

**Public Accounts Committee**

# **Report on Managing and Protecting Funds Held in Court**

**Together with the Minutes of Proceeding of the Committee relating to the Report  
and the Minutes of Evidence**

**Ordered by the Public Accounts Committee to be printed on 21 April 2015**

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**THE REPORT REMAINS EMBARGOED UNTIL  
00:01AM ON 13 MAY 2015**



# Membership and Powers

The Public Accounts Committee is a Standing Committee established in accordance with Standing Orders under Section 60(3) of the Northern Ireland Act 1998. It is the statutory function of the Public Accounts Committee to consider the accounts, and reports on accounts laid before the Assembly.

The Public Accounts Committee is appointed under Assembly Standing Order No. 56 of the Standing Orders for the Northern Ireland Assembly. It has the power to send for persons, papers and records and to report from time to time. Neither the Chairperson nor Deputy Chairperson of the Committee shall be a member of the same political party as the Minister of Finance and Personnel or of any junior minister appointed to the Department of Finance and Personnel.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows:

Ms Michaela Boyle <sup>3</sup> (Chairperson)  
 Mr John Dallat <sup>5</sup> (Deputy Chairperson)  
 Mr Roy Beggs <sup>14</sup>  
 Mr Trevor Clarke <sup>8</sup>  
 Mr Alex Easton <sup>12</sup>  
 Mr Phil Flanagan <sup>13</sup>  
 Mr Paul Girvan  
 Mr Ross Hussey  
 Mr Daithí McKay <sup>7</sup>  
 Mr Adrian McQuillan <sup>1</sup>  
 Mr Seán Rogers <sup>6</sup>

- 1 With effect from 24 October 2011 Mr Adrian McQuillan replaced Mr Paul Frew
- 2 With effect from 23 January 2012 Mr Conor Murphy replaced Ms Jennifer McCann
- 3 With effect from 02 July 2012 Ms Michaela Boyle replaced Mr Paul Maskey as Chairperson
- 4 With effect from 02 July 2012 Mr Conor Murphy is no longer a Member and his replacement on this committee has not yet been announced
- 5 With effect from 07 September 2012 Mr John Dallat replaced Mr Joe Byrne as Deputy Chairperson.
- 6 With effect from 10 September 2012 Mr Sean Rogers was appointed as a Member
- 7 With effect from 10 September 2012 Mr Daithi McKay was appointed as a Member
- 8 With effect from 01 October 2012 Mr Trevor Clarke replaced Mr Alex Easton
- 9 With effect from 11 February 2013 Mr Sammy Douglas replaced Mr Sydney Anderson
- 10 With effect from 15 April 2013 Mr Chris Hazzard replaced Mr Mitchel McLaughlin
- 11 With effect from 07 May 2013 Mr David McIlveen replaced Mr Sammy Douglas
- 12 With effect from 16 September 2013 Mr Alex Easton replaced Mr David McIlveen
- 13 With effect from 06 October 2014 Mr Phil Flanagan replaced Mr Chris Hazzard
- 14 With effect from 06 October 2014 Mr Roy Beggs replaced Mr Michael Copeland



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## List of Abbreviations Used in the Report

the Committee	Public Accounts Committee (PAC)
C&AG	Comptroller and Auditor General
CFO	Courts Funds Office
the Department	Department of Justice
NICTS	Northern Ireland Courts and Tribunals Service
JLG	Judicial Liaison Group

## Executive Summary

1. The Courts Funds Office (CFO) is a business unit within the Northern Ireland Courts and Tribunals Service (NICTS) which is an agency of the Department of Justice (the Department). The CFO provides a banking and investment service for the civil courts in Northern Ireland, looking after money when a child (minor) has been awarded damages as a result of civil legal action, and managing the financial affairs of people who have become mentally incapacitated (patients).
2. Funds may be invested in a variety of ways with judicial approval. These include being placed in deposit accounts, short-term and long-term investment accounts, and being invested in certain designated securities.
3. Court Funds Office (CFO) provides a service to some of the most vulnerable people in our society, managing their money at the behest of the courts. As such, it should aspire to the highest standards of performance and customer care. However the CFO has been a Cinderella service, stuck in the past and not providing value for money.
4. Modernisation has been delayed for too long. Despite a modernisation programme commencing in 2004 the programme is still not complete and legislative change has been delayed. The CFO appears too content to rely on long established models of investment for clients' funds. A more modern approach is needed to deliver returns while managing investment risk and reducing the administrative burden.
5. The CFO is operating an archaic service and it has failed to take the necessary steps to implement a client-focused approach. A radical overhaul is required and this should be undertaken by Courts Service as a matter of urgency to ensure that it provides an efficient, effective, open and transparent service to all of its clients.

## Summary of Recommendations

### Recommendation 1

**The Committee recommends that the NICTS establishes the necessary independent financial expertise within the governance structures of the CFO to ensure that investment decisions taken on behalf of its clients are robustly challenged. A statutory committee should be established at the earliest possible juncture.**

### Recommendation 2

**It is unacceptable that little or no progress has been made in putting in place the legislative changes required to support modernisation. The Department and the NICTS should pursue these reforms as a matter of urgency to modernise the CFO.**

### Recommendation 3

**The implementation of modern business processes supported by a new IT system would help to make the service provided by the CFO more efficient and the Committee recommends that it should be implemented as a priority.**

### Recommendation 4

**While investments should take account of liquidity needs, this should not be at the expense of investment returns. The Committee recommends that the NICTS introduces a new model of investment, utilising pooled investment funds, to maintain returns while managing investment risk effectively and reducing the administrative burden.**

### Recommendation 5

**The Committee recommends that the CFO establishes fair and equitable arrangements for recovering its costs from clients.**

### Recommendation 6

**Regular client satisfaction surveys should be a feature of the CFO's operations.**



# Introduction

1. The Public Accounts Committee (the Committee) met on 25 February 2015 to consider the report of the Comptroller and Auditor General on Managing and Protecting Funds Held in Court. The witnesses were:
  - Mr Nick Perry, Accounting Officer, Department for Justice DoJ;
  - Mr David Lavery, Director of Access to Justice, DoJ;
  - Mr Ronnie Armour, Accountant General and Accounting Officer, NICTS;
  - Mr Richard Ronaldson, Deputy Accountant General, NICTS;
  - Mr Kieran Donnelly, Comptroller and Auditor General (C&AG); and
  - Mr Jack Layberry, Treasury Officer of Accounts, Department of Finance and Personnel.
2. The Courts Funds Office (CFO) is a business unit within the Northern Ireland Courts and Tribunals Service (NICTS) which is an agency of the Department of Justice (the Department). The CFO provides a banking and investment service for the civil courts in Northern Ireland, looking after money when a child (minor) has been awarded damages as a result of civil legal action, and managing the financial affairs of people who have become mentally incapacitated (patients).
3. Funds may be invested in a variety of ways with judicial approval. These include being placed in deposit accounts, short-term and long-term investment accounts, and being invested in certain designated securities. The CFO currently manages around £290 million on behalf of 14,000 clients, and uses a stockbroker to advise on appropriate investments that should be tailored to individual client's needs.
4. The Court Funds Office (CFO) provides a service to some of the most vulnerable people in our society, managing their money at the behest of the courts. As such, it should aspire to the highest standards of performance and customer care. However the CFO has been a Cinderella service, stuck in the past and not providing value for money.
5. In taking evidence, the Committee examined four themes.
  - Governance;
  - Procurement of stockbroker services;
  - Monitoring performance; and
  - Quality of service.

## Governance

6. Investment decisions taken on behalf of clients must receive judicial approval. Under current arrangements the CFO relies on the professional advice of a stockbroker to make recommendations to a judge of the relevant court regarding the investment of client funds.
7. The CFO appears to be reluctant to acknowledge that it has a skills deficit. However, despite having responsibility for managing around £290 million on behalf of 14,000 clients only three of the 21 staff employed by the CFO have any relevant financial expertise. The witnesses told the Committee that the expert advice provided by the stockbrokers is scrutinised by the CFO and ultimately by a judge. However, the Committee questions the rigour with which the CFO can scrutinise the stockbroker's advice as it does not possess the necessary skills and expertise. The CFO is wholly reliant on the judgement of a third party in choosing the most suitable investments for its vulnerable clients.
8. In response to a review undertaken in 2003, the NICTS established a Judicial Liaison Group (the JLG). The JLG provides a forum for the judiciary to express their view in relation to CFO operations. It is encouraging the NICTS has put in place an oversight mechanism however, it is disappointing that the JLG has not yet been established as a statutory committee and that, at present, it has only one independent board member with a financial background. The Director of Access to Justice demonstrated a great deal of complacency regarding the status of the JLG and told the Committee that establishing a statutory committee was a 'secondary issue'.

### Recommendation 1

**The Committee recommends that the NICTS establishes the necessary independent financial expertise within the governance structures of the CFO to ensure that investment decisions taken on behalf of its clients are robustly challenged. A statutory committee should be established at the earliest possible juncture.**

9. In 2004, NICTS began a modernisation programme intended to 'review all aspects of business policy, practices and operations to ensure a modern, professional, transparent, flexible and cost effective service to meet the specific needs of clients and stakeholders'. However, the modernisation programme lacked impetus and was formally closed in 2010 with only limited progress. The NICTS Accounting Officer acknowledged that progress had not been as prompt as he would have liked and he agreed that there is a long way to go in establishing a modernised service.

### Recommendation 2

**It is unacceptable that little or no progress has been made in putting in place the legislative changes required to support modernisation. The Department and the NICTS should pursue these reforms as a matter of urgency to modernise the CFO.**

10. The IT system currently operated by the CFO has not been updated in the last 18 years. Witnesses confirmed that the system is time consuming to operate, does not provide adequate management information and in the event of the system breaking down a time consuming manual work around would be required. It is anticipated that the implementation of a new IT system would generate a 20 per cent reduction in staffing costs.
11. A business case for the procurement of a new system has been approved and off-the-shelf packages are available to meet the needs of the CFO.

## Recommendation 3

**The implementation of modern business processes supported by a new IT system would help to make the service provided by the CFO more efficient and the Committee recommends that it should be implemented as a priority.**

## Procurement of stockbroker services

12. The CFO employed the same stockbroker for over 70 years, from the 1930s until 2008, without testing the market. The Committee finds this astonishing. Competitive tendering is the cornerstone of good public procurement. That it took this length of time before any form of competition was undertaken is damning of CFO's management.
13. A review undertaken in 2003 recommended the competitive procurement of a stockbroker service. However, it took until 2008 for the CFO to award a 5 year contract for the provision of stockbroker services. The contract was worth £3 million, but the CFO failed to develop a business case in support of the contract. In 2013 the contract was due for renewal. On this occasion the CFO prepared a business case, but failed to fully appraise all of the options available.
14. In the Committee's view it has taken far too long for CFO to establish arrangements which comply with public sector procurement practice. The lack of control over the award of these contracts makes it difficult for the CFO to demonstrate that it achieved value for money.
15. CFO holds less than £3,000 in individual low interest deposit accounts on behalf of approximately half of all of its clients. This equates to approximately £87m of clients' funds being held in low interest bearing accounts to maintain liquidity, yet the CFO only pays out in the region of £50m annually. This overly cautious approach is cumbersome to administer and clients are losing out on potential returns.
16. The CFO has disregarded pooled investment models which have proved successful in other jurisdictions in favour of individual client investment arrangements which are archaic and create a heavy administrative burden. The Committee is well aware of the need to manage the risks associated with clients' funds however consideration should be given to implementing a new model of investment, utilising pooled investment funds, to improve returns while managing investment risk effectively and reducing the administrative burden.

## Recommendation 4

**While investments should take account of liquidity needs, this should not be at the expense of investment returns. The Committee recommends that the NICTS introduces a new model of investment, utilising pooled investment funds, to maintain returns while managing investment risk effectively and reducing the administrative burden.**

## Monitoring performance

17. The CFO has been remiss in its monitoring of investment performance for many years and does not have specific targets for the performance of its stockbroker. Only recently has it introduced much needed improvements, including benchmarking against the FTSE all-share index and against neighbouring jurisdictions. The witnesses indicated that, over the last three years the CFO has outperformed the market. It is vital that this information is available publically in the interests of openness and transparency.

18. The witnesses were confident that no clients have suffered losses due to poor investment decisions. Given the lack of effective monitoring of investment performance, the Committee is not assured on this point.

## Quality of service

19. Legislation allows the CFO to deduct charges from clients' funds to manage and run the service provided. However, at present interest rates are too low to enable the CFO to recover its costs and it is, therefore, administered by the NICTS which receives a grant from the Department of Justice. Previously, between 1997 and 2010 the costs to the CFO of administering funds in court were covered by interest and dividends accruing on cash investments. This meant that, in effect, those with smaller funds subsidised the cost of fund management for those with larger funds. The NICTS Accounting Officer accepted that this charging regime was unfair.

### Recommendation 5

**The Committee recommends that the CFO establishes fair and equitable arrangements for recovering its costs from clients.**

20. The witnesses indicated that they take comfort from the fact the CFO receives very few complaints. However, given that the CFO provides a service to some of the most vulnerable members of society, the Committee does not consider that this is an appropriate indicator of client satisfaction. The Committee was reassured to learn that the CFO has plans to undertake a customer satisfaction survey and would suggest that this should be completed on a regular basis.

### Recommendation 6

**Regular client satisfaction surveys should be a feature of the CFO's operations.**

## Conclusion

21. The CFO is operating an archaic service and it has failed to take the necessary steps to implement a client-focused approach. A radical overhaul is required and this should be undertaken by Courts Service as a matter of urgency to ensure that it provides an efficient, effective, open and transparent service to all of its clients.



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Appendix 1

# Minutes of Proceedings of the Committee Relating to the Report



## Tuesday, 24 February 2015

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Alex Easton  
Mr Phil Flanagan  
Mr Paul Girvan

**In Attendance:** Ms Lucia Wilson (Assembly Clerk)  
Mr Jack Peel (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr Adrian McQuillan  
Mr Roy Beggs  
Mr Trevor Clarke

**3:49pm** The meeting began in open session

- 5. Inquiry into Managing and Protecting Funds Held in Court – Introduction to Briefing Session**  
NIAO staff provided an introduction to the Briefing Session on Managing and Protecting Funds Held in Court in open session.

**4:02pm** The meeting moved into closed session.

- 6. Inquiry into Managing and Protecting Funds Held in Court –Briefing Session**  
The Committee received briefing from NIAO staff on the inquiry into Managing and Protecting Funds Held in Court in closed session.

- 7. Inquiry into Managing and Protecting Funds Held in Court –Preparation Session**  
The Committee conducted a Preparation Session for the Inquiry into Managing and Protecting Funds Held in Court during which Members selected their chosen areas for questioning during the evidence session on 25th February.

**[EXTRACT]**

## Wednesday, 25 February 2015

### Senate Chamber, Parliament Buildings

**Present:** Mr John Dallat (Deputy Chairperson)  
Mr Roy Beggs  
Mr Alex Easton  
Mr Phil Flanagan  
Mr Paul Girvan  
Mr Adrian McQuillan  
Mr Sean Rogers

**In Attendance:** Ms Lucia Wilson (Assembly Clerk)  
Mr Jack Peel (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Ms Michaela Boyle (Chairperson)  
Mr Trevor Clarke  
Mr Phil Flanagan

**2:05pm** The meeting began in closed session.

**1. Inquiry into the Department of Justice: Managing and Protecting Funds Held in Court – Preparation Session**

The Committee conducted a Preparation Session for the Inquiry into the Department of Justice: Managing and Protecting Funds Held in Court.

**2:10pm** Mr Girvan joined the meeting.

**6. Inquiry into Managing and Protecting Funds Held in Court – Evidence Session**

**2:15pm** The meeting moved into open session.

The Committee took oral evidence on the above inquiry from:

- Mr Nick Perry, Accounting Officer, Department of Justice
- Mr David Lavery, Director of Access to Justice, Department of Justice
- Mr Ronnie Armour, Chief Executive, Northern Ireland Courts and Tribunals Service
- Mr Richard Ronaldson, Deputy Accountant General, Courts Funds Office, Northern Ireland Courts and Tribunals Service

The witnesses answered a number of questions put by the Committee and agreed to provide additional information in writing.

**2:46pm** Mr Easton left the meeting.

**2:56pm** Mr Easton re-joined the meeting.

**3:00pm** Mr McQuillan left the meeting.

**3:25pm** Mr McQuillan re-joined the meeting.

**3:29pm** Mr Rogers left the meeting.

**3:36pm** Mr Rogers re-joined the meeting.

**3:48pm** Mr Girvan left the meeting.



**4:15pm** The meeting moved into closed session.

**4:18pm** Mr Girvan re-joined the meeting.

**[EXTRACT]**

## Wednesday 11 March 2015

### Room 29, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr Roy Beggs  
Mr Trevor Clarke  
Mr Alex Easton  
Mr Paul Girvan  
Mr Daithi McKay  
Mr Adrian McQuillan

**In Attendance:** Ms Lucia Wilson (Assembly Clerk)  
Mr Jack Peel (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr John Dallat (Deputy Chairperson)  
Mr Phil Flanagan  
Mr Ross Hussey  
Mr Sean Rogers

**2:09pm** The meeting began in open session.

**2:45pm** The meeting moved into closed session.

**2:21pm** Mr McKay joined the meeting.

**2:41pm** Mr Clarke left the meeting.

**3:09pm** Mr McKay left the meeting.

**3:25pm** Mr McKay re-joined the meeting.

**3:29pm** Mr McQuillan left the meeting.

**3:30pm** Mr McQuillan re-joined the meeting.

**3:35pm** Mr McQuillan left the meeting.

**3:38pm** Mr McQuillan re-joined the meeting.

#### **10. Inquiry into DOJ: Managing and Protecting Funds Held in Court – Issues Paper**

*Agreed:* The Committee agreed that the C&AG should produce the first draft of the Committee report for consideration.

**[EXTRACT]**

## Tuesday, 21 April 2015

### Room 21, Parliament Buildings

**Present:** Ms Michaela Boyle (Chairperson)  
Mr John Dallat (Deputy Chairperson)  
Mr Roy Beggs  
Mr Trevor Clarke  
Mr Alex Easton  
Mr Phil Flanagan  
Mr Paul Girvan  
Mr Adrian McQuillan  
Mr Sean Rogers

**In Attendance:** Ms Lucia Wilson (Assembly Clerk)  
Mr Jack Peel (Assistant Assembly Clerk)  
Mrs Danielle Saunders (Clerical Supervisor)  
Mr Darren Weir (Clerical Officer)

**Apologies:** Mr Ross Hussey

**12:40pm** The meeting began in open session.

**12:42pm** The meeting moved into closed session.

#### 6. **Inquiry into the Department of Justice: Managing and Protecting Funds Held in Court – Correspondence**

**Agreed:** The Committee agreed to note the correspondence from the Department of Justice.

**12:45pm** Mr Flanagan and Mr Rogers joined the meeting

**Agreed:** The Committee agreed not to hold a PAC Meeting on Wednesday 6th May due to its proximity to the polling day for the Westminster elections on Thursday 7th May.

#### 7. **Inquiry into the Department of Justice: Managing and Protecting Funds Held in Court – Consideration of Draft Report**

**Agreed:** The Committee considered its draft report on the above inquiry.

##### **Main Body of Report:**

Paragraph 6: Read and agreed.

Paragraph 7: Read and agreed.

Paragraph 8: Read and agreed.

Recommendation 1: Read and agreed.

Paragraph 9: Read and agreed.

Recommendation 2: Read and agreed.

Paragraphs 10-11: Read and agreed.

Recommendation 3: Read, amended and agreed.

Paragraphs 12-14: Read and agreed.

Paragraph 15: Read, amended and agreed.

Paragraph 16: Read and agreed.

Recommendation 4: Read and agreed.

**12:50pm** Mr Clarke left the meeting.

Paragraphs 17-18: Read and agreed.

Paragraph 19: Read and agreed.

Recommendation 5: Read and agreed.

Paragraph 20: Read and agreed.

Recommendation 6: Read and agreed.

**Executive Summary:**

Paragraphs 1-5: Read and agreed.

**12:53pm** Mr Clarke re-joined the meeting.

**Summary of Recommendations:**

Recommendations 1-2: Read and agreed.

Recommendation 3: Read, amended and agreed.

Recommendations 4-6: Read and agreed.

*Agreed:* The Committee agreed the minutes, minutes of evidence and correspondence to be included as appendices to the report.

*Agreed:* The Committee ordered the report to be printed.

*Agreed:* The Committee agreed the report to be launched on Wednesday 13th May and for a draft press release to be brought before the Committee on Wednesday 29th April.

**12:58pm** The meeting moved into open session

**[EXTRACT]**



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Appendix 2

# Minutes of Evidence



## 25 February 2015

### Members present for all or part of the proceedings:

Mr John Dallat (Deputy Chairperson)  
 Mr Roy Beggs  
 Mr Alex Easton  
 Mr Paul Girvan  
 Mr Adrian McQuillan  
 Mr Seán Rogers

### Witnesses:

Mr David Lavery	<i>Department of Justice</i>
Mr Nick Perry	
<i>Mr Ronnie Armour</i>	<i>Northern Ireland</i>
<i>Mr Richard Ronaldson</i>	<i>Courts and Tribunals Service</i>

1. **The Deputy Chairperson (Mr Dallat):** We have with us Mr Nick Perry, accounting officer at the Department of Justice; Mr Ronnie Armour, chief executive of the Northern Ireland Courts and Tribunals Service; and Mr Richard Ronaldson, deputy accountant general of the Court Funds Office (CFO). The Comptroller and Auditor General, Mr Kieran Donnelly; and the Treasury Officer of Accounts, Mr Jack Layberry, are also present. Members will find biographies of all our witnesses in their pack.
2. Thank you for joining us today; you are very welcome. We will begin with a few questions from the Deputy Chairperson, and I wish to direct my first question to Mr Nick Perry.
3. The Court Funds Office provides a service to some of the most vulnerable members of society. What steps are you taking to address the governance, performance, management and quality-of-service issues raised in the Audit Office report?
4. **Mr Nick Perry (Department of Justice):** Thank you very much, Deputy Chair. Perhaps at the outset I could just say that the Department welcomes the report and make three quick points that go to your question about the work of the Court Funds Office. First, the core

purpose of the CFO is to protect the investments of vulnerable clients on behalf of the court. The CFO is neither a commercial investment operation nor a normal Civil Service business department; it is a department of the court, operating under judicial direction. Secondly, the responsibility to protect client assets fundamentally determines the way the CFO approaches its task. It deliberately manages funds in a careful and cautious manner and works hard to ensure that its 14,000 clients receive a tailored, reliable and, where possible, personal service that meets their needs. Thirdly, I accept that there is more we can do and that aspects of modernisation have been too long delayed. To that end, I have asked the chief executive to put in place a programme of work to implement the recommendations of the Audit Office report. That work is already under way, and Mr Armour will update the Committee on progress and outline his action plan, moving forward.

