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Iuil 2015

Public Accounts Committee

Report on the Wards of Court

July 2015



Foreword by the Chairman of the Public Accounts Committee, John McGuinness, T.D.

I welcome the report of the Committee on its examination of management and investment of funds belonging to Wards of Court.

Wards of Court are protected by the State which holds almost €950 million on behalf of these vulnerable individuals who number 2,600. The Committee, in examining the operation of the fund and in particular the systems put in place by the Courts to manage and protect this fund, is anxious that the investment of these individual funds deliver an appropriate return and that a transparent system is in place that gives appropriate and timely information to Wards of Court. To that end, and while I note that the funds belong to the beneficiaries and is not public money, the Committee has recommended that it be audited by the Comptroller & Auditor General.

Of particular concern to the Committee is the position of a number of Wards of Court, who as minors were awarded damages by the Courts for injuries sustained and who now find that their funds will become depleted during their lifetime. These individuals and their families are very vulnerable as the comfort of having a fund to cater for their needs will no longer be available to them. Their situations need to be addressed now before the funds become depleted and the Report will call for such action.

I commend the Report to Dáil Éireann.

John McGuinness, T.D.,

Chairman

6th July 2015

Public Accounts Committee

Report on Wards of Court

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Introduction

The Courts hold approximately €1.47billion under management in respect of 18,500 beneficiaries. A subset of these managed funds is the €950 million held on behalf of 2,600 wards of court. All wards of court are, because of their status, in a vulnerable position where they are assisted in decision making because they lack the capacity to do so themselves. The Committee was informed that the majority of wards of court are brought into wardship because of age related deterioration in mental capacity. Others may have an intellectual disability or suffer from a psychiatric illness. A small number of wards of court arise from personal injury awards.

While the ultimate responsibility for the management of these funds rests with the Courts, the administration of the fund is dealt with by the Office of the Wards of Court which is part of the Courts Service. Since the establishment of the Courts Service in 1999, a number of reviews of the management and investment of these funds have been undertaken and this led to a new investment strategy being put in place in 2003. Investment policy is determined by an Investment Committee on the advice of independent investment advisors under contract to the Courts Service. The performance of the investment will be examined in Chapter One of this Report.

These funds belonging to wards of court are held in trust and are thus not public funds and they are audited privately. The question of having the funds audited by the Comptroller and Auditor General was considered during the reviews mentioned above and it is a matter that will also be considered in Chapter One of this Report.

The Committee also reviewed the extent to which the Courts Service interact with the legal representatives of wards and the extent to which information is made available in respect of the performance and the sustainability of the fund. These matters are dealt with in Chapter Two.

Finally, the Committee examined a number of issues relating to the administration of the ward of court system which will have regard to proposed changes, especially in the way damages are paid to persons who may become wards of courts in the future. One of the key concerns of the Committee related to the protection of those wards of court where the fund is likely to become depleted during the lifetime of the individual. These matters are dealt with in Chapter Three of this Report.

Accountability issues

The accountability issues that arose when the Committee examined the vote of the Court Service at its [meeting on 20th November 2014](#) were as follows:

1. Investment of Funds held for Wards of Court
2. Management of Client Services
3. Managing the vulnerability of certain Wards of Court

Chapter One

Investment of Funds held for Wards of Court.

Introduction

The Committee was informed that a number of customised funds were established in 2003 and that most of the funds held in trust by the Courts are now invested under this arrangement. The Courts Service outlined that it operates a conservative investment policy so as to ensure that the capital sum is protected, especially in the case of minors. The Committee in reviewing this investment strategy questioned the extent to which the funds had been depleted as a result of the decline in equities arising from the financial market collapse in Ireland in 2008. The Committee is of the view that issues around performance of the investment, the investment strategy and the controls in place in respect of the fund should operate with a greater degree of transparent and be subject to greater public scrutiny.

Extent of the investment

The Committee was informed that 65% of the overall fund [of €1.47 billion] was invested in cash based assets and bonds with the remaining 35% invested in equities and corporate bonds. The higher percentage of the fund now invested in cash based assets reflects the fact that many of the beneficiaries of the fund, including wards of court are elderly where access to cash and capital preservation is a priority. The Committee was also informed that, in some of those cases, the amount held for the beneficiary may not be significant and would not be sufficient to cover their full cost of care. In cases where a minor becomes a ward, as in catastrophic injury cases for example, the likelihood is that most of the fund would be placed in a growth fund where there would be a requirement to build up the fund through income generation. In those cases the Committee was informed that a sum equivalent to approximately three years of payments is now held in cash based assets. This ensures that the ward has ready access to the fund and also avoids a situation where equities and bonds would have to be sold in a distressed market situation. One of the concerns raised directly with the Committee by the families and those who care for wards of court is the fact that this change to have a three year sum did not operate when the markets were at their most volatile in the period from 2007 to 2011.

