to ensure swift access to the account. Your constituents refer to an expansion of the appointeeship scheme to include access to CTFs. As this relates to Department for Work and Pensions legislation, I am unable to comment on their specific process. However, it is important to note that there is a distinction between income received through benefits, and capital such as money held in personal accounts and CTFs. .

You have asked what steps are being taken to speed up the Court of Protection application process. The Court recently reviewed its application processes for property and affairs cases, which would include CTFs, and piloted a new online process for these applications in order to streamline and speed up the process. The results from the pilot saw application times reduced from 24 weeks to 8 weeks. In February 2023, the court rolled out the online process for property and affairs applications for all court users.

Should you or your constituents wish to learn more about the new process, details can be found at the following links:

- Deputies: <https://www.gov.uk/become-deputy/apply-property-financial-affairs-deputy>.
- Professionals: <https://apply-for-a-property-and-affairs-deputyship-order.form.service.justice.gov.uk/>.
- Litigant in person/Citizens: <https://apply-to-become-a-property-and-affairs-deputy.form.service.justice.gov.uk/>.

In the future, the court will continue to identify areas to simplify and remove duplication on court forms, including uploading to the online process many of the forms required for property and affairs applications.

Finally, you may be aware that in November 2021, the Government consulted on an alternative process to allow access to funds. The response to the consultation was published in February and can be found here: <https://www.gov.uk/government/consultations/mental-capacity-act-small-payments-scheme>.

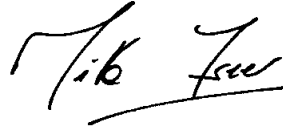
What was very clear from respondents is that there is a lack of awareness concerning the MCA. We are committed to making information more widely available for individuals who lack mental capacity and their families on how to make decisions on their behalf, by launching a campaign to increase the awareness of the MCA and the support available for individuals at key life points. A core step within this is the creation of a series of toolkits to inform families and frontline stakeholders about the MCA and how they can support someone who lacks mental capacity.

The first toolkit in this series, launched on 9 June, will provide advice on financial decision making for parents and carers of young people who lack mental capacity, including guidance on the different ways to obtain legal authority to access an account on behalf of someone who lacks mental capacity.

The toolkit can be found here: <https://www.gov.uk/government/publications/making-finance-decisions-for-young-people-parent-and-carer-toolkit>.

The current approach maintains the vital safeguards that prevent fraud and abuse against vulnerable people whilst ensuring they are not deprived of property rights merely on account of their disability. It is often likely that a parent will need ongoing legal authority to make decisions on behalf of someone that lacks capacity and so we urge parents and carers to engage with the process as early as possible.

I am grateful to you for writing to me on this important and sensitive issue.

A handwritten signature in black ink, appearing to read 'Mike Freer', with a horizontal line underneath the name.

**MIKE FREER MP**