5. Our general approach in responding to the report is that we accept that we can do more to strengthen governance arrangements at the CFO, and we are taking steps to appoint an additional financial member to the judicial liaison group (JLG), which oversees the operations of the office at a strategic level. We are looking at putting a representative in place to represent customer and client interests. We are taking steps to improve transparency and the IT system.
6. It is perhaps worth saying that the CFO is already subject to very considerable oversight. It is unique, I think, among DOJ bodies in that it is subject to oversight by both the judiciary and the Civil Service. The chief executive of the Northern Ireland Courts and Tribunals Service oversees its work, the JLG monitors it at a strategic level, and the Courts Service management board monitors progress.

- The chief executive will report to me and the departmental board quarterly on progress in implementing these recommendations. There is a great deal of oversight and accountability already built in. A lot more is happening, building on the recommendations in this report. It is a report that we take very seriously, as we do the CFO's duty to its clients and the court.
7. **The Deputy Chairperson (Mr Dallat):** I am sure that members will be consoled that you are taking the report very seriously. Certainly, my colleagues took the report very seriously and will have some very searching questions to ask your team today, not least why you have had the same stockbrokers since 1930. That is an astonishing fact.
  8. The Audit Office report indicates that little information is available on the performance of the Court Funds Office accounts. Can you provide the Committee with an overview of how well the CFO has performed against its 2013-14 targets? I remind you that you have just told me in your opening remarks that you can do more and that there is considerable oversight; indeed, you said that there was a great deal of oversight. Members will be most interested to hear about this.
  9. **Mr Perry:** I will perhaps ask the chief executive to reply on the detail of performance against targets. On transparency generally, the office has been doing a lot to try to make more information available in its annual report on the website. Investments are outperforming the market, as they have since 2011. A great deal of work goes into dealing face-to-face with clients and making sure that they have the information they need. On the specific point about targets, perhaps I could ask the chief executive to reply.
  10. **Mr Ronnie Armour (Northern Ireland Courts and Tribunals Service):** We have performance standards, which we publish in our annual report and accounts and which are available on the Courts Service website. The service that we provide achieves all those standards, looking specifically at the administrative service. In terms of our stockbroker, we do not have specific targets for the performance of our funds, but we do benchmark that performance against the FTSE all-share index and against neighbouring jurisdictions. In each of those benchmarking exercises, we are currently performing higher, as we have consistently since 2011.
  11. The Committee may wonder why we do not have specific targets for the stockbroker. I suppose that goes to the nature of the Court Funds Office. We are not a commercial organisation in the sense that you would normally expect in dealing with investments and the like. The business of the Court Funds Office is centred on protecting court funds and, as accountant general, it is my statutory obligation to protect the funds that are held in my name and for which I am accountable to the court. In a sense, we do not have the targets for stockbrokers. It is not about them going out there and taking risks to increase the value of funds; it is about protecting those funds. However, it is encouraging to be able to report to the Committee that the values of those funds are rising and we are outperforming neighbouring jurisdictions and the FTSE all-share index.
  12. **The Deputy Chairperson (Mr Dallat):** I understand, Mr Armour, that you are not going to invest your funds in oil wells that may or may not exist in Australia, or gold mines in Africa or whatever, but surely you have a responsibility to ensure that the most vulnerable people, whose money you have, is benchmarked and invested in the best possible way.
  13. **Mr Armour:** We absolutely do. Both I and my colleagues in the Court Funds Office take that obligation extremely seriously, as does the court. The court will pay very particular and careful attention to the work that we do and to the investments that we are making. We have a stockbroker, and that stockbroker advises us on the investments that we should make. The investments are divided into three portfolio types and, if the Committee wishes, I can talk you through each of



- those. The three portfolio types are invested depending on client needs and in consultation with the client and the court. It is through those funds that we balance our performance: looking at the funds, seeing how they are doing and benchmarking them against others.
14. **The Deputy Chairperson (Mr Dallat):** Obviously, my colleagues will want to ask you some pertinent questions about that, and I will leave it to them to do that. Clearly, we are interested in the reasons why that fund was not managed in the way that it should have been in the past, and we want to know why people were either sitting on their hands or were not interested in what was happening. In the interests of accountability, you would agree that it is vital that the public sector bodies manage their performance. You outlined how that is probably happening now and, I suspect, since the report was published. Perhaps not. However, in this case, the Courts Service management board did not discuss the Court Funds Office's performance at any meeting between February 2006 and June 2012. I refer members to paragraph 2.3 on page 10 of the Audit Office report. Can you explain, Mr Lavery, I think —
15. **Mr David Lavery (Department of Justice):** Yes, I was the chief executive —
16. **The Deputy Chairperson (Mr Dallat):** — what on earth was happening for six years when there was not even a discussion taking place?
17. **Mr Lavery:** That is because I had established a court funds judicial liaison group with the explicit responsibility of overseeing the work of the Court Funds Office. I thought that it was much more appropriate that we have an oversight body designed specifically to look at court funds, and representatives who had an understanding of the nature of the work of the Court Funds Office. That was one of the recommendations of a consultancy report that I commissioned in 2003. As I said, I established a judicial liaison group, which, at the time, I co-chaired with one of the senior High Court judges. I think that that was
- a much more appropriate oversight mechanism than the management board of the Courts Service.
18. **The Deputy Chairperson (Mr Dallat):** Mr Lavery, I understand that a liaison board is very important to bring people together, but surely it falls far short of a body that would be responsible for monitoring the performance of the CFO.
19. **Mr Lavery:** No. With respect, Chair, that was explicitly the role of the liaison group. It received reports on the performance of the Court Funds Office, and that was the purpose for which it was established. It was also there to reflect the views of clients of the Court Funds Office. We had, for example, the Master of the Office of Care and Protection, many of whose clients were also clients of the Court Funds Office. We also had the Official Solicitor to the Court of Judicature, many of whose clients were clients of the Court Funds Office. We also had senior judicial representatives from the County Court. I would argue that we had a bespoke oversight arrangement that was much more tailored to the business of the Court Funds Office than a general management board for the Courts Service.
20. **The Deputy Chairperson (Mr Dallat):** OK. We will park that for a moment. I am sure that some of my colleagues will want to pick you up on that because it seems rather strange.
21. At paragraph 2.7 on page 11 of the Audit Office report we are told:
- “Court Service has been considering establishing a statutory committee since 2007”.*
22. How well has that progressed?
23. **Mr Lavery:** We certainly intend to establish a statutory committee but putting a committee on a statutory basis does not change, in any sense, the function that it discharges. When we enact new legislation, which we are committed to doing, we will almost certainly replace the liaison group with a statutory version of the same thing. However, putting it on a statutory basis

- is, to my mind, a secondary issue. The main thing is to have an oversight mechanism for the Court Funds Office, and whether it is statutory or extra-statutory does not seem to me to be materially significant.
24. **The Deputy Chairperson (Mr Dallat):** I am sorry; you are confusing me, Mr Lavery.
25. **Mr Lavery:** I beg your pardon.
26. **The Deputy Chairperson (Mr Dallat):** You are confusing me, and perhaps you can clarify it. Why have you been considering establishing a statutory investment advisory committee since 2007 when you have just told us that it is not really important anyway?
27. **Mr Lavery:** No, that is not what I said; I said that we had already put in place an extra-statutory committee — in other words, a non-statutory committee, which is the court funds judicial liaison group that I established in 2005. When the opportunity arises to change the legislation, we will almost certainly bring that onto a statutory footing. I am saying to the Committee that I do not think that statutory status would materially alter the function that it discharges.
28. **Mr Armour:** If I could comment, Chair, the important thing for me is to ensure that the judicial liaison group is as strong as it possibly can be. As Mr Lavery has indicated, when the opportunity is there, we want to take forward legislation to put the committee on a statutory footing but, in the interim, I think the important thing is that we make sure that the committee is as strong as it can be. I am currently looking at how we might do that.
29. The report helpfully suggests that we should strengthen our independent financial advice expertise on the committee. In April this year, we will appoint a second independent member to the committee who will bring very significant financial expertise. That is a positive development. The report also recommends that we need some consumer representation on the committee. I currently have the official solicitor sitting on that group, and I have been working very closely over the past number of months with her. She is in almost daily contact with clients and is very well — perhaps uniquely — placed to represent their views. Nonetheless, one of the things that I want to do is to take the recommendation in the report and appoint an independent consumer representative. We are taking steps to work towards that as quickly as we can.
30. **The Deputy Chairperson (Mr Dallat):** You say “quickly”: why has it not been implemented sooner, and when will it be implemented?
31. **Mr Armour:** I received this report when I took up my post in September last year. I have already discussed with the judiciary and the judicial liaison committee the need to implement the recommendation in this report. Court funds is a complex area, and we are dealing with some very sensitive and significant issues. For me, it is about getting the right person. We could go out and appoint an independent person to come and sit on the committee, but it is about getting the right person who is best placed to cover the wide range of individuals whose funds we care for.
32. **The Deputy Chairperson (Mr Dallat):** Mr Armour, you say that you took over responsibility in September.
33. **Mr Armour:** Yes.
34. **The Deputy Chairperson (Mr Dallat):** I have a couple of short questions before I move to other members. Were you shocked by what you found in September?
35. **Mr Armour:** No. I have to say that I was not shocked by what I found. I have had an opportunity, I suppose, to look at the Court Funds Office with a —
36. **The Deputy Chairperson (Mr Dallat):** You say that you “suppose”; I would rather that you were definite.
37. **Mr Armour:** I will be definite: no, I was not shocked by what I found. In all honesty, I have been very impressed with the staff in the Court Funds Office

- and the job that they do. I have been impressed with the relationship that we have developed with the stockbroker and the way in which the stockbroker is overseen both by the staff in the Court Funds Office and by the judiciary —
38. **The Deputy Chairperson (Mr Dallat):** This question may come up later: who is the stockbroker responsible to?
39. **Mr Armour:** The stockbroker is appointed by the Courts and Tribunals Service and is, ultimately, responsible to me, as —
40. **The Deputy Chairperson (Mr Dallat):** Who does that?
41. **Mr Armour:** They are responsible to me, as chief executive and accountant general.
42. **Mr McQuillan:** I have a couple of wee questions on the back of what you were saying. Mr Lavery, you talked about referring the views of the clients to the oversight committee. Will you explain to me how that happens? How does that work in reality?
43. **Mr Lavery:** The views of the clients?
44. **Mr McQuillan:** Yes.
45. **Mr Lavery:** The views of the clients are central to the work of the Court Funds Office. There is contact right at the beginning, when funds are brought into court, to ascertain the needs of the client. Those can vary, of course; you might have an elderly person who requires a regular income, or you might have a young person whose money will be preserved for them until they are 18. We discuss with the client or their representatives on an individual basis what their requirements are, and we then refer the matter to the stockbrokers to advise on the appropriate way of achieving those interests. The stockbrokers have, in broad terms, three portfolio strategies that are designed to meet particular needs such as income generation, capital preservation and so forth. We then put the stockbroker's recommendation before the judge of the relevant court for approval. On a case-specific basis, the needs of the client are taken into consideration at the point when the investment is being made.
46. The point that I made to the Chairman was that, in addition to that, the oversight committee, which is called the judicial liaison group, has members who deal with a large number of clients of the Court Funds Office. The Official Solicitor to the Supreme Court represents, as solicitor, quite a large number of the clients and is on the liaison group. The other figure who represents a lot of clients is called the Master of the Office of Care and Protection. That office is part of the Court of Judicature, which deals with patients who, essentially, are people who cannot manage their own affairs. The Master of the Office of Care and Protection is also a member of the oversight committee. Both those people can speak on behalf of the service being provided to client groups that very much make up the majority of the clients of Court Funds Office business.
47. **Mr McQuillan:** Thanks for that. It is a wee bit clearer in my head. It seems from what you are saying that a lot of trust is placed on the stockbroker and his advice. Is his advice always taken or chatted about through the oversight committee?
48. **Mr Lavery:** The oversight committee does not look at individual investment recommendations; that is the job of the judge who is dealing with the case. The first port of call is Mr Ronaldson and the staff of the Court Funds Office. They look at what the client has told them about their requirements and what the stockbroker is recommending. If there is any challenge, it would be done at that stage. The final decision on endorsing the stockbroker's recommendation lies with a judge or High Court master. As Mr Perry explained, there are two measures of scrutiny: the work that the Courts Service does through the Court Funds Office and, ultimately, the decision of the judge on whether to approve the stockbroker's recommendation.

49. **Mr McQuillan:** Thank you. Mr Perry, the fund holds around £290 million on behalf of 14,000 clients. That is a lot of money, yet in paragraph 2.8 on page 11 of the report, we are told:  
  
*“None of the groups overseeing the work of the CFO has the necessary independent financial expertise to challenge investment policies and strategies, or assess the quality of advice provided by the stockbroker.”*
50. It is very concerning that the CFO manages £290 million but does not possess any independent financial expertise.
51. **Mr Perry:** Since 2011, the JLG has included an independent board member who has a financial background. As Mr Armour has just explained, we have reinforced that with a second independent member who has particular expertise.
52. **Mr McQuillan:** That has been reinforced on the back of this report.
53. **Mr Perry:** That is true.
54. **Mr McQuillan:** Had it not been for the report, that might never have been reinforced.
55. **Mr Perry:** That is true. Paragraph 2.8 refers specifically to “financial expertise”, and that is correct. However, as Mr Lavery has explained, there is, of course, intense scrutiny of individual investment decisions by the court and by Courts Service management, as there has been for many years. There are intelligent experienced people who have great concern for the clients and for doing their best for them. We certainly recognise the need to reinforce the financial expertise in that area, but there has been a great deal of independent scrutiny for a prolonged period.
56. **Mr McQuillan:** I will move on to Mr Ronaldson. Paragraph 2.11 on page 12 of the report indicates that you do not enough appropriately qualified staff to review and challenge investment recommendations. Why has that skills gap not been addressed before now? Is it being addressed by you as a matter of urgency?
57. **Mr Richard Ronaldson (Northern Ireland Courts and Tribunals Service):** The recommendation is to identify any skills gap, if it is there.
58. **Mr McQuillan:** The report says that it is there.
59. **Mr Armour:** In fairness, that might be a question for me rather than Mr Ronaldson, who is a member of staff in the office. Maybe I could help you with that one.
60. **The Deputy Chairperson (Mr Dallat):** Mr Armour, I mean no disrespect, but I would prefer that members choose who answers their questions.
61. **Mr McQuillan:** Let Mr Ronaldson answer my question. You can then come in.
62. **Mr Ronaldson:** Since just before 2000, there has been a qualified accountant in the office. We have three qualified accountants in the office, and there is oversight from another qualified accountant. The JLG also has an independent member. The scheme of qualifications that was introduced in 2010 was really to help us to become an intelligent customer and to give us a bit of experience, a bit more knowledge and enhance the knowledge of the accountants who were already in post. The investment recommendations are dealt with by the investments team, which is a small team in the office. We have three members of staff who are qualified by the Chartered Institute of Securities and Investment, and I believe that that is sufficient. We plan to run in-house training in the office —
63. **Mr McQuillan:** So it is not really sufficient. If you are going to run in-house training, what is there at the minute is not sufficient. Is that what you are saying?
64. **Mr Ronaldson:** I believe that it is sufficient, but to enhance the knowledge in the office and to try to feed down some of that expertise to other members of staff, we will run in-house training. It helps with cover during leave periods and things like that.

65. **Mr McQuillan:** Fair enough. Mr Armour, do you want to add anything?
66. **Mr Armour:** Mr Ronaldson has answered the question very fully. I would just make the point that, when the report was written, the Court Funds Office was dealing with an issue called “flexi orders”. I think that that was probably the issue that Audit Office had in mind when it made that comment and recommendation. The Court Funds Office is no longer dealing with flexi orders and we now have a very experienced stockbroker. The role of the Court Funds Office is about overseeing the work of the stockbroker.
67. Mr Ronaldson has explained the qualifications that a number of senior members of staff in the office have, and I am currently satisfied that we have the skills we need to do the job that is required of us at this point. That said, as I indicated earlier, we are bringing a second financial expert in to work alongside us, and I will certainly be willing to take his mind on that issue as a point of reassurance.
68. **The Deputy Chairperson (Mr Dallat):** In paragraph 2.11, we are told that:  
*“The CFO is awaiting the outcome of a court case before reviewing the need for further staff training”.*
69. We are then told that:  
*“Although work has commenced on drafting a programme of legislative reform, it may take at least three years to introduce.”*
70. Can you reconcile that with the evidence that you and Mr Ronaldson have just given to this Committee?
71. **Mr Armour:** We have received the outcome of that court case, and, on the back of that, I am content that the staff are suitably qualified for the job that they are currently doing. Staff training is an issue that is, rightly, kept under consideration. That is why I say to the Committee that I want to take the mind of the financial expert we are bringing in just to reassure myself that I am right in my assessment.
72. **The Deputy Chairperson (Mr Dallat):** Earlier, Mr Lavery told us that the stockbroker is responsible to a judge. It is far from me to offer an opinion on any judge, but I assume that he has no particular expertise in investment and finance.
73. **Mr Lavery:** He will certainly have considerable experience of approving investments.
74. **The Deputy Chairperson (Mr Dallat):** I do not question that, but I am talking specifically about the ability of a stockbroker to do the right thing.
75. **Mr Lavery:** I think that the stockbroker does his job, and the judge does his or her job in the sense of challenging and testing the match between what the stockbroker is proposing and what the client requires. The judges are certainly not second-guessing the stockbrokers’ advice. The stockbrokers were procured competitively, and they are one of the top 20 firms in the United Kingdom, so we are satisfied with the expertise that we have there. I do not think that it is really appropriate to try to duplicate that expertise somewhere else in the system. We pay the stockbrokers to provide expert advice. It is scrutinised by the Court Funds Office and, ultimately, by the judge.
76. **The Deputy Chairperson (Mr Dallat):** You paid the stakeholders a great deal of money, and I am sure that my colleagues will remind you of that later on.
77. **Mr McQuillan:** I have one more question. Mr Armour, it seems to me that, if this report had not been produced, there would have been no changes at all in the CFO. You would have just carried on with the same old, same old.
78. **Mr Armour:** I do not accept that. As I said in response to a question from the Chair, having looked at the work of the Court Funds Office with fresh eyes when recently appointed, it is clear to me that, consistently over the past number of years, there has been a desire and a willingness to continuously improve the work of the office. The Chair referred to



- the past 10 years. When you look over the past 10 years —
79. **Mr McQuillan:** There is a difference between a desire and willingness, and actually doing something. I might have a desire and willingness to be First Minister, but I doubt that I will ever make it.
80. **Mr Armour:** When you look over the past 10 years, I think that you can see, at key junctures, the progress that has been made. Has progress been as quick as colleagues would have liked? No, it has not, but there have been a number of reasons for that, including legal challenges that we had to await the outcome of. There have certainly been a lot of developments. Mr Lavery mentioned the establishment of the judicial liaison committee. There has been a modernisation programme that has taken a number of positive steps. We have introduced investment strategy guidelines and closed a number of sub-accounts in rationalising matters. Over the past number of years, we have taken forward legislation through a small number of clauses that have assisted us. Is there still a long way to go? Absolutely, there is a long way to go, and that is why we put the modernisation programme in place. As Mr Perry indicated, I am accountable to him and to Mr Lavery for performance management, as well as wider accountability for the delivery of that programme.
81. **The Deputy Chairperson (Mr Dallat):** I want to make sure that we understand each other, Mr Lavery. I get the impression from chairing this meeting that the message you are giving us is that absolutely everything is rosy in the garden and there is no need for change. Hopefully, I am picking up from Mr Armour that, actually, there is a great deal of need for change. Which is it?
82. **Mr Lavery:** Of the people at the table, I have the most experience of this. I was the accountant general from 2001 until 2012.
83. **The Deputy Chairperson (Mr Dallat):** Not the best period, I would have thought.
84. **Mr Lavery:** No, I dispute what you are saying, Chair. In your opening remarks, you said that the organisation had not been managed properly. I dispute that entirely. There is no basis in the Audit Office report to suggest that.
85. **The Deputy Chairperson (Mr Dallat):** Mr Lavery, is there any point, really, in discussing the report? The Department has already accepted it.
86. **Mr Lavery:** We accepted the recommendations in the report.
87. **The Deputy Chairperson (Mr Dallat):** The report is damning.
88. **Mr Lavery:** No, it is not damning. It does not sustain the remark that you made in your introductory observations. I commissioned a major review of the Court Funds Office by Amtec, the consultancy firm that also advises the Court Funds Office in England and Wales. It reported in 2003 and made a wide-ranging number of recommendations, and we have implemented, in whole or in part, its recommendations. For example, it recommended the competitive procurement of a stockbroker service, and we did that.
89. **The Deputy Chairperson (Mr Dallat):** Can you tell me when that started, Mr Lavery?
90. **Mr Lavery:** The report was in 2003, and we began a procurement exercise in 2005. The actual procurement was interrupted for legal reasons, but it was completed in 2008. We had a further procurement in 2013. The point that I am trying to get across concerns Mr McQuillan's point that, if we had not had the Audit Office report, nothing would have been done. That is an unfair reflection of what the Courts Service did. We commissioned a major review in 2003, and we have implemented the greater part of those recommendations. We welcome the Audit Office's further consideration, and Mr Armour is taking forward the further recommendations. It would be wrong for the Committee to form the impression that nothing was done to improve the Court Funds Office. Some of the things that we

- have already discussed are specific examples of that improvement. When I was appointed, there was no oversight body for the Court Funds Office. Amtec recommended one, and I appointed one. I think that that is an improvement. I did not have the Audit Office to tell me that; rather, that was put in place as a fairly early improvement. I think therefore that it would be misleading for the Committee to form the impression that nothing happened, or would have happened, until the report came out.
91. **The Deputy Chairperson (Mr Dallat):** I certainly hope that nobody would accuse the Committee of misleading anyone. Our evidence is based on a report that has been agreed by the Department.
92. **Mr Beggs:** I am struggling to get a clear picture of how the whole system works together. One of the comments that I picked up on was that the investment is determined by the judge in individual cases. Then there are the 24 administrative staff, and then there is the professional stockbroker who has been brought in to do the investing. What does the judge determine?
93. **Mr Lavery:** The judge determines whether the recommendation by the stockbroker is appropriate for the client's needs, and the judge will look to the Court Funds Office to have explored the client's needs with the client or the client's representatives. Therefore, ultimately, the investment is made on the order of the court, and the judge makes that order.
94. **Mr Beggs:** I am told that you have something like 14,000 clients, so, presumably, there are 14,000 meetings with a judge, on a regular basis, to look at where the investment has gone.
95. **Mr Lavery:** No, that would be misleading, Roy. A lot of the clients will have had investment packages in place for many years. The judge would have to look at the case again only if the investment was going to be altered in some way.
96. **Mr Beggs:** Most people, if they want to invest money, keep some in the bank for quick access. After that, you determine the level of risk and reward. Why does the legislation not allow your system to operate in a similar fashion, without the intervention of the judge, which also minimises a judge's time? Is reasonable reward without undue risk not all that is needed?
97. **Mr Lavery:** It is, but the money is being managed on behalf of the client by the court. That is the job of the court. The law requires the court to manage the fund on behalf of the client. As the Committee knows, the clients are either young people — under the age of 18 — who have not the legal authority to manage their own affairs, or patients who perhaps have not got the mental capacity to manage their own affairs. Therefore, the court is making the investment decisions on their behalf.
98. **Mr Beggs:** There are potentially 14,000 different investments to be tracked.
99. **Mr Lavery:** That is true.
100. **Mr Beggs:** That must be a nightmare, is it not? It must be very bureaucratic and time-consuming.
101. **Mr Armour:** Yes. We have 14,000 clients. It is fair to say, though, that 50% of those individuals would have less than £3,000, for example, with us. That money is held in deposit accounts. We do not have 14,000 people with equities and shares.
102. **Mr Beggs:** One thing strikes me. Have you considered changing the legislation so that you have bands or methods of determining the most appropriate investment for somebody? Have you considered having some criteria in a band so that you do not then need to track every individual criterion, only whether an individual is in the right band? That would considerably reduce the bureaucracy that is involved in your organisation.
103. **Mr Lavery:** As I mentioned earlier, and Ronnie will say more about it, the new stockbroker is moving much more towards that standardised approach. That is a reflection of that. As I said earlier —

104. **Mr Beggs:** With the judges, it is not. Judges still deal with individual cases.
105. **Mr Lavery:** The final decision in every case has to be made by a judge, but it is not as though you have 14,000 different types of investments. You now have increasing standardisation, into three portfolio groups. That has been helpful in reducing —
106. **Mr Beggs:** That is a lot less complicated than what you seemed to be talking about earlier.
107. **Mr Lavery:** It depends on the size of the case, though. Some cases might require to be tailored very much to the specific needs of the client, but, generally speaking, they would fall into those three groups, which would then be adjusted according to the individual's needs.
108. **The Deputy Chairperson (Mr Dallat):** Mr Seán Rogers wants to discuss the modernisation programme. We will certainly be most interested to hear about that.
109. **Mr Rogers:** Before we go on to that, Mr Lavery, you say that you accepted the recommendations. What Adrian has been talking about is the level of expertise in the CFO around investment and securities. According to the information that we have, around four of the 24 staff had some sort of qualification. One of the recommendations states:  
  
*"Court Service should identify and fill the skills gap ... to ensure there is a sufficient number of appropriately qualified staff to review and, where appropriate, challenge investment recommendations on behalf of clients."*
110. What have you done about that?
111. **Mr Lavery:** As you have noted, three of the staff of the Court Funds Office are professionally qualified accountants. As Mr Armour said, other staff have accredited training through an appropriate professional body for investments. In addition, Mr Armour was saying that we are bringing in an additional independent member to join the liaison group to which I referred.  
  