Governance of the Fund

The President of the High Court, in allowing a person into wardship, performs a dual role in

- (1) Making an order appointing a committee (usually a family member) to manage the wards property and make recommendations in respect of the persons welfare and
- (2) Heading up the Investment Committee which approves the overall strategy for the investment of the overall Fund.

The day to day management of the ward of court system, including the investment is delegated by the President to the Office and Registrar of the Wards of Court. In accordance with the Courts (Supplemental Provisions) Act 1961, the Office and the Registrar of Wards of Court has statutory

responsibility for managing the affairs of persons who are Wards of Court. The Registrar has responsibility for the investment of the funds, in accordance with the protocols set down by the Investment Committee which is guided by an outside investment advisor which advises on the overall investment strategy and sets the benchmark for investment performance. The actual investment decisions are made by independent fund managers under contract. The Court Service did point out that changes were being made to the fund manager's role so as to segregate the duties of the fund manager and the custodian of the funds.

Investment performance

As outlined above, the nature of the funding requirement of wards of court results in approximately two-thirds of the funds being placed in cash based assets which is an almost risk free investment that gives ready access to funds but generates an insignificant investment return. In the case of the growth fund, where a large part of the funds of the wards of court are invested, there is a higher rate of return as the investments carry a higher risk given that the funds are invested in equities and corporate bonds. As outlined in the latest Financial Statements of the Office of the Accountant of the Courts of Justice for the [year to 30th September, 2014](#), the growth fund generated a return of 14.8% after the deduction of management fees. The Court Service also informed the Committee that this fund has grown by 67% in the years 10.8 years to October 2013, which is an average annual performance of 6.2%. This average yield takes account of the fact that the fund lost value during the financial crisis. The Committee was told for instance that in 2008 alone it decreased by 17% in value. Based on the unit price index of one example of the fund, the investment unit value reached a peak in May/June 2007 [€15 per unit] and thereafter fell to a low value in February 2009 [€10] which equates to a fall in value of 33%. The value of units has since recovered and figures seen by the Committee show growth fund units at €18 in January 2015. In the example above and as cited at the meeting the value of that particular fund fell from €516,000 in January 2007 to €261,000 in February 2009. In this case, it appears that the growth performance of the fund was sufficient to offset the drawdown costs in the period up to May 2007, thus preserving the value of the fund: In the period from May 2007 to February 2009, a larger number of the units were sold off in order to meet the drawdown costs of the Ward. The need to sell these units has resulted in the funding becoming severely depleted to the extent that it may be insufficient to meet the maintenance costs of the ward going forward. The need for contingency arrangements in cases where the fund will become depleted is the subject matter of Chapter Three.

In the context of the investment performance, two issues arise, one relating to a look-back and the other relating to the oversight of the fund management performance going forward. It may be appropriate for the Courts Service to now seek an independent review of the management and performance of funds during the period from May 2007 to January 2009 to establish whether the appropriate strategies were pursued in a falling equity market. This look-back review should place particular focus on those cases where there was a significant fall in value of the Wards funds and on the further steps, if any, which could have been taken to protect the values of such funds. In regard to the current and future performance of the fund, the Committee sees scope in having an independent assessment of the investment policies and of the fund performance so as to fully assure the wards of court and their representatives that all appropriate steps are being taken to protect the funds for the ongoing use of the wards. The Committee will recommend a periodic review by an outside body which will give an independent benchmark of fund performance.

Audit

The financial statements of the Accountant of the Courts of Justice are audited by independent auditors and the audited financial statements are submitted to the Minister for Justice & Equality and the Minister for Finance. At present there is a legal impediment to giving the Comptroller and Auditor General a role in the audit of this account. While the current legislative proposals, as contained in the Assisted Decision-making (Capacity) Bill, 2013 will see the current wardship system replaced by a system of guardianship, it is likely that the new Office of Public Guardian will also have to retain a centralised fund especially for those where the fund has become depleted or who cannot find an appropriate guardian. The Committee will recommend that, notwithstanding the fact that the fund belongs to private individuals, that funds of the office of the Ward of Court or the any funds held in trust by the proposed Office of Public Guardian be audited by the C&AG who in addition the financial audit can examine the systems processes and procedures that are employed to ensure that the fund is managed in a way that protects the funds. In addition, the designation of the C&AG as the auditor of the fund will result in the management and the performance of the fund being open to regular scrutiny by the Committee of Public Accounts which would give another level of assurance to wards of court and their families.