That person will specifically look at what skills gap, if any, exists and make recommendations to us. Mr Armour is asking that person to undertake the role as a priority. If it reveals a skills gap, we will address it.
112. **Mr Rogers:** Do you not believe that there really is a skills gap?
113. **Mr Lavery:** Mr Ronaldson said that we can always improve. We are certainly committed to continuing professional development of staff. Refresher training, and so on, is necessary and desirable in any organisation. What we are not doing is training people to be stockbrokers. We have appointed one of the top 20 firms of stockbrokers in the country to provide that service. We need staff with the appropriate skills to work out whether what the stockbroker recommends matches the needs of the client in order to put the recommendation to the judge to approve. I am not going to train staff or give the Committee any expectation that I would train staff to do a stockbroker's job. That would be quite wrong. As I said, we have hired one of the best firms in the country to do that job. Our job is to test and validate the recommendation that it makes against the requirements of the client in the individual case. If there is a skills gap, we will address it. I think, though, that it would not be in the area of investment knowledge.
114. **Mr Perry:** I will pick up on that, if I may. We are looking for our staff to provide an intelligent-customer role and to be able to ask intelligent questions. As Mr Lavery says, they are not in a position to second-guess investment decisions.
115. **Mr Armour:** You mentioned 24 staff in the Court Funds Office, Mr Rogers. That has now fallen back to just under 21 staff through the efficiency programme. The key issue for me is that the senior staff in that office have the right qualification. A lot of the staff in the Court Funds Office are doing administrative work and processing. Mr Ronaldson, who is the deputy accountant general, and the people who are working closely with him are those in



- the office who are qualified and whom I need to be qualified.
116. **Mr Rogers:** OK, thank you. I will move on to the modernisation programme. It was originally planned in 2004 but was not finished, and then, in 2010, it was agreed that there was a need for some sort of legislative reform. I believe that some work has begun on drafting that legislative reform but that it will take at least three years to introduce it. Even when we have legislative reform, modernising the system could take even longer. Why has progress been so slow?
117. **Mr Perry:** To some extent, the 2004 programme has been overtaken, in that key elements of it, as both Mr Lavery and Mr Armour said, have been implemented: the recommendation to go to open competition for the stockbroker; internal reorganisation in the CFO to create a better customer focus; modernisation of annual accounts; the establishment of the JLG; and the creation of what are now investment portfolios. Quite a lot of the recommendations, as Mr Lavery described, have been implemented.
118. The run-up to devolution meant that progress could not be made on the legislation. Since devolution, a couple of legislative changes have been taken through, as Mr Armour was describing, around management fees and the mechanism for setting the CFO's interest rates. As it happened, one of those legislative changes led to the court case that lasted for three years, which prevented further progress. We are committed to legislating in the next mandate, but the nature of that legislation will now depend on the consultation that the Minister is considering on the future role of the CFO. I will ask Mr Lavery to say a word about that. It will help the Committee, because he is leading on the policy.
119. **Mr Rogers:** From your answer to me, Mr Perry, it seems that, to account for your lack of progress, you are hiding behind the lack of legislation.
120. **Mr Perry:** It was not safe to proceed with major legislative change until we had the outcome of the court case, because it was quite a fundamental case, but that has not prevented some legislative change happening; for example, the work on specific issues around the mechanism for setting interest rates. It is not that nothing has happened but that it was not possible to proceed with the major change that was envisaged before 2010. Now, as I say, a broader consultation will affect the nature of any future legislation, depending on the outcome.
121. **Mr Rogers:** There are a number of recommendations. Look at paragraph 2.12. Can you tell me what progress has been made?
122. **Mr Lavery:** How far do you want me to go back?
123. **Mr Rogers:** Take paragraph 2.12 on page 13 of the report. OK, "strategic and legislative modernisation" takes some time, but look at some of the other recommendations:
- "modernisation of the stockbroker contract and modernisation of accounts";*
- and
- "modernisation of transaction processing, and a review and update of systems".*
124. What progress has been made there?
125. **Mr Lavery:** The "governance arrangements", which is the first of the bullet points on paragraph 2.12, have been put in place. As I said earlier, that has not been done on a statutory basis; rather we created a non-statutory committee to do that job. That is the one that Mr Armour is strengthening further by bringing on to it another independent member, so that is in place. I said earlier that, when we change the legislation, we will put that committee on a statutory footing but we did revise the governance arrangements.
126. The second bullet point concerns the "modernisation of the stockbroker contract". For the first time since the Court Service was established, we

- procured a stockbroker in 2008 and took the opportunity to introduce new service standards. We then ran a further procurement exercise in 2013, which led to the appointment of the current stockbroker. The accounts were modernised and put on to the appropriate government accounting standard. The third bullet point is the “modernisation of transaction processing”. Mr Ronaldson may be able to address that slightly better than I can.
127. The last bullet point is on “legislative modernisation” and is the one that Mr Perry referred to. The Minister has agreed that we will initiate a pre-legislative consultation later this year, with a view to introducing legislation at the beginning of the next mandate. The point that I think that Mr Perry was alluding to was that, in the consultation, we should ask the fundamental question, which concerns whether the particular role undertaken by the Court Funds Office should remain the responsibility of the Courts and Tribunals Service.
128. In England and Wales, for example, the Court Funds Office looks to National Savings and Investments to manage a lot of investments for it. Scotland takes a different approach. A lot of the funds that would be managed by the court in Scotland are out of the court and are instead managed by clients’ representatives. They are not under the court’s protection.
129. The South of Ireland modernised its system a few years ago and introduced something closer to what we have had in mind: a modernised court funds administration that retains the principle that the court is there to protect the clients and should continue to manage funds on their behalf.
130. It probably is worth going back to that fundamental question. There has not been a review of the appropriateness of the role of court funds in Northern Ireland since the report of the MacDermott committee in 1970, which stated that that was an appropriate responsibility for the court to continue to discharge. It would be useful if we were to ask that fundamental question in our consultation paper later this year.
131. **Mr Rogers:** Mr Ronaldson, may I go to you before we look at the modernisation of the transaction process and accounts? You have a computer system that is almost 20 years old and has not been significantly updated for some time. Based on what Mr Lavery has just said about the transaction process and the modernisation of accounts, what progress has been made?
132. **Mr Ronaldson:** In 2008, we carried out a review of the roles and responsibilities of the staff in the office. As a result, we were able to provide greater focus on customer services and increase the number of staff in the customer service team. That allowed us to increase vastly the number of face-to-face meetings with clients.
133. As for the updating of systems, we implemented an interface with the integrated court operations system (ICOS), which means that data is automatically uploaded on to the CFO system. That also removed the need for manual processing, so efficiencies were generated there. We removed the sub-accounts that we maintained in our bank accounting operations, and that enabled us to make full use of online banking facilities, thus generating efficiency there as well.
134. **Mr Rogers:** What are the problems with the computer system?
135. **Mr Ronaldson:** The computer system is supported on a best-efforts basis, so at the minute it does its job. It is on a stable platform, but we are looking to implement a new system. We recently had a business case approved for the procurement of a new system.
136. **Mr Rogers:** You say that it does its job. I do not see how my computer, if it were 20 years old, could do its job at the same time as I was trying to modernise transaction processing and accounting procedures. Accounting and transaction processing have changed a lot in 20 years.

137. **Mr Ronaldson:** Correct. The system is a database system. At its very basic level, it records transactions. As a result, we are able to produce accounts. It just takes us longer, and a new system will generate efficiencies in the preparation of accounts. We hope that the new system will also be able to use automatic bank reconciliation processing, which, again, would generate efficiencies. That is where we are looking to implement the new system.
138. **Mr Rogers:** If the system breaks down, is there any way that payments can be carried out manually?
139. **Mr Ronaldson:** Yes, that is our contingency at the minute. If the system were to become irrecoverable, we would have the backup data every evening and would be able to continue to make payments, if necessary, through our online banking system.
140. **Mr Armour:** The system has been highlighted as a risk. As Mr Ronaldson indicated, it is 20 years old. We now have business case approval for a new system. Money will be available for that in the incoming financial year, and we hope to have the system in place by the end of the year. However, we do have very careful contingency arrangements in place should there be an issue with the system. Mr Ronaldson indicated that the contingency arrangements take the form of a manual system, and I accept that that would be time-consuming, but there are contingency arrangements in place, and those are covered in the Courts Service's disaster recovery plan.
141. **The Deputy Chairperson (Mr Dallat):** Mr Armour, would the Ulster Museum not be the best place for your computer?
142. **Mr Armour:** It might well be, Chair, but it is the system that we have at the moment. It is doing what we require of it, albeit not as efficiently as it should.
143. **The Deputy Chairperson (Mr Dallat):** I hope that I have not cut across Seán, but you have said that, basically, it keeps accounts.
144. **Mr Armour:** Yes.
145. **The Deputy Chairperson (Mr Dallat):** It may even do a reconciliation statement, but is it not possible to interrogate it to get information that will tell you whether your clients are getting the best return on their money? Have you been sleeping on the need to get a new computer system?
146. **Mr Armour:** We are absolutely able to interrogate it for it to provide us with information. It is not able to provide me with as much management information as I would want, and that is what the new system will do. We benchmark the return for our clients in other ways. We do not necessarily use the system to do that.
147. **Mr Beggs:** I am struck by the terminology used. You said that the system is maintained on a "best-endendeavours basis". Can you explain what that means?
148. **Mr Armour:** The age of the system means that there is an issue with supporting it. Therefore, if we were to have a major problem with it, it would be difficult to get it back operating in the way —
149. **Mr Beggs:** How long has it been on that best-endendeavours backup system?
150. **Mr Armour:** With the IT system, we recognise that, over the past number of years, there has been a need —
151. **Mr Beggs:** How long has it been classified as a best-endendeavours maintenance backup?
152. **Mr Ronaldson:** I think that it has been for something in the region of 18 months. At that point, we got a feasibility report from Fujitsu on our options to replace the system, and we have been working with the business consultancy service in DFP to generate specifications for the exercise.
153. **Mr Beggs:** It sounds as though you have a very limited group of engineers who are able to support the system. Is that correct?
154. **Mr Armour:** Support for the system is undoubtedly a concern for us.
155. **Mr Beggs:** What hourly rate is charged, given that there are very few people in

- the world who can provide it? How does that compare with alternative, modern systems?
156. **Mr Ronaldson:** The system is supported in the current contract that we have with Fujitsu. There are no additional costs if anything goes wrong.
157. **Mr Beggs:** That is what I am asking: what is the cost?
158. **Mr Ronaldson:** I do not know.
159. **Mr Armour:** We do not have that figure. We are happy to write to the Committee with it.
160. **Mr Beggs:** Finally, are there off-the-shelf products that others are using elsewhere? Are we having to invent something bespoke?
161. **Mr Armour:** No, absolutely not. The new system will not be a bespoke one; it will be an off-the-shelf system. We are not designing something specific, no.
162. **Mr Rogers:** I will move on to paragraphs 2.16 and 2.17, which give the details of the estimated fees wrongfully deducted from clients' funds. In August 2012, the figure was estimated at £2.9 million. With interest, it went up to £3.7 million but was eventually reduced to £320,000. Can you explain why you did not have enough information on each case at the time to know whether the necessary court order was in place? I put that question to Mr Ronaldson.
163. **Mr Ronaldson:** The issue of the potential refund of fees depended on the outcome of the court case. Before the outcome, it was irrelevant whether the order was in place or not. That was one of the cruxes of the court judgement. The suggestion was that, even despite there being a court order in place, the fees were still deducted unlawfully. As a result of the court judgement, we were able to reduce the liability to £320,000. We then got further legal advice on the outworkings of the judgement to ascertain exactly what order we needed and what the wording of the order must be to determine whether the fees were deducted lawfully or unlawfully. We have now done that work. We have reviewed the court orders, and we estimate that the current total liability is no more than £55,000.
164. **Mr Rogers:** It started off at £3.7 million and is now at £55,000?
165. **Mr Ronaldson:** The £3.7 million was every single fee that had been deducted. That was the worst-case scenario if the court case had gone against us. The £320,000 figure came about because, as a result of the court case, we were able to discount the orders that we were definitely sure of. We then got further legal advice that has allowed us to discount further orders that we had questions over. That is why the liability is now £55,000.
166. **Mr Rogers:** ISAs worth £9 million were held on behalf of around 100 clients, despite a lack of legislative authority. That is in paragraph 2.18, Mr Lavery. How did that happen?
167. **Mr Lavery:** The legislation establishing the Court Funds Office is quite prescriptive about the types of investments that can be held. ISAs were a relatively new development and post-dated the legislation. We found that quite a number of clients, particularly elderly people, had ISAs. When their funds came into court, the ISA came into court along with their other holdings. We then had reason to question whether it was permissible to hold ISAs in the court. We took counsel's opinion and were eventually advised that a particular category of ISA could not be held in court, for largely technical reasons. We then put in place a strategy to allow the clients to decide whether to liquidate the ISA and have the money invested by some other means or to take the ISA out of the court. We did that to avoid anybody losing the tax advantage that the ISA represented for them. A number of clients simply chose to take the ISA out of the court so that they could continue to benefit from the tax advantage.

168. **Mr Rogers:** Was that situation related to the lack of independent financial expertise or the lack of qualified staff in the Court Funds Office?
169. **Mr Lavery:** I do not think so. We had to go to senior counsel for advice. It was not a black-and-white issue but a matter of interpretation of the legislation. It was certainly not obvious to anybody that ISAs were not permissible. We eventually took senior counsel's opinion. That was quite a lengthy, 12-page opinion. It was a finely argued point. The legislation inhibits certain types of investments, and ISAs are perhaps the most explicit example. The way in which we managed the situation was sensible. We allowed each client to decide what to do with his or her ISA. As I explained, clients could take the ISA out of the court to keep the benefit of the tax advantage.
170. When we modernise the legislation, we will want to remove those sorts of issues. What happened simply reflects the fact that the legislation was rather prescriptive and described types of investments in a very particularised way. ISAs came along later and did not quite fit into the legislative environment.
171. **The Deputy Chairperson (Mr Dallat):** Mr Lavery, just for the record, you said to Seán that you do not think that it was a lack of independent financial expertise or of qualified staff that brought this about. With the gift of hindsight, what would have prevented it?
172. **Mr Lavery:** Do you mean prevented the ISA issue arising?
173. **The Deputy Chairperson (Mr Dallat):** Correct.
174. **Mr Lavery:** It is such a case-specific instance. What I tried to explain to the Committee was that we had to go to senior counsel to interpret the legislation establishing the court funds regime to see whether an ISA investment was permissible. It was not a straightforward issue; it is quite a complex issue of statutory interpretation. I certainly do not feel that it was a lack of knowledge on the part of the staff. If we had to go to senior counsel for advice, that indicates, almost by definition, that it was a pretty complex issue. There is no doubt that, when we modernise the legislation, one of our expectations will be that it is less likely that this sort of restriction could arise again, because an ISA, or its recent equivalent, pensioner bonds, would be a very useful investment vehicle for an elderly person whose funds are held in court. The point that I want to get across is that we still allowed clients to keep funds in their ISAs if they wanted to, but they had to take them back out of court in order to do so.
175. **Mr Girvan:** Thank you for your answers so far. I am quite interested in the tender process. To all intents and purposes, it seems a bit weird that one firm was able to deliver this from 1930 until 2008, when it went out for tender, which I might ask questions about later. Why was there no competitive tender for stockbroker services until 2008? Maybe David could answer that.
176. **Mr Lavery:** Honestly, I have no insight into the history of the appointment of the court stockbrokers. The Court Service, as colleagues will know, was established in 1979. This contract was awarded by the Supreme Court or possibly the Ministry of Home Affairs; well, it would not have been the Ministry of Home Affairs, but it might have been the Lord Chancellor's Department. We have no records indicating what process was used to appoint the stockbrokers at that time, but it was not uncommon for a professional entity to be appointed to represent the court almost on a permanent basis. For example, the legislation provided that the bank of the court would be the Bank of Ireland, and we have changed that approach as well. We carried out a procurement exercise of banking services, and our banking services are now provided by Danske Bank. The legislation, however, provided that the bank of the court was the Bank of Ireland. That seemed to be the way this business was organised back in the 1930s.
177. **Mr Girvan:** Would it be right to say that it leaves itself open to being described as an old boys' club? Things are done on a nod and a wink. It reeks of that when



- you are dealing with a company that had been investing on behalf of courts for well-nigh on 80 years, with no query whatever about what is going on.
178. **Mr Lavery:** I have no basis on which to question the performance of Cunningham Coates. There is nothing I saw between my appointment in 2001 and the appointment of Brewin Dolphin in 2008 to suggest that Cunningham Coates did not provide a suitable, professional service. I commissioned a consultancy report on the court funds, as I mentioned earlier, through Amtec Consulting, and it reported in 2003 recommending a competitive tendering process. We initiated that in 2005. I mentioned earlier that the award of the contract was delayed somewhat by a legal issue that emerged, and it was eventually awarded to Brewin Dolphin in 2008. It was retendered in 2013, so we are now in a pattern of competitive tendering of stockbroker services.
179. **Mr Girvan:** I want to go into the point about the tender process. I appreciate that we are fishing from a fairly small pool in relation to that matter. The Audit Office report indicates that the tendering process in 2008 was not robust. There was no business case completed for a contract estimated to be worth somewhere in the region of £430,000 a year, which I may ask questions on later. Despite the fact that the cost of the investment service is borne by the client's fund, and only a small percentage weight was given to that fact I think that it was about 20% do you acknowledge that the competitive process was flawed?
180. **Mr Lavery:** It adhered to the procurement rules that were applicable at the time. We were advised by the procurement service of the then Northern Ireland Office — this was pre-devolution — and the process that we used was compliant with the then requirements. So, a business case was not required, but there was an analysis of the services required, and a process that we were advised to implement was followed. I think that three companies made it through to the final selection process, so there was a competitive element to it, undoubtedly. The decision to weight cost slightly lower than quality of service was a deliberate one. We chose to give a higher weighting to quality and standard of service than cost. That changed in the subsequent procurement exercises as we gained more confidence in that process, but I think that the process was satisfactory and achieved a good outcome. The one run in 2013 was under the Central Procurement Directorate (CPD) rules and was subject to a full business case process, and the cost element was weighted higher on that occasion.
181. **Mr Girvan:** I do not want to suggest that the Courts Service was playing fast and loose with clients' money, but appendix 2 of the report referred to cash cases in which moneys were not necessarily going to be invested because of access. Where were those cash accounts held? Who held those cash accounts?
182. **Mr Armour:** The cash account is held in my name but in a deposit account.
183. **Mr Girvan:** It is not in the stockbrokers. It is not handed over for them to play the market with.
184. **Mr Armour:** No, absolutely not. It goes back to the point that I was making earlier about the protective nature of the Court Funds Office. We are not an organisation that is taking risks with the money that is in our care.
185. **Mr Girvan:** That is the reason why I asked the question. I wanted to make sure that there was no suggestion of that.
186. **Mr Armour:** We can give you an absolute assurance on that.
187. **Mr Girvan:** With it being held in a deposit account, does it attract any interest whatsoever? Some of the moneys might be there from when someone is two years old until they are 18, so it can be there for 16 years.
188. **Mr Armour:** It currently attracts around 0.5%.

189. **Mr Lavery:** It basically attracts the Bank of England base rate, which means that it is rock bottom.
190. **Mr Girvan:** They will soon be charging you money to put money in the bank. I think that they actually do that anyway.
191. As part of the tendering exercise, six options were identified. Four of them were assessed — it is in paragraph 3.12 on page 20 of the report. Is it fair to say that the CFO left insufficient time to fully consider all the options without risking the loss of clients' funds?
192. **Mr Armour:** No, I do not think that it is fair to say that. In 2012-13, we went through a process that was overseen by CPD and met its standards and requirements. I do not think that it is fair to say that we left it to the last minute. I think that it was done in a timely way.
193. **Mr Girvan:** Have you put plans in place to ensure that you have sufficient time to consider all options prior to the next procurement exercise?
194. **Mr Armour:** Absolutely. The current stockbroker was appointed on a three-year term with the option of two further one-year extensions, so there is plenty of time to consider whether we want to look at the extensions or whether we want to move to procurement.
195. **Mr Girvan:** You might well need that time, because I understand, from listening to what happened, that the wheels of justice and the Justice Department move extremely slowly in some cases, depending on what they are dealing with.
196. **Mr Armour:** We will certainly do it in line with the CPD requirements. We will obviously work closely with colleagues in CPD to do that.
197. **Mr Girvan:** I appreciate that. That brings me back to the performance area. You mentioned benchmarking against other jurisdictions on how they perform with their court funds. Is that the proper way to look at it? Private investments tend to do fairly well when individuals keep a very close eye on how their money is being worked and how it is being invested. I appreciate that there is some calculation, and I appreciate that we are following the stock market, which can be quite volatile, but you are going to hedge your bets — I have to use that word — on many occasions where you will be sure that you will come out on the right side fairly well. Over five years, you would expect a reasonable return on an investment. Coming from my background, you like to see that you are getting maximum bang for your buck and ensure that you do that. The benchmarking that you referred to only mentioned what happened in other areas, and some of them could be doing really badly. It is a bit like the talents that were given out to individuals: some decided that they wanted to be sure that, when the master came back in 10 years, it would be there for him, so they decided to bury them in the ground. However, when he came back to the man he had given one talent, he found that he had worked with it and had turned it into four. That man is the one who should be rewarded. How do you work with clients?
198. **Mr Armour:** We certainly want to protect the funds that we have been given. As the Deputy Chair indicated at the start, this is money belonging to some of the most vulnerable in society, so our primary objective ought to be, and has to be, protecting that fund. I think that it is right to benchmark against the FTSE all-share index. Richard can give you some statistics on the rates of return that we have been getting in comparison with the FTSE, which, I think, are quite impressive.
199. **Mr Ronaldson:** For the year ending 2011, the equities under our management increased by 11.6%, and the FTSE all-share was 5.4%. In 2012, the FTSE all-share decreased by 2.1%, and our investments increased by 7%. In 2013, it was 17.4% for CFO investments and 12.6% for the FTSE. In 2014, it was 6.2% for our investments and 5.2% for the FTSE. For the year to date, 2015, it is 6.7% for CFO investments and 1.9%

- for the FTSE all-share. We were definitely outperforming the market in that period.
200. **Mr Armour:** We are doing it within that protective environment, which is the important issue for us.
201. **Mr Girvan:** It is helpful to hear that and to know that. It is clients' money. I want to ask about how the fees are brought about. The fee that is paid to the stockbroker to manage the account is £430,000. I appreciate that, as was alluded to, it is not just 14,000 individual investments; they are managing three major funds and whatever movements they require over that period of time. Is that comparable to what people would expect if they were handling a pension fund of almost a third of a billion pounds?
202. **Mr Ronaldson:** The fees charged are based on a factor of the valuation of the investments under management. In the most recent tender, the larger clients were charging 0.27% per year of the value of their fund under investment. In the private sector, for a private client going for a similar service, you would expect to pay more than 1%, and potentially 1.2%, so, certainly, in terms of comparison with the private sector, there is a definite clear benefit with the funds in court.
203. **Mr Beggs:** Can you give us some idea of the actual amount of cash that you issue to clients each year? How much money in cheques would you post out to support them?
204. **Mr Armour:** Whilst Richard is looking for that figure, I will set the context: we do not just post cheques or cash out to clients. If clients want to withdraw money from their fund, they need to go to the court to get approval for that. In terms of the actual figure —
205. **Mr Beggs:** Just roughly.
206. **Mr Ronaldson:** In January, for example, we made payments out of court totalling £4.3 million. If you
207. **Mr Beggs:** Is that normal?
208. **Mr Ronaldson:** Yes. I think that —
209. **Mr Beggs:** So, maybe £50 million a year.
210. **Mr Ronaldson:** I think that £40 million or £50 million would not be unusual.
211. **Mr Beggs:** Why do you then keep £87 million in cash deposit, as is in your analysis of 2013, and get what percentage return on it?
212. **Mr Armour:** It is 0.5%.
213. **Mr Beggs:** So, why keep £87 million if, in a typical year, you turn over £50 million?
214. **Mr Armour:** It depends on the value of the money and the duration that we would have it for. We take the decision that a significant amount of money should be held in a cash deposit account. For example, it is less than £3,000 if it has been held for less than two years.
215. **Mr Beggs:** There will be all sorts of variations in there. What was the turnover in the previous year? You are giving us spin that it is down to all these individual situations, but there is bound to be a rough line or an average cutting through it. That is why I want to get an idea of why you keep almost a third of your money in a cash deposit, where you are getting 0.5% interest, when you could have been getting up to 17% interest over the last number of years by investing it.
216. **Mr Ronaldson:** The cash that is held is allocated to each client. Therefore, if the money comes in and that client is not having funds invested, that will go as cash.
217. **Mr Beggs:** Who decides to keep so much cash?
218. **Mr Ronaldson:** Because we consider —
219. **Mr Beggs:** Is it the judge who decides that all that money should sit in the cash account?
220. **Mr Ronaldson:** The cash will be determined by each individual client. If a client has —
221. **Mr Beggs:** Who takes that decision?



222. **Mr Ronaldson:** It is the stockbroker's recommendation, and the judge will make the decision.
223. **Mr Armour:** Ultimately, it is the court's decision where the money —
224. **Mr Beggs:** Do you see why I am a bit surprised that, if you have a turnover of £50 million, you have £87 million in your cash account?
225. **Mr Ronaldson:** It is the way it is managed because we are basically —
226. **Mr Beggs:** Because of the way that you are set up in the legislation. Would that be it?
227. **Mr Ronaldson:** It is the way that the office manages the cash. We are treating it as that person's cash. We are not investing a pooled fund; we are not treating it as a pooled fund.
228. **Mr Beggs:** Why are you not treating it as a pooled fund? Would you get a better return of the money for the clients if you treated it as a pooled fund?
229. **Mr Armour:** You may, but, as Mr Ronaldson indicated, that is not the way that —
230. **Mr Beggs:** No, no. My question is this: would you get a better return for the clients if it was treated as a pooled fund? Would there be less of an administrative burden if it was treated as a pooled fund?
231. **Mr Ronaldson:** I will give you an example, because —
232. **Mr Beggs:** I am sorry, Mr Armour, could you answer that question? Would there be less administrative burden if it was treated as a pooled fund, as most investment companies would operate in those sorts of conditions?
233. **Mr Armour:** Yes, possibly; I would accept that.
234. **Mr Beggs:** Possibly. Is that a yes or a no?
235. **Mr Armour:** I accept that, yes. If you were holding it as a pooled fund —
236. **Mr Beggs:** What is stopping you holding it as a pooled fund?
237. **Mr Armour:** It is because we hold them as individuals in terms of the money that is —
238. **Mr Beggs:** No, no. What is stopping you? That is the way you do it. What is stopping you going to a better system that would benefit the individuals?
239. **Mr Armour:** The funds are held —
240. **Mr Beggs:** I am not asking how it is done. I am asking what is stopping you going to a modern system to benefit your clients.
241. **Mr Armour:** I would certainly look at that. I have not looked at that as an option as to whether there are strong benefits there. We will certainly have a look at it.
242. **Mr Beggs:** Why have you not looked at it?
243. **Mr Armour:** Because we hold the money for the individual in my name and it is dealt with in an individual way. The protection of the court is there rather than pooling that money.
244. **Mr Ronaldson:** England and Wales do use pooled funds —
245. **Mr Beggs:** I did not know that.
246. **Mr Ronaldson:** — but they do not offer the level of service that we provide.
247. **Mr Beggs:** Do they provide a better return on the investment?
248. **Mr Ronaldson:** The amount of funds that is invested in their pooled funds totals 5% of all funds that they hold in court and 95% of their funds are held as cash. We invest 50% or more, so we are happy that we are providing a better service than England and Wales in terms of the pooled service.
249. **Mr Beggs:** Would you accept that it could be even better?
250. **Mr Ronaldson:** That is something that we will obviously have to consider in future.

251. **Mr McQuillan:** Would it not also be riskier to go down the road of pooled funds?
252. **Mr Armour:** There is a danger, yes, but we will certainly have a look at that.
253. **Mr Ronaldson:** It cuts out the flexibility that we have under our current system.
254. **The Deputy Chairperson (Mr Dallat):** I will come back to Paul. I just want to get my head round this. Are you saying that there are millions of pounds overnight in banks that attract an interest rate of 0.5%?
255. **Mr Ronaldson:** No. The money is held with the debt management office, which is part of the Treasury. It is not in a commercial bank.
256. **The Deputy Chairperson (Mr Dallat):** So, it is the Treasury that benefits from it. Do you think that the Treasury should be benefiting from money belonging to the most vulnerable people in society?
257. **Mr Armour:** The legislation requires us to hold the money in that way. We are tracking the Bank of England base rate, and that is the current return. At a time, it was much better than that but it is what it is at this point in time. We are required to do it in the way that we do.
258. **The Deputy Chairperson (Mr Dallat):** I asked the question because I am familiar with organisations that attract 2.5% and 3% overnight on money that is not being used.
259. **Mr Girvan:** I have just one small point to make. Do you take any moneys out to manage and run the Courts Service from the moneys that you are working with? Does any money come out of that at all?
260. **Mr Armour:** Not at this point in time, because the interest rate is so low. The Court Funds Office is administered by the Courts Service from within the grant that we receive from the Department.
261. **Mr Girvan:** I note that you say, "Not at this point in time".
262. **Mr Armour:** At a point in time when the interest rate was much higher, the legislation allowed us to do that, but we have not been doing that for a number of years.
263. **Mr Girvan:** Look back to the late 1980s when there was interest rates of maybe 16% or 17%. Were you taking moneys to run the Court Funds Office out of that at that stage?
264. **Mr Armour:** I suspect that we were back in the 1980s, but I could not comment on that far back.
265. **Mr Ronaldson:** I can confirm that the cost recovery exercise was brought in in 1997. So, between 1997 and 2010, we recovered the costs of running the office. Since 2010, we have been unable to do so.
266. **Mr Girvan:** It is interesting that you say you have been unable to do so because of interest rates. You have performed fairly well with the return that you have been getting but, potentially, if interest rates increased and your return from your investments increased, you would also be taking some of the most vulnerable people's reward to run the Court Funds Office.
267. **Mr Armour:** That is a slightly separate issue. The report makes reference to the need to look at cost recovery in respect of the Court Funds Office. One thing that we want to do moving forward is have a public consultation on our charging regime, because, at the moment, it is being met from within the Courts Service's allocation. So, in effect, the taxpayer is paying for this. I think it is right that the client should be contributing towards the cost of that, but we want to have a public consultation exercise that will look at what the options are for full cost recovery, in line with DFP requirements.
268. **Mr Girvan:** To go back on a point on cost recovery and legal issues: does the current legal framework allow you to do that?
269. **Mr Armour:** On cost recovery, yes.

270. **Mr Lavery:** The Administration of Justice Act provides for this; it is not something that we came up with.
271. **Mr Girvan:** I appreciate that.
272. **Mr Lavery:** It covers court funds in England, Wales and here, and it provides for any surplus income that is generated on money on deposit with Treasury and the Debt Management Office to be used to defray the running costs of the Court Funds Office in England and the Court Funds Office here. That is what Parliament provided in the Administration of Justice Act.
273. **The Deputy Chairperson (Mr Dallat):** I am conscious that time is moving on, and a number of members have yet to ask their questions. To keep it tidy, address questions through the Chair.
274. **Mr Easton:** Richard, the Audit Office found a number of cases with concentrated portfolios, which, by their nature, expose clients to a higher level of risk. That is in paragraph 4.7, page 23, if that helps. Why was that allowed to happen? What action is the CFO taking to increase diversification and reduce the risk that client funds are exposed to?
275. **Mr Ronaldson:** That refers to nine cases. They are legacy cases, I suppose, in which the investments were bought many, many years ago — potentially in the 1970s or 1980s. There would be huge capital gains tax implications if we were to sell them and put them into the new portfolios. There is an assessment of those. Obviously, each year, we make use of the capital gains tax allowance, but there is an assessment of those based against the individual client needs and the age of the client on whether crystallising that liability would be beneficial to the client. That is the position we are in. Obviously, at the minute, it is not beneficial to crystallise the full liability of those nine cases.
276. **Mr Easton:** Are there any cases in which the clients have suffered significant losses as a result of poor investment decisions?
277. **Mr Ronaldson:** We are not aware of any cases in the last 10 or 15 years where there have been significant losses.
278. **Mr Easton:** Nick, you are next. The Audit Office report indicates that the CFO had been remiss in monitoring the stockbrokers' performance. On page 22, it is stated that the CFO no longer sets investment guidelines for the stockbrokers to follow. In September 2011, when you requested a risk metric from the stockbroker, the information provided was of poor quality. That is on page 23. Compliance with the global investment performance standards is not monitored. Although the existing contract was awarded in July 2013, it was almost a year before you started to receive attribution analysis from the stockbroker. That is on page 24. Do you acknowledge that the CFO has failed to manage the stockbrokers' performance robustly? How will the CFO ensure that it monitors performances more closely in the future?
279. **Mr Perry:** By accepting the report's recommendations, we have accepted that we can strengthen the governance around this, but I think there are a number of points there. The experts will correct me if I have got it wrong. The investment strategies by the previous stockbroker and the current stockbroker were agreed by the JLG, as has the portfolio approach. The parameters that the stockbrokers work within have also been agreed by the JLG, and they are monitored very closely by the CFO. The new independent financial member on the JLG will strengthen things and be able to provide advice on the additional oversight that we can provide on stockbroker performance.
280. On the benchmarking against performance that we have just discussed and the monitoring of the implementation of the contract, the tender for the 2013 contract set out the required standards of the stockbroker and the performance of the stockbroker against the contract, as well as on investment returns. Those are closely monitored. The CFO does a very diligent job. I agree that we can strengthen it further, and we are looking to the new

- independent person to help us to do that.
281. **Mr Armour:** I can assure you about the contract management. The contract is very clearly defined with our stockbroker as far as our needs, requirements and expectations are concerned. We manage that through the Court Funds Office and daily contact with the stockbroker, but formal contract management arrangements are in place in the Courts Service.
282. We did an assessment quite recently and found a number of things, which I touched on earlier. The advice and the administrative actions of the contractor all took place within the agreed timescales, the performance is consistently higher than the FTSE all-share index, and our fees remain very competitive in comparison with others. As Mr Perry said, we are managing that contract and that relationship very diligently.
283. **Mr Easton:** I have one last very quick question. Ronnie, I am curious: why are the accounts in your name?
284. **Mr Armour:** That is what the legislation requires. The Judicature (Northern Ireland) Act 1978 requires that all funds are held in the name of the accountant general. Sadly, it is not in my personal name, but they are held in the name of the accountant general, which is the role that I fulfil. It is a dual role with my chief executive responsibilities.
285. **Mr Easton:** So you are worth a robbing then. *[Laughter.]*
286. **Mr Armour:** The accountant general certainly is, but I, unfortunately, am not.
287. **Mr Beggs:** In the Chair's opening remarks, he touched on performance and targets, yet that information does not seem to be easily accessible. I noticed in paragraph 5.9 of the report that the targets were once on your website but disappeared after 2010. I also noticed in paragraph 5.3 that information on performance against targets is not provided to clients. Paragraph 5.6 states:
- "As costs are deducted annually at source, clients do not see a direct charge to their funds."*
288. That does not strike me as being a very open and transparent operation. Would you care to comment on that, Mr Armour?
289. **Mr Armour:** In recent years, a significant amount of work has been undertaken to develop customer service and transparency. I accept that there is more that we can do, and the new IT system will undoubtedly help us to do that.
290. As I said, our performance targets are in the annual report, which is on the website. On your point about the management fees, we are now advising clients up front what the fees are for the stockbroker. We also have very good user-friendly material that individuals and their representatives who come to the Courts Service can use, and we have a very effective customer service team in the office. There is a lot more information now.
291. It is worth saying to the Committee that the Court Funds Office has received very few complaints — I think that it was three in the last four years — so my assessment is that our clients are satisfied with the service that we provide. We have launched a customer questionnaire, so, in time, we will be able to substantiate that.
292. **Mr Beggs:** You said that you felt that clients were satisfied, but I understand that your last customer satisfaction survey was in 2006.
293. **Mr Armour:** I am saying that customers are satisfied on the basis of the lack of complaints.
294. **Mr Beggs:** Do they know how to complain?
295. **Mr Armour:** Details of the complaints process and procedures are on our website. We are in regular contact with a significant number of our clients, and, as I said, the official solicitor represents some of our clients and is in contact with them, so I do not think that there is an issue.

296. On the back of one of the report's recommendations, we are assessing quality through a customer service questionnaire.
297. **Mr Beggs:** I am pleased that you are carrying out a customer satisfaction survey. Do you agree that that is the only way to be sure rather than simply feeling that customers are satisfied?
298. **Mr Armour:** Yes, I accept that.
299. **Mr Beggs:** You talked about publishing the annual report. Apart from the annual report, will you be publishing your key targets and ultimate performance in an easily accessible format?
300. **Mr Armour:** We publish them on our website. When we get the new IT system later this year, it will further enhance the interaction between us and our clients. I will certainly want to move forward on that.
301. **Mr Beggs:** Court Funds Office charges are normally charged against clients' funds. That has not happened this last number of years because of low interest rates and, I dare say, the large sums of money that you have invested, which have not brought in a very significant return. If clients are paying for it, it would be reasonable for you to operate as efficiently as possible, so why do you not have specific efficiency targets?
302. **Mr Armour:** Over the past number of years, we have had efficiency targets. In response to a question from Mr Rogers, I said that we had reduced our staffing complement from 24 to 21, so the Court Funds Office is not immune to wider efficiency targets that face other areas of the Courts and Tribunals Service.
303. We have a target for when the IT system is implemented. I expect it to deliver, for example, a 20% savings reduction, so there have been targets, and efficiency targets are coming down the track.
304. **Mr Beggs:** What are your efficiency targets for this year, or is it all about your new computer system?
305. **Mr Armour:** We have been working on the basis of roughly a 5% reduction, but we are hampered to an extent in what we can deliver in the Court Funds Office because of the IT system and the manual backup and support that it requires. As I said, when we deliver that system, we are looking for a 20% reduction in our staffing costs.
306. **Mr Beggs:** Today, you used the word "processing" on a number of occasions. People were "processing", and I am trying to understand what they are doing when they are processing. Each day, how many new customers will have to be logged on to the computer system?
307. **Mr Armour:** For example, when an order comes across from the court, they will be bringing that forward for the funds to be brought in.
308. **Mr Beggs:** My question is: how many transactions relating to a new customer come in each day or each month?
309. **Mr Ronaldson:** We have approximately 50 new customers every week.
310. **Mr Beggs:** Do 50 people have to be logged on to the computer each week?
311. **Mr Ronaldson:** Yes.
312. **Mr Beggs:** How many transactions are there on your system each day?
313. **Mr Ronaldson:** We looked earlier, and 40,000 to 50,000 payments is not unusual for a year, and there are a similar number of receipts.
314. **Mr Beggs:** So there are 1,000 payments a month.
315. **Mr Ronaldson:** It will fluctuate. For example —
316. **Mr Beggs:** There are 250 payments a week.
317. **Mr Ronaldson:** It will fluctuate because —
318. **Mr Beggs:** On average, it is 250 payments a week.
319. **Mr Ronaldson:** Yes, that would not be unreasonable.
320. **Mr Beggs:** If I have got it right, new clients have to be added on to the



- system, and there are about 250 payments a week. What else do the 20 staff do?
321. **Mr Armour:** There is the customer care team, which interacts with the clients, and it, for example, takes phone calls from client representatives. There is the interface with the stockbroker and overseeing that relationship, and there is also the interaction with the judicial liaison group.
322. **Mr Beggs:** Aside from the computer system, have you looked at how you can improve your system so that fewer people are tied up in processes and the CFO could become more efficient?
323. **Mr Armour:** The primary focus is on the IT system. That will help us to reduce a number of the current processes.
324. **Mr Beggs:** Do you need any other changes to enable you to become more efficient so that clients can benefit?
325. **Mr Armour:** Rather than benefiting clients, it would benefit the Courts Service, because that is where the funding comes from.
326. **Mr Beggs:** Normally, it comes from the clients.
327. **Mr Armour:** We regularly review how we carry out our business, but, at the minute, we are in that difficult position with the IT system. We have talked through the issues, and it is difficult for us to make those improvements until the IT system is in place. Thankfully, the end is in sight with that.
328. **Mr Beggs:** Are legislative changes needed to enable you to become more efficient?
329. **Mr Armour:** I do not think that legislative changes would impact directly on efficiency. For me, the key issue is getting the IT system in. That is the big priority, because that is where the efficiencies will be significantly driven from.
330. **Mr Beggs:** This question is for the permanent secretary: should legislative changes be made to enable the system to operate more efficiently?
331. **Mr Perry:** Given the way in which the CFO is structured, I do not think so. I am sure that management is scrutinising carefully to make sure that resources are being used efficiently.
332. **Mr Beggs:** Given the report, what makes you sure that management is looking at it carefully?
333. **Mr Perry:** From talking to the chief executive, I know that they are.
334. **Mr Beggs:** Surely the report illustrates that management has not been carefully looking at the system.
335. **Mr Perry:** I know that, like every part of the Department, the Courts Service is carefully scrutinising what staff are doing daily. Clearly, I am aware of the IT business case, so I know that a significant justification for the new IT system is that it will help us to drive efficiencies. With the operation of the CFO, as Mr Lavery explained, there is a wider consultation on whether some administrative functions could be outsourced. That will form part of the consultation exercise.
336. **Mr Beggs:** I now turn to cost recovery. At present, surplus from deposits normally covers your running costs. I understand that smaller amounts of money are generally held in a deposit account rather than going for longer-term investment. Do you accept that that is unfair on your clients who have smaller amounts of funds? Surely that is inequitable.
337. **Mr Armour:** I accept that there is an unfairness. Of course, as I said, we have not been recovering funds from clients.
338. **Mr Beggs:** You did that until, I think, 2012?
339. **Mr Armour:** Yes, and that is one reason why we are now looking at our charging regime with a view to having a public consultation on what is the fair and appropriate way to do this.
340. **Mr Beggs:** You said that there were very healthy returns on the large funds that you had invested. In some years, it was 17%, and I think that the lowest was