Findings of the Committee

1. Some individual funds were severely depleted in value in the period from May 2007 to January 2009 because of the fall in the unit value of the growth fund required units to be sold in a depressed market in order to make maintenance payments to the ward.
2. While the funds, held in trust for wards of court, are invested by independent fund managers the overall performance of the fund is not subject to independent assessment.
3. The funds of the wards of court are not audited by the Comptroller and Auditor General

Recommendations of the Committee

1. The management and performance of the Wards of Court growth fund in the period from May 2007 to January 2009 should now be subject of an independent review having regard to the dramatic fall in the value of certain individual funds which have become severely depleted to the point where they may be a danger that the funds will run out.
2. The ward of court fund should be subjected to periodic independent assessment in respect of the investment performance of the fund and such reviews should be published.
3. The funds held in trust for wards of court and any funds held in trust under the proposed Office of Public Guardian should be audited by the Comptroller & Auditor General and legislative amendments to facilitate this should be brought forward by the Minister for Finance and/or the Minister for Justice & Equality.

Chapter Two

Management of Client Services

The Office of the Registrar of Wards of Court within the Courts Service manages the day to day interactions with ward and deal with issues such as the draw-down of individual funds and it also provides information on fund performance. The management of the relationship with the client base is a key public service. As outlined in this Report, there are approximately 2,600 Wards of Court, each of whom is highly vulnerable and all of whom, given the nature of their dependency, will have a requirement to draw down monies to meet specific or ongoing costs. The Committee was informed that the level of contact between the Courts Service and individual wards will vary according to circumstances. The nature of the fund requires the Office of the Registrar of Wards of Court to act in a fiduciary manner by doing what is best for the beneficiary. In that regard decisions are made for the wards in circumstances where the wards representatives may sometimes have a passive role in the process. In addition the Committee has received correspondence in recent years about difficulties in getting information about the position of individual funds. The Committee notes the proposed changes in the legislation governing Wards of Court which provides for the replacement of the adult ward of court system by a less intrusive system and the proposal that a new service will be set up in the Courts Service to manage capacity related matters for adults. This changed service is contained within the provisions of the Assisted Decision Making (Capacity) Bill 2013 which is currently before the Oireachtas.

The Committee takes cognisance of the work being done by public servants in managing the relationship with this large cohort of clients. Given the nature of the relationship and the fact that some clients do experience a level of difficulty it may be appropriate that, as part of the change process that will fall into place with the new legislation, a charter of rights is put in place which would set minimum standards and could also help in the management of the relationship with those cases where there are some difficulties. In addition, the Courts Service should provide an annual statement to each beneficiary (as is done for beneficiaries of occupational pension schemes) which would address some of the difficulties that have been raised by the Committee.

Finding of the Committee

1. Wards of Court do not have their rights outlined in a charter.
2. An annual statement outlining the amount in the fund and the performance of the investment is not provided to each of Ward of Court.

Recommendation of the Committee

1. The Courts Service should draw up a customer charter to facilitate its management of the relationship with Wards of Court.
2. An annual statement which contains the sum remaining in the fund at year end and the investment performance for the previous year should be provided to each ward of court.

Chapter Three

Contingency Provisions

One of the concerns raised by the Committee relates to the risk that funds granted to minors could over time become depleted during the lifetime of the ward. The Committee will ask for a review of such cases because of the fact that in future those who are will require lifelong care as a result of catastrophic will get phased payments which will protect them, whereas there is currently a small group of Wards who will enjoy no such protection. It is also likely that those whose funds will run out will not benefit from the new guardianship proposals that are contained in the Assisted Decision-making (Capacity) Bill 2013 as guardians will not be able to take on their responsibilities given the depleted condition of the funds in question.

Sufficiency of the Fund

As outlined earlier in this Report, small cohorts of wards are minors who, due to the nature of their condition, require lifelong care. The Courts will, in many instances, have made an award to these individuals arising from personal injury actions. In determining the size of any award, a Court will normally take account of the cost of care and the life expectancy of the individual. However there are now instances where the individual fund will become depleted during the lifetime of the ward. This may be because the awards offered many years ago where smaller or because the cost of care now is much higher than what was anticipated at the time the award was made. There are also a number of cases where the fall in value of the units in the growth fund (between late 2007 and early 2009 allied to the fact the units were sold in a depressed market) has depleted the capacity of the fund to meet the full lifelong care costs of the individuals concerned. The Court Service is not in a position to provide a comprehensive analysis of the cases that have in the past or are likely in the future to run out of funds . The Court Service did highlight the following:

1. There is one case where a substantial award was made almost thirty years ago where the fund will run out in the next two years
2. There are six wards of court where the funds have fallen below €10,000
3. There are fifteen other cases where the sums invested may not prove sufficient in the coming years to provide for the lifetime needs of the ward.

Need for contingency plans for those with depleting funds.

It was highlighted to the Committee that, in cases where there is a risk that the fund will run out, there is no provisions in place whereby the fund can be underwritten or replenished. In such circumstances, the Office of the Ward of Court no longer has a role in terms of maintenance or care payments. The likelihood is that these vulnerable individuals will then fall within the total care and management of public bodies like the HSE and the Dept. of Social Protection as their requirements will not have changed and their families will most likely not be in a position to either undertake or cover the full cost of the care.