- about 6%. You were not using any of that money to charge against your running costs, but you were looking at smaller clients who were putting money in the deposit account, and it was looking after your running costs.
341. **Mr Armour:** Individuals in that category will pay a management fee to the stockbroker for managing their funds. In principle, what you are saying is right. All our clients will have some sort of cash deposit, so they will be contributing. I do accept that there is an apparent unfairness in the way that that was operated. That is why, as I said, we want to move forward with a very different charging regime.
342. **Mr Beggs:** Would you not have a more stable income source if charges came out of all your investments?
343. **Mr Armour:** We will certainly look at that issue in the public consultation. We have a charging regime that covers our costs, is fair and is seen to be fair.
344. **Mr Beggs:** I turn to a different issue. It is important that all clients receive regular, timely updates on their investments. However, paragraph 5.13 states that 75 cases on the portfolio list slipped through the net; they were on the portfolio list but not the broker's list. How did that happen?
345. **Mr Ronaldson:** It was just a simple error by the broker at the time. Once it was uncovered, we took steps to rectify it and made sure that there were sufficient controls. We brought the controls in-house to ensure that it could not happen again.
346. **Mr Beggs:** Are you telling me that there are checks in the system to prevent this happening again?
347. **Mr Armour:** Yes.
348. **Mr Rogers:** My question is about driving efficiencies and the importance of internal audit, given the value and number of client accounts. Why was no internal audit carried out for about two years, between 2010 and 2012?
349. **Mr Armour:** You are right. The report highlights a period of just over a year — some 18 months, I think — during which no internal audit was carried out. As I understand it, there were other pressures at that time in internal audit's work, but I assure the Committee that there has been an internal audit inspection every year since then. The head of internal audit in the Department sits on my audit and risk committee. There are, therefore, very clear linkages now, and we go through the audit process annually. At that time, there were other pressures, which, regrettably, resulted in no audit being carried out.
350. **Mr Rogers:** Internal audits are a recommendation. Do you take that on board?
351. **Mr Armour:** Absolutely. As I said, the head of internal audit sits on the audit and risk committee. He presents his report to that committee, which is a subcommittee of the agency management board. An action plan is put in place, and the audit and risk committee monitors its implementation. Given that the audit is done on behalf of the Department, it is also fed into the Department, which has oversight of the delivery of the recommendations.
352. **Mr Rogers:** What were the other pressures over those two years that you refer to?
353. **Mr Lavery:** I will answer this, because I was the chief executive at the time. You may recall the case of the McDermott brothers in the village of Donagh; they had been abusing children. One of the issues that emerged from that case was an inaccuracy in the recording of a court order by staff in the court office, which did not, however, materially affect the outcome of the case. I was concerned that it might not have been an isolated example, so I redirected internal audit resources to carry out a complete review of all court orders made in cases involving sexual offences. This was to make absolutely sure that no other mistakes had been made. They had to pull resources in, and I judged that it was appropriate to redirect some

- internal audit capacity for a sustained period to carry out that urgent review. The internal audit consideration of the Court Funds Office resumed when the exercise was complete, but it brought to light some issues, although they are not material today. We worked with the office of the Lord Chief Justice to make sure that the orders were recorded correctly. We found that the courts were making one or two mistakes in some cases about the type of sexual offences prevention orders. That internal audit exercise helped us to fix that, but I simply redirected capacity to something that I thought was a much more immediate priority because it was a public protection issue.
354. **The Deputy Chairperson (Mr Dallat):** I have heard a lot of evidence today about the problems and concerns in the Court Funds Office. I am not sure whether you will be pleased with this remark, Mr Lavery, but it strikes me that it is an archaic, Cinderella service that is in urgent need of reform. Do you agree?
355. **Mr Lavery:** I think that we have consensus that the modernisation programme that Mr Armour described is a priority for us. I just did not want to give the Committee the impression that perhaps we had done nothing prior to the Audit Office report.
356. **The Deputy Chairperson (Mr Dallat):** The purpose of the CFO is to look after the financial affairs of the most vulnerable in society, such as minors who have been awarded damages in our civil courts and those who have become mentally incapacitated and rely on the Court Funds Office to manage their financial affairs. From what my colleagues and I have heard today, I think that those people have been let down and have not had value for money from the service that has been entrusted to look after their affairs. Do you agree?
357. **Mr Perry:** I think that the report has shown that there are valuable things that we can do to strengthen governance, demonstrate value for money and improve transparency.
- However, the acid test for us is whether the Court Funds Office provides a good and appropriate level of service, both for clients and the court. While we can do better, it essentially carries out its responsibilities, as I said, diligently and with great care and concern for the clients who are at the heart of its business. I take assurance from that.
358. **The Deputy Chairperson (Mr Dallat):** That is useful, and, just as I did in my opening remarks, I was simply regurgitating what was in the executive summary, which, I think, we all signed up to.
359. Members, we have all now had an opportunity to ask questions. Do the witnesses have any final issues that they wish to address before we conclude the session? Mr Layberry and Comptroller and Auditor General, is there anything that you wish to add regarding the evidence that you have just heard?
360. **Mr Kieran Donnelly (Northern Ireland Audit Office):** I have nothing to add at this point, thank you.
361. **Mr Jack Layberry (Department of Finance and Personnel):** No, thank you.
362. **The Deputy Chairperson (Mr Dallat):** Members, have you any questions that you would like clarification on from Mr Layberry or the Controller and Auditor General?
363. I thank you all for your attendance before the Committee today; it has been extremely useful, and the information received will be taken on board as we develop our report. It comes to mind, Mr Lavery, that, at an earlier stage you mentioned that you had drawn up a document. It would be useful if we had a copy of that.
364. **Mr Lavery:** Is that the investment protocol?
365. **The Deputy Chairperson (Mr Dallat):** It is the Amtec report.
366. **Mr Lavery:** Yes, of course we will make that available to the Committee.



367. **The Deputy Chairperson (Mr Dallat):**

You will be pleased to know that we may seek clarification of issues raised today and other issues as they arise during our deliberations. We will write to you about that. Thank you very much for your time.





Northern Ireland  
Assembly

Appendix 3

# Correspondence



# Correspondence of 20 March 2015 to Department of Justice



**Public Accounts Committee**

Room 371  
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Ballymiscaw  
BELFAST BT4 3XX

Tel: (028) 9052 1208

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20 March 2015

Mr Nick Perry  
Permanent Secretary  
Department of Justice  
cc. Treasury Officer of Accounts

Dear Nick,

**PAC inquiry into Managing and Protecting Funds Held in Court**

I wish to thank you, Mr David Lavery, Mr Ronnie Armour and Mr Richard Ronaldson for attending the Public Accounts Committee meeting on Wednesday, 25th February. The meeting was extremely beneficial in providing the opportunity to discuss concerns and issues arising from the Audit Office report on Managing and Protecting Funds Held in Court.

A number of points were raised during the session and I write to request some additional information.

- Could you confirm what is the annual cost of the Fujitsu computer system contract in the Court Funds Office?
- Could you provide the Committee with a copy of the Amtec consultant's report commissioned by the Northern Ireland Courts and Tribunals Service circa 2003?
- Could you confirm when the benchmarking exercise on the investment performance of the Court Funds Office was carried out? Can you provide the Committee with all relevant documentation?

I would request a response on the above issues by 8 April 2015.

Yours sincerely,

A handwritten signature in black ink, reading "Michaela Boyle". The signature is written in a cursive, flowing style.

**Michaela Boyle**

Chairperson,  
Public Accounts Committee

# Correspondence of 31 March 2015 from Department of Justice

**FROM THE PERMANENT SECRETARY**  
**Nick Perry**



Department of  
**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

Ms Michaela Boyle MLA  
Chair of the Public Accounts Committee  
Room 371, Parliament Buildings  
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Tel: 028 9052 2992  
email: [nick.perry@dojni.x.gsi.gov.uk](mailto:nick.perry@dojni.x.gsi.gov.uk)

Your reference  
Our reference NP90-15;  
15/131746  
Date 31 March 2015

*Dear Ms Boyle,*

## **PAC INQUIRY INTO MANAGING AND PROTECTING FUNDS HELD IN COURT**

I am writing in response to your letter of 20 March 2015 requesting further information following attendance at the Public Accounts Committee (PAC) meeting on 25 February.

The annual cost of the application support contract for the Court Funds Office (CFO) system is £49,360. The Northern Ireland Courts and Tribunals Service (NICTS) has an ICT Managed Services Contract with Fujitsu who sub-contract the support for the CFO system to ICS-Equiniti (the supplier of the software). Due to the age of the system, support is provided on a best endeavours basis.

As requested, I have enclosed a copy of the Amtec report from 2003.

The benchmarking exercise on the investment performance of CFO is a continuous process. Benchmarked performance information has been prepared on a monthly basis since July 2008. Initially performance of equities was benchmarked against the FTSE100 Index, and this continued until January 2009. Since February 2009, after discussions with the incumbent supplier of stockbroking services, monthly comparisons have been made with the FTSE All Share Index.

Since 2011/12, the annual accounts of the Court Funds Office have included a comparison of annual investment performance for both debt securities and investment securities, benchmarked against six applicable indices. Comparison against the same benchmarks was introduced to the monthly reports in July 2013.

We recently compared our investment performance against the other jurisdictions in the UK and Ireland. It is difficult to make a direct comparison, as each jurisdiction manages funds in court in a different manner and reports over different periods. However, data for investment performance was extracted from the annual reports that were available.

I have enclosed **Schedule A**, summarising the above benchmarked performance information over recent years.

In addition to the above, since March 2014 the current stockbroker has provided six-monthly performance reports measuring their performance against a number of industry standard benchmarks. I have enclosed a copy of their latest report (with individual names redacted) for the six month period to 30 September 2014.

I trust that this additional information is sufficient, but please contact me if you require anything further.

*Yours sincerely,*



**N P PERRY**



### Summary of equity performance

The performance of equities is compared monthly against the FTSE All Share Index. The following table shows the annual performance of equities held on behalf of clients, compared against the annual movement in the index.

	Year ended Y/E Mar 2010 £'000s	Year ended Y/E Mar 2011 £'000s	Year ended Y/E Mar 2012 £'000s	Year ended Y/E Mar 2013 £'000s	Year ended Y/E Mar 2014 £'000s
Opening balance	12,858	17,398	24,231	37,996	56,220
Purchases	6,892	10,206	15,178	18,058	37,060
Sales and transfers	(5,745)	(5,726)	(3,655)	(7,270)	(9,521)
Movement in market value	3,393	2,353	2,242	7,436	4,101
Closing balance	17,398	24,231	37,996	56,220	87,860
Movement in market value (%)*	29.7%	11.6%	7.0%	17.4%	6.2%
Movement in FTSE All Share Index (%)	46.7%	5.4%	-2.1%	12.6%	5.2%

\* - the percentage movement in market value is calculated monthly, so this figure takes account of which month the purchase and sale transactions occurred in throughout the year.

### Annual performance

The following information has been extracted from the annual accounts of CFO.

	2011/12	2012/13	2013/14
<b>Movement in market value (%)*</b>			
<b>Investments held on behalf of minors</b>			
Debt Securities	5.0%	1.9%	-4.5%
Investment Securities	4.6%	14.9%	5.5%
<b>Investments held on behalf of patients</b>			
Debt Securities	9.1%	4.4%	-6.2%
Investment Securities	2.7%	15.3%	4.6%
<b>Benchmarks</b>			
<b>Movement in index (%)</b>			
<b>Debt Securities</b>			
FTSE Fixed rate gilts up to 5 years	1.7%	-2.7%	-3.9%
FTSE Fixed rate gilts 5-15 years	11.6%	1.9%	-7.0%
FTSE Index-linked gilts up to 5 years	2.0%	1.8%	-3.4%
FTSE Index-linked gilts 5-15 years	14.1%	9.7%	-8.1%
<b>Investment Securities</b>			
FTSE All Share	-2.1%	12.6%	5.2%
FTSE 100	-2.4%	11.2%	2.9%

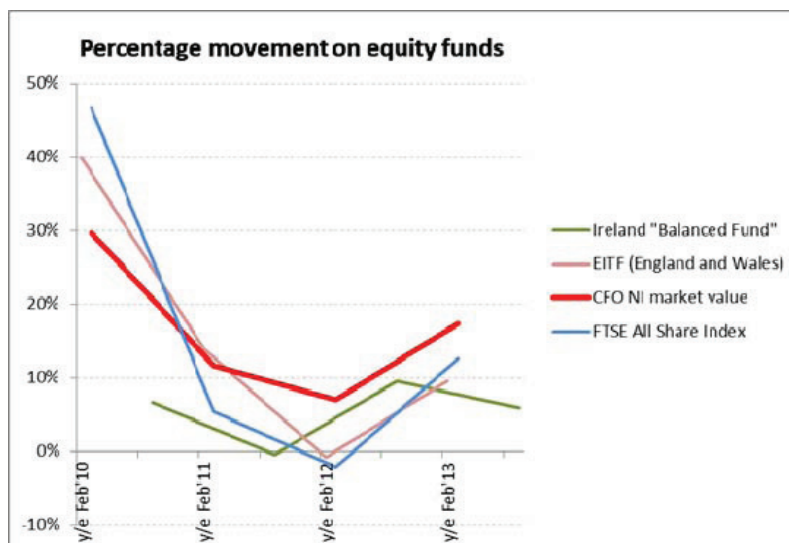
\* - the movement in market value has been calculated, based on the average value of holdings during the year.

Holdings are split between minors and patients, as different investment strategies are applied, with patients' funds more likely to be held for a longer period.

Debt securities consist of government gilts only. Investment securities include equities and other investments.

### Benchmarking against other jurisdictions

The graph below shows the results of the comparison of investment performance with other jurisdictions. The information was extracted from the available annual reports of each jurisdiction.



#### Ireland

The equivalent of the Court Funds Office in Ireland has created a “balanced fund” into which client funds are invested if considered appropriate. It comprises of investments in cash, bonds and equity funds in the ratio 25:20:55. As at 30 September 2013, a total of 37% of client funds held in court were invested in the “balanced fund” with the remaining funds held in a cash fund. It is not possible to extract the performance of the equity element of the fund from the information available, so a direct comparison cannot be made.

#### England and Wales

The Court Funds Office for England and Wales has set up an Equity Index Tracker Fund (EITF) into which client funds are invested if considered appropriate. As at 28 February 2013, a total of 4% of client funds were invested in the EITF with 94% of funds being held as cash. As this is an equity fund, it can be compared directly with the CFO (NI) equity performance.

#### Scotland

In Scotland, funds are not generally held in court. In the small number of cases where funds are held, they are not invested.

#### Northern Ireland

The graph above depicts the performance of equity investments held on behalf of CFO clients. As at 31 March 2013, a total of 19% of client funds held in court were invested in equities. An additional 51% of client funds were invested in other investments, such as bonds and gilts, with the balance held as cash.

Davy Private Clients

DAVY

# Court Funds Office Performance Report: DRAFT

31 March – 30 September 2014

J&E Davy, trading as Davy, is regulated by the Central Bank of Ireland. Davy is a member of the Irish Stock Exchange, the London Stock Exchange and Euronext. In the UK, Davy is authorised by the Central Bank of Ireland and authorised and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our authorisation and regulation by the Financial Conduct Authority are available from us on request.

CAPITAL MARKETS | CORPORATE FINANCE | PRIVATE CLIENTS | RESEARCH

## Important Notes

- A significant rebalancing exercise occurred during the period. In total c.£16m net was invested across the three model portfolios. Whilst this will distort performance figures this rebalancing exercise was less than the c.£30m net that was conducted in January.
- Included within the net £16m were 38 clients who previously had no investments and c.40 clients who held gilts only. Again, the investment of these funds at various points throughout the period in will distort returns for these clients.
- Significant progress has been made in bringing CFO clients in line with the models (subject to capital gains tax limitations):
  - *59/145 Balanced clients are 100% in line with model*
  - *138/168 Cautious clients are 100% in line with model*
  - *6/6 Preservation clients are 100% in line with model*
  - *Overall 60% of all CFO clients are now 100% in line with model portfolios*
- There is now very limited scope to increase this percentage as, in doing so, we will be unable to avoid realising capital gains for CFO clients.

Day Private Clients

## Overview of CFO Portfolio risk and return characteristics

**Warning: Past performance is no guarantee of future results. The value of your investment can go down as well as up.<sup>1</sup>**

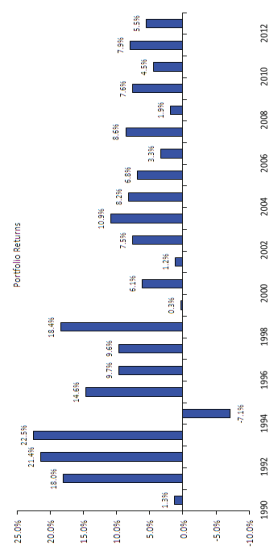
These simulated returns are based on the past performance of various asset classes. Return estimates are gross of fees. Securities in portfolios may differ from the indices used in this analysis.

Data Source: Datastream & Bloomberg. Consolidated Indices have been constructed using a number of past indices.

Dates for Historical Stress Test: Russia/TCM Crisis 20/07/1998-08/10/1998. Tech bubble burst 08/09/2000-10/03/2003. GFC 13/07/07-09/03/2009

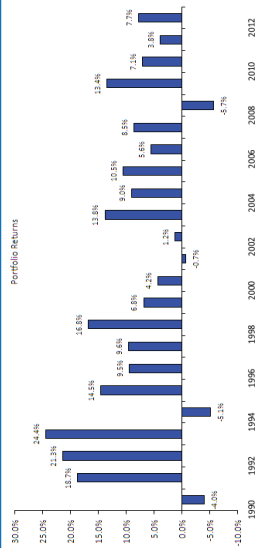
### Preservation:

- Target average return 3% p.a. over five years
- Volatility Range: -8% to +10%
- Probability of an annual loss: 5%
- Probability of 3 year loss: Improbable
- Probability of 5 year loss: Improbable



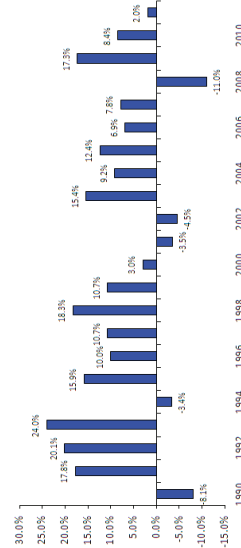
### Cautious:

- Target average return 4% p.a. over seven years
- Volatility Range: -12% to +15%
- Probability of an annual loss: 10%
- Probability of 3 year loss: 5%
- Probability of 5 year loss: Improbable



### Balanced:

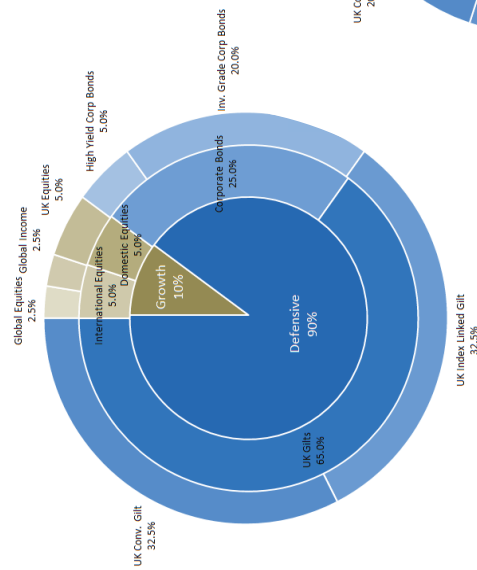
- Target average return 5% p.a. over ten years
- Volatility Range: -17% to +20%
- Probability of an annual loss: 20%
- Probability of 3 year loss: 7%
- Probability of 5 year loss: 1%