While the number of cases where this is an issue is small, the facts are that the future care of these vulnerable people are a cause of major concern for their families. The Committee is strongly of the view that there is a need for a contingency plan for each of these individuals. This plan should contain the steps that will be taken by State agencies to assist the ward of court before he/she

becomes a total dependant. The first step in this process is for the Office of the Ward of Court to now identify the cases at risk and a plan should be drawn up in respect of this category of ward which should cover health care, accommodation and income maintenance. The Committee will recommend that the income or potential income generated from each fund be disregarded in these specific cases when it comes to assessment for medical cards and for social welfare disability payments. The need to make legislative provision for these special measures should also be examined and precedents such as the Hepatitis C group can be cited. In addition to the provision of medical cards, a total health care plan should be put in place which should also cater for issues such as the provision of appropriate accommodation.

Finding of the Committee

1. There are a number of cases where funding that was to provide for the lifelong care of the Ward of Court will become depleted during the individuals lifetime

Recommendation of the Committee

1. Given the increased vulnerability of those wards of court where their fund has become depleted, special measures, including legislative provisions if necessary, should now be put in place to provide lifelong care of these individuals. These special provisions should also provide that that the remaining portion of each fund be disregarded for assessment of medical card cover and for disability payments from the Department of Social Protection.

APPENDIX 1

orders of Reference of the Committee of Public Accounts

(1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—

(a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:

Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;

(b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and

(c) other reports carried out by the Comptroller and Auditor General under the Act.

(2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.

(3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann.

(4) The Committee shall have the following powers:

(a) power to send for persons, papers and records as defined in Standing Order 83(2A) and Standing Order 85;

(b) power to take oral and written evidence as defined in Standing Order 83(1);

(c) power to appoint sub-Committees as defined in Standing Order 83(3);

(d) power to engage consultants as defined in Standing Order 83(8); and

(e) power to travel as defined in Standing Order 83(9).

(5) Every report which the Committee proposes to make shall, on adoption by the Committee, be laid before the Dáil forthwith whereupon the Committee shall be empowered to print and publish such report together with such related documents as it thinks fit.

(6) The Committee shall present an annual progress report to Dáil Éireann on its activities and plans.

(7) The Committee shall refrain from—

(a) enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and

(b) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.

(8) The Committee may, without prejudice to the independence of the Comptroller and Auditor General in determining the work to be carried out by his or her Office or the manner in which it is carried out, in private communication, make such suggestions to the Comptroller and Auditor General regarding that work as it sees fit.

(9) The Committee shall consist of thirteen members, none of whom shall be a member of the Government or a Minister of State, and five of whom shall constitute a quorum. The Committee and any sub-Committee which it may appoint shall be constituted so as to be impartially representative of the Dáil.

APPENDIX 2

MEMBERS OF COMMITTEE

Áine Collins TD ¹	(Fine Gael)	
Paul J Connaughton TD	(Fine Gael)	
Joe Costello TD ²	(Labour)	
John Deasy TD	(Fine Gael)	Vice Chairman
Robert Dowds TD ³	(Labour)	
Seán Fleming ⁴	(Fianna Fáil)	
Mary Lou McDonald TD	(Sinn Féin)	
Gabrielle McFadden TD ⁵	(Fine Gael)	
John McGuinness TD	(Fianna Fáil)	Chairman
Derek Nolan TD	(Labour)	
Patrick O'Donovan ⁵	(Fine Gael)	
John Perry ⁵	(Fine Gael)	
Shane Ross TD	(Independent)	

NOTES

1. Deputy Áine Collins appointed to the Committee by order of Dáil Éireann on 18 July 2013 in place of Deputy Pascal Donohoe who was discharged on his appointment as Minister of State 12 July 2013.
2. Deputy Joe Costello appointed to the Committee by order of Dáil Éireann on 17 July 2014 in place of Deputy Gerald Nash who was discharged on his appointment as Minister of State 17 July 2014 having replaced Deputy Anne Ferris on 8 May 2012.
3. Deputy Robert Dowds appointed to the Committee by order of Dáil Éireann on 17 January 2013 in place of Deputy Colm Keaveney who was appointed on 28 November 2012 in place of Deputy Michael McCarthy.
4. Deputy Seán Fleming appointed to the Committee by order of Dáil Éireann on 21 June 2011 in place of Deputy Michael McGrath.
5. Deputies Gabrielle McFadden, Patrick O'Donovan and John Perry appointed to the Committee by order of Dáil Éireann on 2 December 2014 in place of Deputies Simon Harris, Eoghan Murphy and Kieran O'Donnell.