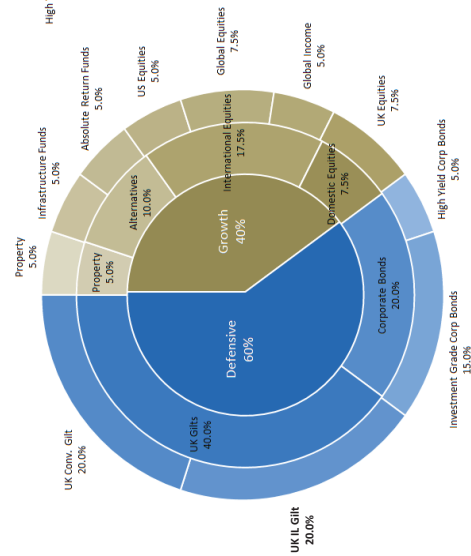
Day Private Clients

Core Portfolios – Tactical Asset Allocation

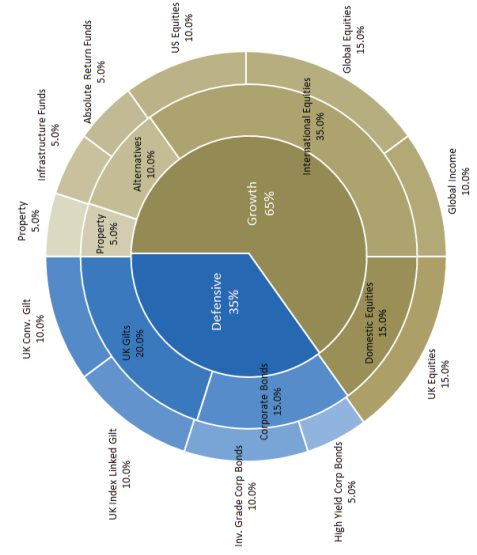
Preservation



Cautious Growth

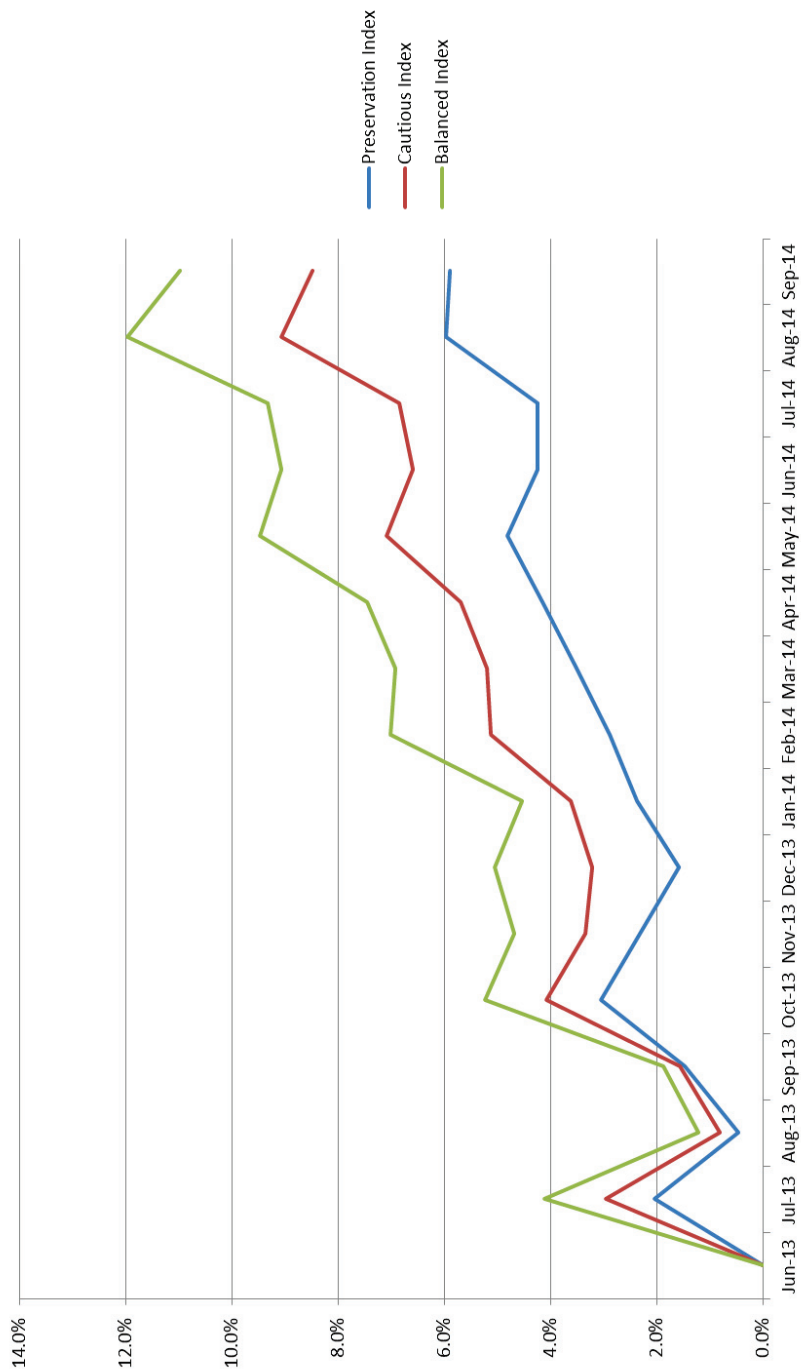


Balanced Growth



## CFO Portfolio Performance from Inception to 30 Sept 2014

Day Private Clients



Davy Private Clients

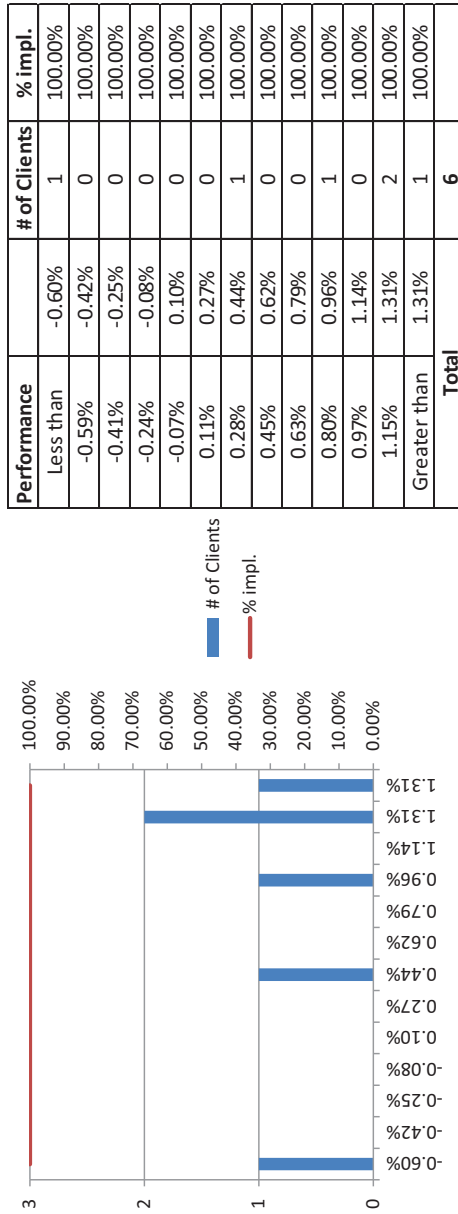
## CFO Client Performance Summary: 6m to 30 Sept 2014

	Preservation	Cautious	Balanced	No Model
Davy Portfolio Performance (incl. income after fees)	+2.12%	+2.99%	+3.78%	n/a
Average Portfolio Performance *	+0.76%	+2.23%	+2.66%	+1.61%
Difference	-1.36%	-0.76%	-1.13%	n/a
Number of clients invested in each model	6	168	145	25
Standard Deviation from average portfolio return	+0.79%	+1.06%	+1.22%	2.23%
<b>Benchmarks</b>				
Asset Risk Consultants (ARC) Total Return	n/a	+2.19%	+2.17%	n/a
APCIMS/WMA Benchmark Total Return (adjusted ex. Cash)	n/a	+4.25%	+3.76%	n/a
Composite Benchmark	+4.91%	+5.06%	+5.15%	n/a
<b>Relative performance of Davy Portfolio against benchmarks</b>				
Asset Risk Consultants (ARC)	n/a	+0.80%	+1.61%	n/a
APCIMS/WMA	n/a	-1.26%	+0.02%	n/a
Composite	-2.79%	-2.07%	-1.37%	n/a
<b>Performance Attribution (against APCIMS/WMA)</b>				
Relative performance of Davy Portfolio against benchmarks	n/a	-1.26%	+0.02%	n/a
Comprised of				
Investment Selection	n/a	-1.28%	-0.05%	n/a
Tactical Asset Allocation	n/a	+0.19%	+0.24%	n/a
Davy Fees plus VAT	n/a	-0.16%	-0.16%	n/a
<b>Total</b>	<b>n/a</b>	<b>-1.26%</b>	<b>+0.02%</b>	<b>n/a</b>



Davy Private Clients

## Statistical Analysis – Preservation



	H1 2014/15	H2 2013/14	Annualised
Davy portfolio return in period	+2.12%	+1.47%	+3.62%
APCIMS/WMA Benchmark	n/a	n/a	n/a
Average return across CFO client base categorised as Preservation	+0.76%	n/a	n/a
Difference between average return and Davy return	-1.36%	n/a	n/a
Standard Deviation from average return	+0.79%	n/a	+0.79%

Davy Private Clients

All Preservation Clients

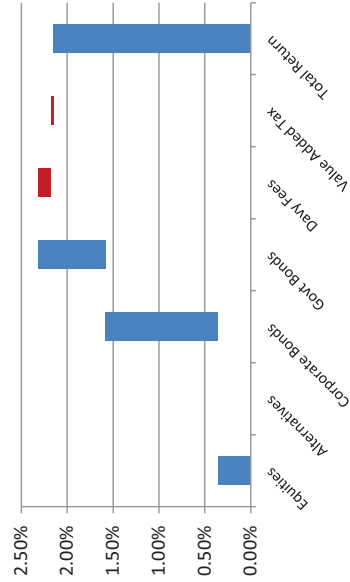
Client	Name	Total Return	% imp	Notes
6002793		-0.61%	100%	Invested August 2014
6002783		0.31%	100%	Invested August 2014
6001050		0.89%	100%	Invested July 2014
6002517		1.15%	100%	Invested July 2014
6001734		1.25%	100%	Invested July 2014
6001119		1.56%	100%	Invested August 2014

Davy Private Clients

## Attribution Analysis – Preservation

### Contribution to return analysis

Asset Class	Portfolio Weighting	Asset Class Return	Contribution to Return
Equities	10%	4.0%	0.40%
Alternatives	0%	0.0%	0.00%
Corporate Bonds	25%	4.6%	1.15%
Govt Bonds	65%	1.1%	0.73%
Davy Fees			-0.14%
Value Added Tax			-0.03%
<b>Total Return</b>			<b>2.12%</b>



### Investment Selection Performance

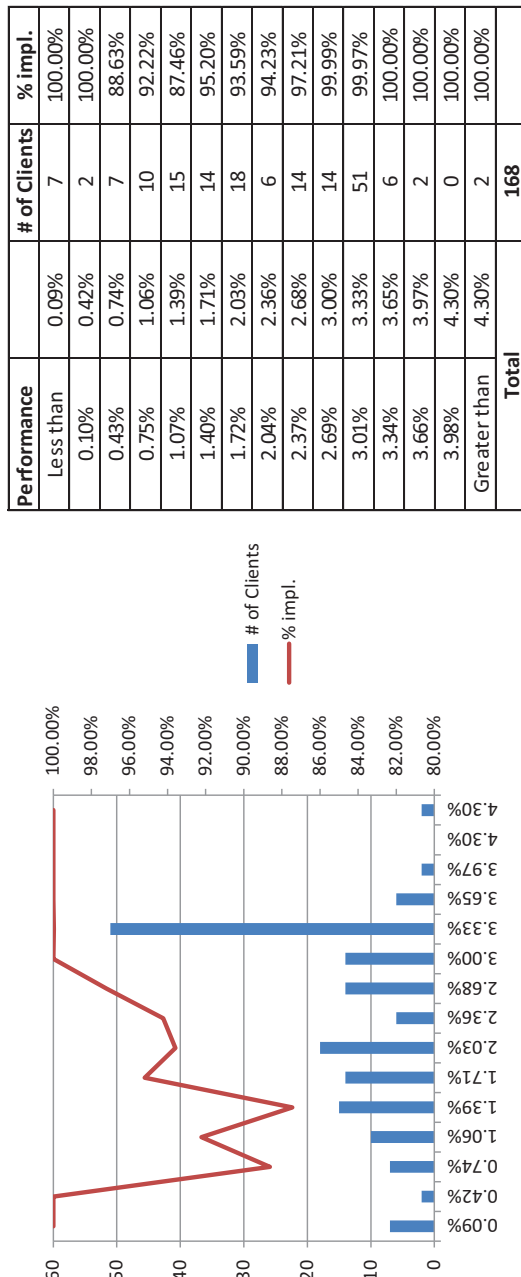
Asset Class	Tactical Asset Allocation	Asset Class Return	Benchmark Return	Relative performance	Benchmark
Equities	10%	4.04%	5.46%	-1.42%	FTSE All Share/All World
Alternatives	0%	0.00%	0.00%	0.00%	WMA Custom Index/Uk Property
Bonds	90%	2.09%	4.85%	-2.76%	FTSE Gilts All Stocks
<b>Total Investment Selection out/underperformance</b>					<b>-2.63%</b>

### Tactical Asset Allocation Performance

Asset Class	Tactical Asset Allocation	Gilt Only	Benchmark Return	Tactical Asset Allocation Return	Benchmark Asset Allocation Return	Relative return
Equities	10.0%	0.0%	5.46%	0.55%	0.00%	0.55%
Alternatives	0.0%	0.0%	0.00%	0.00%	0.00%	0.00%
Bonds	90.0%	100.0%	4.85%	4.37%	4.85%	-0.49%
<b>Total</b>	<b>100%</b>	<b>100%</b>		<b>4.91%</b>	<b>4.85%</b>	<b>0.06%</b>

## Davy Private Clients

## Statistical Analysis – Cautious



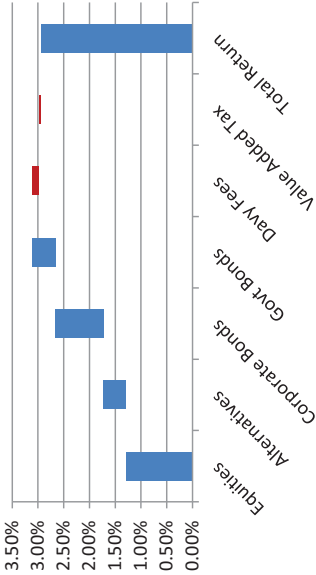
	H1 2014/15	H2 2013/14	Annualised
Davy portfolio return in period	+2.99%	+3.16%	+6.24%
APCIMs/WMA Benchmark	+4.25%	+2.61%	+6.97%
Average return across CFO client base categorised as 'Cautious'	+2.23%	+1.90%	+4.17%
Difference between average return and Davy return	-0.76%	-1.26%	-2.01%
Standard Deviation from average return	1.06%	1.15%	1.06%

Davy Private Clients

Attribution Analysis – Cautious

Contribution to return analysis

Asset Class	Portfolio Weighting	Asset Class Return	Contribution to Return
Equities	25%	5.64%	1.41%
Alternatives	15%	2.88%	0.43%
Corporate Bonds	20%	4.32%	0.86%
Govt Bonds	40%	1.13%	0.45%
Davy Fees			-0.14%
Value Added Tax			-0.03%
Total Return			2.99%



Investment Selection Performance

Asset Class	Tactical Asset Allocation	Asset Class Return	Benchmark Return	Relative performance	Benchmark
Equities	25.0%	5.64%	2.91%	2.73%	FTSE All Share/All World
Alternatives	15.0%	2.88%	5.36%	-2.48%	WMA Custom Index/UK Property
Bonds	60.0%	2.19%	4.85%	-2.66%	FTSE Gilts All Stocks
Total Investment				-1.28%	

Tactical Asset Allocation Performance

Asset Class	Tactical Asset Allocation	Benchmark Allocation (APCIMS/WMA)	Benchmark Return	Tactical Asset Allocation Return	Benchmark Asset Allocation Return	Relative return
Equities	25.0%	34.2%	2.91%	0.73%	0.99%	-0.27%
Alternatives	15.0%	13.2%	5.36%	0.80%	0.71%	0.10%
Bonds	60.0%	52.6%	4.85%	2.91%	2.55%	0.36%
Total	100%	100%		4.44%	4.25%	0.19%

Davy Private Clients

## Top/Bottom 15 Cautious Clients

## Bottom 15

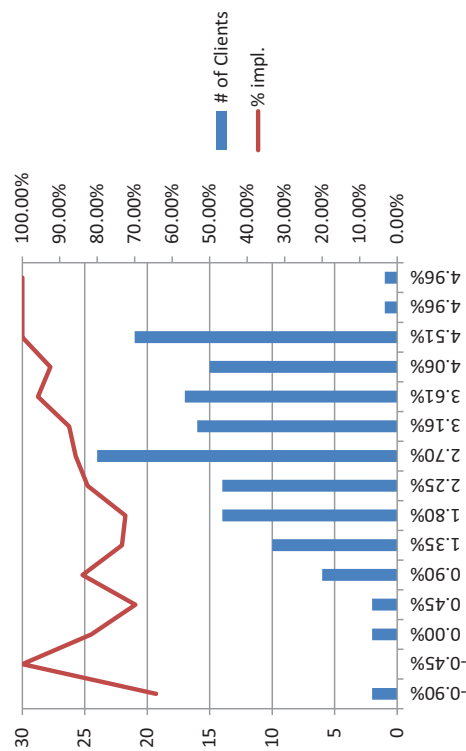
Client	Name	Total Return	% Imp	Notes
6001117		-0.01%	100%	prev gilt - inv Sept 14
6001106		0.02%	100%	prev gilt - inv Aug 14
6002667		0.22%	100%	prev gilt - inv Sept 14
6001201		0.39%	100%	prev gilt - inv Aug 14
6000962		0.43%	72%	Legacy Brewin holdings
6001156		0.47%	100%	prev gilt - inv Aug 14
6000905		0.56%	73%	Legacy Brewin holdings
6001087		0.60%	100%	prev gilt - inv Aug 14
6001100		0.62%	100%	prev gilt - inv Aug 14
6000871		0.65%	75%	Legacy Brewin holdings
6002159		0.65%	100%	prev gilt - inv Aug 14
6002522		0.75%	100%	prev gilt - inv Aug 14
6001001		0.76%	71%	Legacy Brewin holdings
6001093		0.79%	100%	prev gilt - inv Aug 14
6001012		0.81%	91%	Legacy Brewin holdings
6000970		3.25%	100%	Full Davy Portfolio for period
6000972		3.25%	100%	Full Davy Portfolio for period
6001026		3.25%	100%	Full Davy Portfolio for period
6002754		3.26%	100%	Full Davy Portfolio for period
6002755		3.26%	100%	Full Davy Portfolio for period
6002679		3.26%	100%	Full Davy Portfolio for period
6002646		3.29%	100%	Full Davy Portfolio for period
6001173		3.39%	100%	Full Davy Portfolio for period
6000904		3.40%	100%	Full Davy Portfolio for period
6001206		3.42%	100%	Full Davy Portfolio for period
6000973		3.50%	100%	Full Davy Portfolio for period
6000939		3.82%	100%	Full Davy Portfolio for period
6000897		3.92%	100%	Full Davy Portfolio for period
6000837		4.41%	100%	Full Davy Portfolio for period (2 accounts)
6000963		4.55%	100%	Full Davy Portfolio for period - sale at market high

## Top 15

Davy Private Clients

## Statistical Analysis – Balanced

Performance	# of Clients	% impl.
Less than -0.90%	2	64.33%
-0.89% to -0.45%	0	100.00%
-0.44% to 0.00%	2	81.60%
0.01% to 0.45%	2	69.84%
0.46% to 0.90%	6	83.91%
0.91% to 1.35%	10	73.40%
1.36% to 1.80%	14	72.50%
1.81% to 2.25%	14	82.58%
2.26% to 2.70%	24	85.76%
2.71% to 3.16%	16	87.51%
3.17% to 3.61%	17	95.80%
3.62% to 4.06%	15	92.51%
4.07% to 4.51%	21	100.00%
4.52% to 4.96%	1	100.00%
Greater than 4.96%	1	100.00%
<b>Total</b>	<b>145</b>	

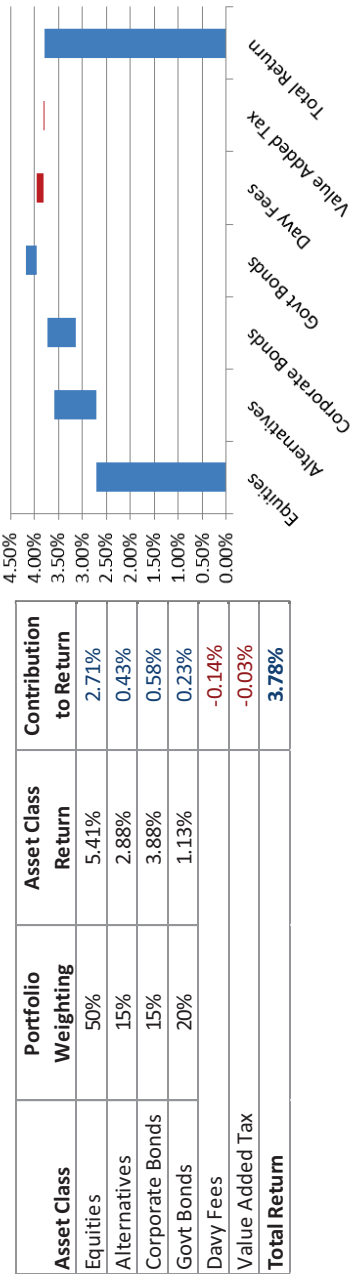


	H1 2014/15	H2 2013/14	Annualised
Davy portfolio return in period	3.78%	4.59%	8.54%
APCIMs/WMA Benchmark	3.76%	3.40%	7.29%
Average return across CFO client base categorised as 'Balanced'	2.66%	2.47%	5.20%
Difference between average return and Davy return	-1.13%	-2.12%	-3.26%
Standard Deviation from average return	1.22%	1.33%	1.22%

Davy Private Clients

## Attribution Analysis – Balanced Growth

### Contribution to return analysis



### Investment Selection Performance

Asset Class	Tactical Asset Allocation	Asset Class Return	Benchmark Return	Relative performance	Benchmark
Equities	50.0%	5.41%	2.81%	2.60%	FTSE All Share/All World
Alternatives	15.0%	2.88%	5.97%	-3.09%	WMA Custom Index/UK Property
Bonds	35.0%	2.31%	4.85%	-2.54%	FTSE Gilts All Stocks
<b>Total Investment Selection out/underperformance</b>					<b>-0.05%</b>

### Tactical Asset Allocation Performance

Asset Class	Tactical Asset Allocation	Benchmark Allocation (APCIMS/WMA)	Benchmark Return	Tactical Asset Allocation Return	Benchmark Asset Allocation Return	Relative return
Equities	50.0%	57.9%	2.81%	1.41%	1.63%	-0.22%
Alternatives	15.0%	7.9%	5.97%	0.90%	0.47%	0.42%
Bonds	35.0%	34.2%	4.85%	1.70%	1.66%	0.038%
<b>Total</b>	<b>100%</b>	<b>100%</b>		<b>4.00%</b>	<b>3.76%</b>	<b>0.24%</b>



Davy Private Clients

## Top/Bottom 15 Balanced Client

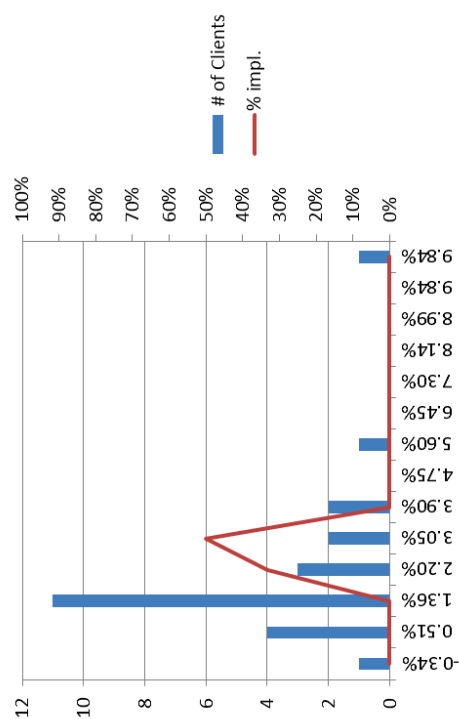
## Bottom 15

## Top 15

Client	Name	Total Return	% Davy Imp as at 14/08/2014	Notes
6000985		-1.40%	29%	Legacy Brewin Portfolio - Transferring to England
6002772		-0.35%	63%	Majority Legacy Brewin Portfolio
6001024		0.43%	40%	Direct Stock Portfolio
6002779		0.69%	71%	Legacy Brewin Holdings
6002788		0.81%	100%	New case - Invested August 14
6001011		0.82%	65%	Legacy Brewin Holdings
6000921		0.84%	67%	Legacy Brewin Holdings
6001200		0.86%	100%	New case - Invested July 14
6000782		1.07%	63%	Legacy Brewin Holdings
6000987		1.10%	83%	Legacy Brewin Holdings
6000998		1.11%	66%	Legacy Brewin Holdings
6000959		1.26%	70%	Legacy Brewin Holdings
6000992		1.27%	58%	Legacy Brewin Holdings
6000994		1.27%	73%	Legacy Brewin Holdings
6000903		1.30%	73%	Legacy Brewin Holdings
6002738		4.20%	100%	Full Davy Portfolio for period
6002739		4.20%	100%	Full Davy Portfolio for period
6000874		4.22%	100%	Full Davy Portfolio for period
6000877		4.22%	100%	Full Davy Portfolio for period
6000974		4.28%	100%	Full Davy Portfolio for period
6002749		4.29%	100%	Full Davy Portfolio for period
6000869		4.31%	100%	Full Davy Portfolio for period
6000818		4.32%	100%	Full Davy Portfolio for period
6001724		4.33%	100%	Full Davy Portfolio for period
6000873		4.34%	100%	Full Davy Portfolio for period
6000754		4.37%	100%	Full Davy Portfolio for period
6001029		4.41%	100%	Full Davy Portfolio for period
6001186		4.42%	100%	Full Davy Portfolio for period
6000901		4.62%	100%	Full Davy Portfolio - encashment at mkt high
6001085		5.21%	100%	Full Davy Portfolio - encashment at mkt high

## Davy Private Clients

## Statistical Analysis – ‘Other’



Performance		# of Clients	% impl.
Less than	-0.34%	1	0%
-0.33%	0.51%	4	0%
0.52%	1.36%	11	0%
1.37%	2.20%	3	33%
2.21%	3.05%	2	50%
3.06%	3.90%	2	0%
3.91%	4.75%	0	0%
4.76%	5.60%	1	0%
5.61%	6.45%	0	0%
6.46%	7.30%	0	0%
7.31%	8.14%	0	0%
8.15%	8.99%	0	0%
9.00%	9.84%	0	0%
Greater than	9.84%	1	0%
<b>Total</b>		<b>25</b>	

	H1 2014/15	H2 2013/14	Annualised
Davy portfolio return in period	n/a	n/a	n/a
APCIMs/WMA Benchmark	n/a	n/a	n/a
Average return across CFO client base categorised as 'Other'	1.61%	3.23%	4.89%
Difference between average return and Davy return	n/a	n/a	n/a
Standard Deviation from average return	2.23%	2.22%	2.23%

Davy Private Clients

## All 'Other' Clients

Client	Name	Total Return	% Imp	Notes
6000965		-0.34%	0%	Legacy Brewin Portfolio
6000983		0.04%	0%	Legacy Brewin Portfolio
6000945		0.05%	0%	Legacy Brewin Portfolio
6000766		0.10%	0%	Legacy Brewin Portfolio
6001510		0.24%	0%	Gift only
6000934		0.52%	0%	Legacy Brewin Portfolio - Rebal post 30/09
6000788		0.53%	0%	Legacy Brewin - transferred to Davy post 30/09
6000856		0.63%	0%	Legacy Brewin Portfolio
6000789		0.66%	0%	Legacy Brewin Portfolio - Rebal post 30/09
6000784		0.71%	0%	Legacy Brewin Portfolio - Rebal post 30/09
6001013		0.76%	0%	Legacy Brewin Portfolio
6000862		0.82%	0%	Legacy Brewin Portfolio
6000942		1.02%	0%	Legacy Brewin Portfolio
6000956		1.15%	0%	Legacy Brewin Portfolio
6000793		1.20%	0%	Legacy Brewin Portfolio - transferred out
6000779		1.78%	0%	Legacy Brewin Portfolio
6002130		1.81%	100%	Davy Aggressive Growth Portfolio
6000947		1.95%	0%	Legacy Brewin Portfolio
6000951		2.29%	100%	Legacy Brewin Portfolio
6000833		2.52%	0%	Legacy Brewin Portfolio
6000868		3.28%	0%	Legacy Brewin Portfolio
6002594		5.25%	0%	Direct Stock Portfolio
6000809		10.09%	0%	Direct Stock Portfolio

Appendix: Benchmark Mapping

The table below maps each of the benchmarks performance (which can be independently verified) to each of the Davy portfolios performance.

Benchmark	Preservation	Cautious	Balanced
ARC	N/A	ARC Cautious PCI	ARC Balanced PCI
APCIMS/WMA	N/A	APCIMS Conservative	APCIMS Income
COMPOSITE	10% MSCI World 90% UK Gilts	35% MSCI World 65% UK Gilts	50% MSCI World 50% UK Gilts

ARC: <https://www.assetrisk.com/data-resources/PCI.php>  
APCIMS: <http://www.thewma.co.uk/private-investor-indices/current-asset-allocation/>

## Davy Private Clients

## Appendix: Glossary of terms

Element	Description
Davy portfolio performance	Performance of Davy Portfolio for each risk category (Preservation, Cautious, Balanced), net of fees for any given time period.
Average portfolio performance	The average portfolio performance encompassing all clients classed within each model. Ideally, the average portfolio performance will equal the Davy portfolio performance.
Number of Clients	The number of CFO clients within each risk/portfolio category.
Standard Deviation from Davy Portfolio performance	The standard deviation of CFO client returns against the average portfolio performance. This figure will be targeted to be as low as possible. Ideally, Average portfolio performance will be equal to Davy portfolio performance and the standard deviation will be 0.
Asset Risk Consultants (ARC) benchmark	ARC benchmarks detail the average performance of UK investment managers, net of fees, for any given risk level
Association of Private Client Investment Managers (APCIMS/WMA) Benchmark	Common benchmark used by many UK investment managers, however excludes fees. Available for four levels of risk, two of which are applicable to CFO clients.
Composite Benchmark	A simple benchmark encompassing two holdings in varying weights depending on risk profile. These two holdings will be: <ul style="list-style-type: none"> <li>• UK Gilt Tracker (Bonds)</li> <li>• MSCI World Tracker (Equities)</li> </ul>
Relative Performance	The relative outperformance or underperformance of the Davy portfolio against the relative benchmarks.
Performance Attribution	An analysis of performance against benchmark was achieved, and decomposition of the total performance across the various asset classes.
from Investment Selection	Performance attribution from Investment Selection details how our investment choices within each asset class performed against the asset class benchmark.
from Tactical Asset Allocation	Performance attribution from Tactical Asset Allocation details whether or not our relative overweight or underweight tactical positions added value against the strategic asset allocation benchmark

## Davy Private Clients

## Appendix: Davy Portfolio Returns Data: 31/03/2014 – 30/09/2014

Equities	Asset Class	SEDOL	Total Return in Period	Balanced			Cautious			Preservation			Balanced			Cautious			Preservation		
				%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
UK Equity				15.0%	7.5%	5.0%	10.0%	5.0%													
ISHARES PLC ISHARES FTSE 100 UCITS ETF (INC)		504245	2.05%	5.0%	4.0%	0.0%							0.1%	0.1%	0.0%						
EDINBURGH INVESTMENT TRUST PLC ORD 25P		305233	4.82%	5.0%	3.5%	2.5%							0.2%	0.2%	0.1%						
CITY OF LONDON INVESTMENT TRUST PLC ORD 25P		199049	0.91%	5.0%		2.5%							0.0%	0.0%	0.0%						
International Equity				35.0%	17.5%	5.0%															
ISHARES PLC ISHARES MSCI WORLD UCITS ETF (INC)		B0M62Q5	5.79%	15.0%	7.5%	2.5%							0.9%	0.4%	0.1%						
DB X-TRACKERS DBX STOXX GLOBAL SELECT DIV 100 ETF		B1WKZH6	4.64%	10.0%	5.0%	2.5%							0.5%	0.2%	0.1%						
ISHARES PLC ISHARES S&P 500 UCITS ETF (INC)		3144206	9.85%	10.0%	5.0%	0.0%							1.0%	0.5%	0.0%						
Alternatives				15.0%	15.0%	0.0%							2.7%	1.4%	0.4%				5.4%	5.6%	4.0%
Absolute Return Funds				5.0%	5.0%	0.0%							-0.2%	-0.2%	0.0%						
RUFFER INVESTMENT COMPANY LTD RED PTG PREF SHS 0.01P		B018CS4	-4.73%	5.0%	5.0%	0.0%							-0.2%								
Property				5.0%	5.0%	0.0%															
ISHARES II PLC ISHARES UK PROPERTY UCITS ETF		B1TXLS1	3.20%	5.0%	5.0%	0.0%							0.2%	0.2%	0.0%						
Other Alternatives				5.0%	5.0%	0.0%															
HICL INFRASTRUCTURE COMPANY LD ORD 0.01P		B074LH6	10.17%	5.0%	5.0%	0.0%							0.5%	0.5%	0.0%						
Bonds				35.0%	60.0%	90.0%							0.4%	0.4%	0.0%			2.9%	2.9%	0.0%	
Government				20.0%	40.0%	65.0%															
UNITED KINGDOM 1 1/4% TREASURY GILT 2018		B8KPGM4	1.31%	10.0%	20.0%	32.5%							0.1%	0.3%	0.4%						
UNITED KINGDOM 2 1/2% IL TREASURY 2020		908182	0.94%	10.0%	20.0%	32.5%							0.1%	0.2%	0.3%			1.1%	1.1%	1.1%	
Corporate & Other				15.0%	20.0%	25.0%							0.2%	0.5%	0.7%						
ISHARES PLC ISHARES £ CORPORATE BOND UCITS ETF		B00FV01	5.65%	10.0%	15.0%	20.0%							0.6%	0.8%	1.1%						
CITY MERCHANTS HIGH YIELD TRUST LIMITED ORD NPV		B6RMDP6	0.35%	5.0%	5.0%	5.0%							0.0%	0.0%	0.0%			3.9%	4.3%	4.6%	
Total				400.0%	400.0%	400.0%							2.0%	2.2%	2.2%			2.3%	2.2%	2.1%	

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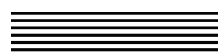
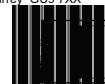
**COURT FUNDS OFFICE**

**NORTHERN IRELAND COURT SERVICE**

**INVESTMENTS REPORT**

**ISSUE V1.2**

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Court Funds Office, Northern Ireland Court Service

Investments Report v1.2

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## 1 Introduction

### 1.1 Executive Summary

Amtec has carried out a study of the present arrangements for the administration of funds invested by NI CFO on behalf of its clients, comparing the NI CFO arrangements with those in place in England and Wales and the Republic of Ireland, and taking into account the future directions adopted by those jurisdictions.

On the basis of this comparison, Amtec has highlighted certain areas for NI CtS to consider for review or reform, with a view to offering the best service to clients and to minimise business risks to NI CtS.

Full details of the recommendations can be found in Section 7 of this report. In summary, the key recommendations cover:

- Confirmation of the objectives of the NI CFO's investment administration service, particularly its stance on investment risk
- Ensuring that NI CFO has the right sources of investment advice at appropriate levels (specific and strategic), free of potential conflicts of interest
- Clarifying roles and responsibilities in relation to the determination of investment risk and ensuring effective communication of the level of investment risk being undertaken in each client case
- Confirming the asset classes to be available for use, and reviewing the investment vehicles to be used to achieve exposure to each asset class, including the use of appropriate performance benchmarks\*
- Clarifying the roles to be carried out by a broker, ensuring appropriate fee structures, freedom from conflict of interest and demonstrable value for money
- Ensuring that all clients receive timely and helpful information, including performance reports, on their investments, and that the performance of investment professionals is monitored at the appropriate levels (client and asset class).

Amtec recommends that an implementation project be commissioned, the first phase of which (estimated at 30 days effort) would provide a detailed project plan for the work. It is expected that the structure of the project would include a mix of "top-down" and "bottom-up" focus, to provide a flexible structure for dealing with the wide range of governance, policy, legislative, administrative and commercial issues involved, and the different degrees of urgency of various components of the work.

\* NB This includes reviewing the DMO's role in managing the investment of certain cash deposits.

## **1.2 Background**

The Court Funds Office of the Northern Ireland Court Service (CFO) administers funds which the civil courts of Northern Ireland have ordered to be held in court. These funds are principally held on behalf of people who do not have legal capacity, either because they are mentally incapacitated (patients) or because they are children. The funds remain subject to the jurisdiction of the courts while they are held in court. Depending on certain factors, funds held in court may be placed on deposit as cash or may be invested in stocks and shares. The CFO sees the ultimate owners of these funds as its "clients", and wishes to ensure that the best arrangements are in place to serve them.

AMTEC has assisted the Department of Constitutional Affairs with the management and implementation of its Investment Programme in England & Wales. This relationship is continuing and successful. Over the last three years, AMTEC has demonstrated an in-depth understanding of the processes involved in investing on behalf of vulnerable members of society, as well as building up a detailed knowledge of the present arrangements in England & Wales and the future roadmap.

The CFO has retained AMTEC to carry out a high-level review of its arrangements for administering funds in court, with a view to making any changes which it might consider appropriate.

## 2 AMTEC's Understanding of the CFO's Requirement

The background to this study is one of rapid change and uncertainty.

In recent years, global equity markets have undergone a dramatic reversal. Whether they are now recovering is still uncertain. This has left many CFO clients with investments which are worth less than they had expected, and in some cases with less than they originally invested. Interest rates and bond yields are at historic lows, and the sustainability of certain favourable rates now available to CFO clients is in question. It is not clear what to do in the best interests of clients and the court service.

At the same time there have been developments in England & Wales and in Eire, with both adopting new approaches to investment strategy-setting and both making moves towards the use of in-house pooled funds. The recent re-tender of the PGO's Panel Fund Manager contract has brought contract management and questions of value for money into the spotlight.

AMTEC has been requested to compare and contrast the present situation and practices of the CFO with those of its counterpart organisations serving Eire (the Central Funds Office) and England & Wales (the Court Funds Office and certain functions of the Public Guardianship Office).

In this initial study, AMTEC will touch on a wide range of aspects of the present situation, including:

- The CFO's clients, organisational context and mission
- The management of investment risk and return
- Allocation of roles and responsibilities between CFO, clients, judiciary and the private sector
- Make / buy decisions – what services could or should be provided by the private sector or the public sector?
- Obtaining and demonstrating value for money
- Business risks to the CFO

Consideration of these factors, using appropriate comparisons with its counterpart organisations together with other observations and suggestions put forward by AMTEC, is intended to lead to the identification of improvement opportunities for the CFO which in turn could frame an agenda for change.

The final part of this study offers a sketch of a possible implementation agenda.

### **3 Method**

The scope and methodology have been determined in part by the need to produce this initial paper in time for discussion at a meeting on Friday 17<sup>th</sup> October 2003.

The information about the Northern Ireland CFO and the Central Funds Office used in this study has been gathered mainly by the inspection of documents, together with information gathered in a meeting with CFO staff during AMTEC's visit to Belfast on 26<sup>th</sup> September 2003.

The corresponding information relating to the CFO in England & Wales and the Public Guardianship Office is derived partly from documents provided by Northern Ireland CFO, but also from AMTEC's direct knowledge of those organisations.

Various questions have arisen from the information provided. Most of these do not have the potential to affect the results of this study materially. In the interests of time, the resolution of these questions has largely been deferred until a later stage in the work.

It should be noted that AMTEC has identified a number of discrepancies concerning the England & Wales situation, as between its understanding and that given by the documents provided by Northern Ireland CFO. These discrepancies are addressed in the recommendations.

## 4 Overview of the current Investment Process

### 4.1 Payment into Court

A judge may order funds to be paid into court. The funds typically will either be the proceeds of a damages award to a child or the assets of a person who has become mentally incapacitated, although there are other types of case, such as Chancery.

Recipients of damages awards will typically receive their award in cash from the defendant (or his insurer). This cash can be placed on deposit, or invested. The course of action taken will depend on various factors including the amount of money being paid into court and the number of years to majority.

Patients may have their existing investments and/or cash transferred into court on becoming incapacitated. A Form F8 is completed, which contains key information about the patient, and the information on that form is used as the basis for future investment decisions.

According to current practice, all assets paid into court are "held in the name of the Accountant General pending stockbrokers' recommendations".

### 4.2 Stockbrokers' recommendations

If the amount of cash is under a certain threshold and based on the expected number of years in court (see Appendix D of Ref L), it is invested in an account maintained by the CFO with the Debt Management Office and stockbrokers' advice is not sought. For all other cases, stockbrokers' advice is sought, based on the best information available.

The stockbroker Cunningham Coates is retained by the CFO to advise the Accountant General in such cases. Details of their mandate, the basis of their remuneration, and the allowable range of investments can be found in Ref L. The proportions of equities and gilts in portfolios are fixed in advance by agreement between the CFO and Cunningham Coates. Levels of cash are determined by reference to Ref L Appendix E, which provides for foreseeable spending, and the need to balance the portfolio. Cunningham Coates presents its advice on each case to the Accountant General, who in turn seeks the authority of the court where such authority is needed to implement their advice. The Accountant General's authority, or the Court's, where that is obtained, this is relayed to Cunningham Coates by the CFO.

Cunningham Coates carries out initial purchases of securities and applies to CFO for settlement by sending in the contract note.

Large cases ("portfolio cases") warrant the establishment of a segregated portfolio of equities, together with an investment in gilts and a cash deposit. The court grants the stockbroker authority, through a flexible order, to perform "housekeeping" on the portfolio in such cases. PEPs are maintained, and ISAs set up, as appropriate. Smaller cases ("sundry cases") are also invested in cash, gilts and equities, although

the equity exposure is achieved through investment trusts only. Most sales and purchases in sundry cases require a court order, one possible exception being gilts in County Court cases.

For both portfolio and sundry cases, the cash deposit is made via the DMO account.

#### **4.3 Portfolio Management and Review**

Portfolio cases are reviewed every 6 months. At the time of the review, Cunningham Coates may recommend that action be taken, either to alter the stock selection within the portfolio, or to restore the balance between asset classes (equities and gilts, and possibly also cash). Cunningham Coates are provided with a Certificate of Funds that sets out all holdings, DMO cash figure and last 5 years payment history. F8 information is shared with CC as and when it is updated by Office of Care and Protection. There is however no communication with clients specifically at this stage.

Sundry cases are not subject to regular review at present, although they are reviewed in "batches" from time to time. CFO is considering the instigation of a regular review cycle for these cases.

Cunningham Coates will advise at any time if there is a need to act in relation to a particular stock, e.g. because of a corporate action.

The CFO will examine Cunningham Coates' recommendations accept them and action them unless

- they do not accord to the reflection of holdings on the CFO system
- CFO is in possession of new material knowledge which CC are unaware of
- the recommendations fall outside agreed investment policy parameters
- CFO feels that more information is needed to explain the recommendations.

In all the above scenarios CFO will go back to CC to resolve matters but will not second guess CC or make investment decisions. After discussions CFO may request CC to further amplify in writing the basis of their recommendation. CFO will then action the recommendation.

#### **4.4 Raising Cash**

Money can only be paid out by order of the court. Large payments out will typically trigger a sale of securities to rebalance the portfolio. Cunningham Coates provides recommendations on any such sales, which are subject to approval by the CFO.

#### **4.5 Case Closure**

Case closure occurs when a child reaches majority, or when a patient recovers or dies.

Securities and/or cash can be transferred out to the former client, or to beneficiaries of the client's will. Any transfer to a former client would have to be directed by a court unless a Minor of Age form has been duly completed.

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Former clients (or their beneficiaries) with securities may create a direct client relationship with Cunningham Coates, or may choose to use another broker.

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## 5 A Model of the Investment Lifecycle

This section describes each of the component parts or stages of an idealised investment process which provides the full protections of regulation, and allows complete flexibility of management style and management arrangements at all levels in each client's portfolio.

Considerations of practicality and cost-effectiveness mean that real investment processes are not this complete, complex or flexible. The purpose of this section is to illustrate the options and design considerations which might be taken into account in putting together a real-world system.

### 5.1 Determining the investment objectives

Establishing a client's investment objectives, and any applicable constraints or considerations, is the first step in putting together a comprehensive investment proposal. In private sector practice, this is done by reference to details of the client's needs, circumstances and preferences obtained during a "fact find", the contents of which are prescribed by regulations. Key factors include:

- the intended term and purpose of the investment
- the amount to be invested (net of any foreseeable spending needs)
- the tolerance for investment risk<sup>1</sup>
- the desired return

Normally, the client chooses the level of risk he can tolerate, bearing in mind that higher reward generally entails more investment risk.

### 5.2 Choosing an Investment Strategy

The second phase is to establish an investment strategy which offers the best prospect of fulfilling the objectives.

Since the key determinant of investment risks and returns is the choice of the mix of strategic asset classes (cash, gilts, equities, property etc.), investment strategies are usually expressed in terms of percentage allocations to these asset classes. For example, a higher risk, long-term strategy might be set as 60% equity, 30% gilts, 10% cash.

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<sup>1</sup> Investment risk is defined as the probability that the investment will be more than a certain amount below its long-term growth trend at any time. This is related to the volatility of the investment.



Each strategic asset class has characteristic levels of average total return and investment risk (usually measured as the volatility of a recognised total return index for that asset class). These values are usually estimated from long-run historic data.

- Cash provides the lowest levels of return and investment risk, although it is subject to inflation risk<sup>2</sup>.
- Government Bonds (or “gilts”) provide an intermediate level of return and investment risk. The level of inflation risk depends on technical factors such as the maturity of the bonds held.
- Shares (“equities”) provide the highest level of return and risk of these three major asset classes. The long-term performance of equities reflects economic growth generally, and so provides protection against the effects of inflation in the long term.

Property is also considered to be a strategic asset class. However, the property market is far less liquid than many markets for the asset classes mentioned above<sup>3</sup>.

It is considered good practice to define a benchmark index for each asset class (e.g. the FTSE All Share Index for UK equities). This index can be used to construct a benchmark level of performance for any given mix of asset classes for any historic period, and hence a benchmark level of performance for each client’s portfolio in any past period under review. This can be used as a comparator for the actual performance during that period<sup>4</sup>.

### **5.3 The Choice of Investment Management Arrangements**

The third stage in creating an investment proposal is to decide how the desired exposure to each asset class is to be achieved, and how it is to be managed, which is in turn linked to the question of who manages which aspects of the overall portfolio.

#### **5.3.1 Segregated or pooled?**

There is typically a choice between direct investment (e.g. buying a portfolio of individual stocks or bonds which are owned exclusively by one client) and investment in collective, or pooled, funds where many investors’ money is used to buy a large well-balanced portfolio, and units or shares in the fund are issued in return.

Pooled funds provide less flexibility to meet unusual requirements, such as particular ethical or religious constraints, but can represent a lower-cost solution for many clients. Pooled funds are appropriate for clients needing small amounts of equity

<sup>2</sup> This is the risk that inflation might rise above the expected levels “built in” to the interest rate

<sup>3</sup> This means that there may be times in the business cycle when it may be difficult to invest or disinvest at reasonable market prices

<sup>4</sup> It should be noted that investment managers will tend to look to the composition of the benchmark index for guidance regarding the range of instruments available to them for investment, and their approximate weightings in client portfolios.

exposure, but for whom it would not be cost-effective to create a sufficiently diversified segregated portfolio.

Where segregated portfolio management is chosen, there is a further choice as to whether the manager's mandate is discretionary or advisory. It is advisable to consider whether the client (the person approving or rejecting the manager's advice) has the skills and information needed to carry out that role effectively, and whether the consultative process inherent in an advisory mandate allows the investment manager to operate quickly and efficiently in the best interests of the client.

A pooled fund will, by definition, operate under the equivalent of a discretionary mandate. The manager will be obliged to fulfill the investment objectives of the fund, but will typically have complete discretion in how the fund is invested from day to day, subject to oversight by a trustee or other governance arrangements of the fund.

If a separate advisor were retained to manage the balance between strategic asset classes within a portfolio, then the question of whether his mandate should be advisory or discretionary might also arise. If the mandate were a passive one, i.e. simply to rebalance to a fixed set of asset allocations from time to time, then the value of the "checks and balances" inherent in an advisory mandate could be questionable.

### 5.3.2 Active or passive?

A parallel consideration is that of management style. This is the choice between active management and passive management. Both styles involve using benchmarks as the basis for choosing the allocation of assets and as a comparator for measuring the performance.

The choice of active or passive management may be made at a number of different levels in the investment management strategy:

- The highest level is that of strategic asset classes.

On this level, active management would involve switching between, say, cash, bonds and equities, with the object of maximising exposure to any expected upturns in bond and/or equity markets and to minimise exposure to any expected downturns. Passive management would involve maintaining a constant degree of exposure to each asset class, by periodically rebalancing to neutralise the effects of any market fluctuations. This has the effect of selling asset classes that have recently risen, and buying asset classes that have recently fallen (relative to the others).

- An intermediate level at which this choice might be considered would be the "sector" level.

At this level, an active manager would, for example, anticipate rises in certain industry or geographic sectors of the equity market by increasing exposure to them, while decreasing exposure to other sectors which are expected to under-perform. A passive manager (or "index tracker") would maintain roughly

constant exposure to all sectors, in line with a certain benchmark. Rebalancing would probably only be needed where major changes in index composition occurred.

- The lowest level at which this choice comes up is at the stock level.

An active manager would aim to increase exposure to those individual stocks which are expected to outperform, while decreasing exposure to those expected to under-perform. Active management at this level can be pursued by means of investment in an actively-managed pooled fund with an appropriate benchmark, or by a segregated portfolio managed by a stockbroker to an appropriate benchmark.

A passive manager would aim to construct a portfolio whose composition precisely matched a broadly-based index. Trading would only be needed where the composition of the index changed. Passive management at this level is an activity which yields dramatic economies of scale - it is best implemented by investing in a large pooled fund with an appropriate benchmark.

In general, a passive strategy will require less specialised research and result in less switching, and hence yield lower management costs. It will also result in lower "manager risk" - volatility caused by investment managers' foibles in anticipating the market.

An active strategy will typically cost more to execute, but may offer more flexibility in accommodating individual preferences (for example ethical or religious constraints at the stock-picking level).

It is possible to make different choices at different levels in a portfolio e.g. by choosing a passive approach at the strategic asset class level, with active management of the assets within each class (or vice versa). The results of these choices will affect the management arrangements and the management costs.

There is, in principle, no connection between the choice of pooled funds vs segregated portfolios and the choice of passive management (index tracking) vs active management. However, it would be most unusual, on grounds of cost, to operate a segregated portfolio that tracks an index. Similarly, cost-conscious investors will choose a pooled index tracker rather than any kind of active investment<sup>5</sup>.

It is desirable to consider the charging structures at each level of management, so as to avoid "double charging". This can occur where, for example, a stockbroker is managing an equity portfolio consisting of a mixture of direct equities and units in pooled funds. Since the stock selection function within the pooled fund is being carried out and charged for by the manager of the pooled fund, it could be argued

<sup>5</sup> This is particularly true when rates of return on equities are flat, as at present – under such circumstances, a certain saving of, say, 0.5% p.a. in management cost through index tracking is a more attractive proposition than the (uncertain) possibility of a 0.5% p.a. improvement in returns through active management.

that the stockbroker should take a reduced fee for managing such assets. If this kind of double-charging cannot be avoided, then the true total management fee should at least be calculated and declared to the client.

Operational questions such as standing arrangements for the remittance or reinvestment of dividends and interest should also be resolved at this stage.

#### **5.4 Investment Proposal**

Whatever choice of management arrangements is made, the client should be presented with specific proposals, at an appropriate level of detail. This should make clear who is responsible for what, the planning assumptions used (concerning time horizons, spending needs etc.), and what the level of investment risk is assessed to be, in addition to any illustration of possible returns.

In normal practice, it would be assumed that the client is able to make informed choices as between a bespoke approach and a pooled one, or an active approach vs a passive one, taking into account any possible effects on costs and volatility. The client would normally be asked to approve the entire proposal before it was put into effect.

#### **5.5 Continuing Management of Investments**

Best practice in this respect is generally to minimise client intervention in the day-to-day operation of the portfolio, while maintaining visibility of performance and costs at regular intervals. This should allow the investment managers to do what they do best, while providing the client with reassurance, or with sufficient information to pose informed questions if anything seemed to be going astray.

It is understood that the management of the portfolio should always be according to the strategy in the original proposal, unless there has been explicit agreement otherwise. The investment manager should be accountable for demonstrating that he is complying with his mandate at all times. There needs to be a balance between discharging this accountability and the ability to manage the portfolio efficiently and effectively.

If there is an advisory mandate, then clearly there will need to be interaction on a day-to-day basis in connection with the investment manager's duty to seek approval before acting.

Most private client mandates in the UK are now discretionary, with clients recognizing that this provides a higher degree of efficiency and a satisfactory degree of accountability, given the stringent regulatory arrangements now in place for private client investment management.

The investment manager would be expected to collect and pay out or reinvest any income, identify corporate actions affecting each portfolio, make decisions to adjust exposures to certain stocks, sectors or asset classes as appropriate in response to market movements and/or expectations, and to take action on these things according to their mandate.

The investment manager will normally be expected to take account of the tax implications of certain actions, taking into account the effect of income tax on interest and dividends, and perhaps modifying the rate at which changes are made so as to avoid paying unnecessary capital gains tax. The use of PEPs and ISAs would be considered, where appropriate. In order to do this, it is essential that everyone who might make such decisions has complete information regarding the client's tax situation.

It is normal to provide clients with routine quarterly or half-yearly statements, showing portfolio valuations, investment performance, transactions and charges. Clients are also usually provided with information on request. An investment manager may also provide ancillary services such as tax accounting.

### **5.6 Periodic Review**

The purpose of a periodic review is to ensure that both the strategy and its implementation continue to be in line with the client's needs, even if these have changed.

In regulated practice, this would entail a full review of the original "fact find". Annual reviews are normal. Having reviewed the client's situation, the investment manager would then review his proposals. A possible outcome would be the preparation of new or modified proposals, which would be presented to the client for his consideration in the usual way. These would, if necessary, take into account any transitional arrangements.

The point immediately after such a review is an ideal time to review the balance between asset classes in a portfolio, since at this point it is clear that the requirements underlying the strategy are fully up to date and valid. Adjustments within asset classes may also be made at this time, although such adjustments would normally be made continually in any event.

It should be open to the client to request an unscheduled review if his circumstances change.

### **5.7 Raising Cash**

The client is usually responsible for raising cash, e.g. by requesting a withdrawal from a deposit account.

Such an action may disturb the balance between cash, gilts and equities in the portfolio. This may give rise to the need to make adjustments to restore that balance. This should be done by the investment manager according to the terms of his mandate<sup>6</sup>.

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<sup>6</sup> The necessary adjustments would not necessarily be made immediately, or at one time, so as to reduce the risk of poor market timing.

In an extreme case, a large withdrawal to finance spending could amount to a change of circumstances of sufficient magnitude to warrant an unscheduled review of the investment strategy.

### **5.8 Disinvestment or Change of Investment Manager**

Eventually, the client will die, discharge the investment manager or withdraw the last of the investments in the form of cash.

In the event of the client's death, the assets may be transferred to the client's beneficiaries in specie or be sold and transferred in the form of cash.

If all or part of the portfolio is to be transferred to another investment manager as a "going concern", either by the client or a beneficiary of the client, the outgoing manager is obliged to exercise due care in executing the transition.

As noted above, it is usual for an investment manager to distinguish carefully between the term of a client's investment strategy (which may anticipate the continuing interest of the client's beneficiaries) and the term of his own appointment.

## 6 Comparative Analysis of the CFO Investment Process

This section follows the pattern of the previous section, placing the actual arrangements in Northern Ireland, England & Wales and Eire into the context of the model process, and comparing them with each other.

### 6.1 Initial Investment

There is no equivalent step in the model process presented above. Cash is paid into court and held in a Bank of Ireland account pending the approval of investment proposals. The CFO will place cash awaiting investment decisions on interim deposit with DMO at favourable rates of interest.

#### 6.1.1 England & Wales, Eire

Similar comments apply to England & Wales and Eire, although in England & Wales, the "interim" deposit is made in the England & Wales Special Account, which has a different rate of interest.

### 6.2 Determining the investment objectives

The stockbroker makes an assessment based on the information available to him. This varies according to the type of case. In most children's cases, only very minimal information is known, such as the amount to be invested and the number of years to majority. A case conference with the Master will be held in a children's case if

- The value of the award is greater than £250K
- A property purchase is involved
- The Guardian requests one

In such cases, the outcome of the case conference (e.g. whether the purchase of a property has been agreed) is passed on to CC. They use this information in compiling the investment proposals.

For patients, the F8 provides more detailed information, which would include the outcome of any case conference, if OCP arranges one. This is passed on to CC.

The information provided to CC is not as comprehensive as the "fact find" which would be done under FSA regulations.

The client does not usually<sup>7</sup> see the investment proposals before they are put into effect, or have the opportunity to ask questions and ensure that he understands them fully.

<sup>7</sup> There would be some opportunity for the client to ask questions about investments during a case conference, although it is not usual for investment proposals to be prepared before a minor's case conference.

### 6.2.1 England & Wales

The only major difference is in the case of a patient where, if a broker produces proposals, he is directly serving the client and has all the regulatory obligations which accompany this.

### 6.2.2 Eire

It is not clear who obtains the client information on which this decision is based, or when.

## 6.3 *Choosing an Investment Strategy*

The stockbroker makes a proposal based on the information available to him. As noted above, this varies according to the type of case. Depending on the size of the case and the remaining time in court (or life expectancy), the case may be designated 100% cash, or may have an allocation to bonds and equities. There are guidelines as to the minimum levels of cash to be held, to minimise the possibility of short-term spending needs having to be met from less liquid resources. Cash is never to be less than 10% of the total value of the portfolio (up to a maximum of £50k) plus 3 years projected payments out.

Where there is an allocation to bonds and equities, there is usually an even split between the two classes, although it is for the stockbrokers to recommend the appropriate allocation in each case. This in effect means that the total of cash and gilts is not usually less than 55% of the portfolio.

### 6.3.1 England & Wales

The practice concerning patients in E & W is similar as regards timing. Proposals are prepared by PGO or brokers after funds have been paid into court. As noted above, where brokers produce proposals, they are directly serving the client and have all the regulatory obligations which accompany this.

SIB has advised a "menu" of four investment strategies, ranging from 100% cash through to 30% cash and 70% equities. The patient's foreseeable spending over the next 5 years is forecast, and this forms the minimum level of cash to be held. Clients may elect to hold higher levels of cash than this minimum.

In children's cases, the judge directs the investment objectives from a menu of three options when funds are paid in, and can discuss the implications at that stage. In practice this process would work better if the investment directions were more explicit as to the asset classes to be used than they are at present. SIB has advised a similar "menu" system to that used by the PGO, with explicit strategies. Implementation of this is under consideration.



### 6.3.2 Eire

In Eire the strategy is set by the CFO after the assets are paid in. It is not clear who obtains the client information on which this decision is based, or when. It is not clear how soon the client is advised of the consequences of this decision, nor in what way.

The strategy is chosen from a menu of four options. The options have been advised by Mercer, as has the process by which strategies are matched to individual clients' situations. Each strategy corresponds to the asset mix of one of the in-house tracker funds. Although the different strategies clearly carry different levels of risk, the process of matching client circumstances to particular strategies is not known.

### 6.3.3 Policy Points

Where the state allows the client a say in the choice of investment strategy, the state may feel under a duty to influence or constrain that choice, perhaps to deter or prevent clients from undertaking unacceptably high levels of investment risk. A key policy decision would be to set out a framework for determining "acceptable" levels of investment risk to clients' funds.

A further policy decision revolves around the term of the investment strategy. It would be most unusual for a private sector advisor to frame an investment strategy as "short term" simply because his own mandate to advise that client extended for no more than, say, three years. However in a child's case, the jurisdiction of the court may expire after only three years, whereas the child's investment planning horizon may be far longer. It would clearly be in a child's interest if the court were to put in place a long-term strategy, where it can be determined that such a strategy is appropriate, regardless of the child's maturity date.

## 6.4 Choice of Investment Management Arrangements

There are three kinds of party who are involved at present: the public sector (which may according to the circumstances be the Civil Service or the Judiciary), stockbrokers and pooled fund managers.

The current practice in Northern Ireland is that all cases involving investments other than cash are managed by the stockbroker on an advisory basis according to a Service Level Agreement. There is a small management fee, plus dealing commissions calculated on a sliding scale according to bargain size. The mandate includes responsibility at all levels in the portfolio, from the balance between gilts and equities, down to individual stock selection.

Cash-only cases are administered by the CFO alone. The CFO administers a deposit account (the Special Account) with the DMO for its use on behalf of persons lacking legal capacity. This account currently pays minor and patient clients a rate of 4.25% gross, which is very close to the yields currently available on bonds. This raises a question concerning who should decide whether to use bonds, and how that decision should be made.

#### 6.4.1 England & Wales

There are various approaches taken, depending on the circumstances.

Children's cases are managed by the CFO and the Public Trustee, as far as the balance between equity and cash is concerned. Cash-only cases are managed by the CFO alone.

The CFO administers a deposit account (the Special Account) at the Bank of England for its use on behalf of persons lacking legal capacity. This account currently pays a rate of 6% gross. This effectively makes bond investment unnecessary for most children and patients. Bond investment is therefore only undertaken for certain patients who are higher-rate taxpayers.

Where equity investment is undertaken, only pooled equity funds are used, so the pooled fund manager does the investment management of the equity holding. At present, all equity investment is made by buying units in the Equity ITF, unless there are specific reasons (e.g. religious constraints) which might make this inappropriate. There are investments in other pooled funds, which were made before the Equity ITF was available.

Cash-only PGO cases (patients) are managed by the CFO, under direction from the PGO.

The majority of patients' cases with equities are managed by brokers at the level of the balance between equity and cash. In addition, the brokers will put in place share (and sometimes bond) portfolios for each client. These portfolios may include direct equity investment and units in pooled funds. The Equity ITF is now available for this purpose.

These portfolios are generally managed on a discretionary basis, with the option to use an advisory basis if the client prefers. The fee structure is based on an *ad valorem* management fee (0.65% p.a.), plus a small fixed charge (£20) per transaction. The management fee is rebated (to 0.25%) in respect of holdings in the Equity ITF, but not units in other pooled funds.

The PGO also manages certain investments directly. These correspond roughly to the Northern Ireland "sundry" cases, being cases where the equity investment is either small (e.g. a few privatization shares held by a client on becoming a patient) or very simple (e.g. a holding in the Equity ITF). The PGO will assign investment strategies in such cases, in consultation with the receiver. It also takes responsibility for maintaining the cash/equity balance. Where direct equities are held, these are left "as is", and there is no attempt to manage them actively.

The PGO system probably provides the most flexible model of the three systems studied.

#### 6.4.2 Eire

The CFO manages the allocation to strategic asset classes by buying units in the appropriate in-house funds. The management of those funds is carried out by Bank of Ireland Asset Management.

There is no evidence concerning the rate of interest available in the cash fund.

This is an extraordinarily “clean” system, this being achieved at the possible expense of flexibility.

#### 6.4.3 Policy Points

If a passive approach is taken to equity and bond investment, it is very likely (on management cost grounds) that pooled funds would be used to achieve this exposure, the pooled fund having its own fund manager. Where this is so, as is the case in England & Wales (with clients who hold only cash and units in the Equity ITF) and Eire, the only remaining choice about investment management activity is at the level of managing the balance between the strategic asset classes (cash, bonds, equities).

It is a question of policy whether the public sector should make *active* decisions on matters of this sort, or whether such a role should always be outsourced to a regulated investment professional. However, since *passive* management at this level would involve nothing more than periodic rebalancing between asset classes, according to a pre-agreed formula (which could be determined under independent advice), it may be more straightforward to accept this as a legitimate administrative activity for the public sector to carry out.

If a segregated portfolio is desired for any class of asset, then it is probably a foregone conclusion that this should be managed by, or on the advice of, a regulated investment professional rather than being undertaken by civil servants or judges. However, it does not necessarily follow that the entire portfolio should be handed over to one investment professional as a consequence of this choice - in this case there would remain choices as to who manages which classes of asset, and who manages the balance between the asset classes.

The sustainability of the present DMO interest rates is in question. In addition, since the returns on bonds and the DMO account are so close, there is a real question as to whether bond investment should be undertaken, and what the decision process should be. The future of the DMO account needs to be determined, so as to provide a sound basis for longer-term decision-making.

#### 6.5 Investment Proposal

The stockbroker makes a proposal to the Accountant General, who seeks the approval of the Court. In certain cases a case conference is held, where the patient's or child's representative may see proposals. In other cases, there is no evidence that the proposal is put to the client, either for approval or consultation.

While the proposal is quite specific as to what is to be done, the implications for investment risk may not be made clear in laymen's terms.

#### 6.5.1 England & Wales

In children's cases, the client sees the judge's direction, but does not see the Public Trustees advice to the CFO which results from that direction. The client therefore has no specific information about what has been done or the risk implications of this.

Patients are provided with a full proposal by brokers, where they use one. This is a full FSA-compliant investment proposal, accompanied by explanatory meetings with the broker if required. The PGO provides a simpler, but similar, service if the client requires only cash and Equity ITF holdings, with no broker involvement.

#### 6.5.2 Eire

It is not clear what information the client receives and when about the strategy that has been chosen, although it is clear that the client does not participate at all in the process of setting the strategy for their case.

#### 6.5.3 Policy Points

There are clearly choices to be made concerning the degree of client participation in the process of setting investment strategy and choosing management arrangements. Such choices may involve the law and also judicial policy and preferences, as well as operational and policy decisions by the court service.

Whatever choice is made in that respect, there is a need to understand the long-term consequences in terms of client understanding, "buy-in" to what is done on his behalf, and overall satisfaction with the investment service.

### 6.6 Continuing Management of Investments

Cash deposits are placed with the DMO, which invests the money in a fund of government bonds which it manages.

Portfolio and "sundry" cases, i.e. those with investments in securities, are managed by Cunningham Coates on an advisory basis on behalf of the Accountant General. Cunningham Coates' client is the Accountant General. The relationship is governed by a Service Level Agreement which is reviewed approximately annually. The broker's responsibilities include management of

- segregated equity and bond portfolios
- holdings in pooled funds
- the balance between equities, bonds and gilts

These are potentially separable responsibilities, although the separation is not recognised in the current SLA.

The CFO considers the stockbroker's recommendations, and, subject to the procedure described in 4.3 above, accepts and actions them.

Cunningham Coates keeps custody of most securities, as a sub-custodian of the Accountant General. It carries out bargains directly through CREST wherever this is possible, and settles with the CFO as necessary.

Cunningham Coates submits performance reports on portfolio cases, but not on sundry cases. This allows the performance of each client's portfolio to be monitored, but does not readily permit the manager's overall performance in managing bonds or equities to be measured. Benchmarks are defined for asset classes, but this is not consistently carried forward in the form of performance benchmarks for each client's portfolio as a whole.

The contract has not been competed for some time, and the question of value for money must be open to challenge. While it would be possible to compile a comparison of the fees charged by Cunningham Coates as against those charged by the PGO's panel brokers, and relate these to the size of funds under management, it would remain a comparison between advisory and discretionary services, which have different levels of value to the client.

#### 6.6.1 England & Wales

Children's funds are not managed on a proactive basis, although since all equity investments are in pooled funds, the only impact is that imbalance between cash and equities could arise. There are proposals to address this.

PGO uses two "panel brokers", who manage the vast majority of funds held in court. They are appointed under an umbrella contract which sets out the terms on which they serve the PGO's clients. The brokers then enter into direct contracts with clients, on the terms specified by their appointment to the panel. The role is essentially the same three-fold one as in Northern Ireland. The PGO also allows clients to use "non-panel" brokers, subject to its approval, who are not obliged to offer the same fee structure and rates, but are still subject to performance monitoring and certain sanctions.

The Panel brokers are obliged to use a complex cash-on-delivery settlement system, since although they place bargains directly on CREST, the Bank of England has custody of all securities held in court. For this, and other, reasons the PGO is moving away from holding securities in court. The panel brokers now hold a large proportion of client portfolios out of court, and this is set to increase.

PGO has moved away from commission-based fees in its panel broker contracts because it is seen as creating a potential conflict of interest between the broker and the client. It is not clear in advance that any given bargain is going to add value to the portfolio (although it is clear that it adds value for the broker). By contrast an ad valorem fee provides the broker with a direct incentive to grow the portfolio.

Advisory mandates have fallen out of favour for reasons of efficiency and accountability. The dependency on receivers to respond quickly to proposals reduces

the efficiency of portfolio management and means that the broker cannot be held fully accountable for the resulting investment performance.

Performance is monitored at the individual client level and at the asset class level. Equity performance is benchmarked against the same combination of indices used by the Equity ITF. Cash performance is benchmarked against the Special Account. Bond performance is benchmarked as though it were cash (since bonds are only justified if they can outperform cash).

Each client has a performance benchmark, which flows from his investment strategy, and the benchmarks from the asset classes used by the strategy. All brokers are required to submit annual performance figures for each client. Analysis of the dispersion of individual results within each strategy grouping is carried out.

Panel brokers meet quarterly with SIB, and are required to submit figures for their performance in aggregate for each asset class, in addition to the individual client figures.

The presumption is that the value added by the panel brokers, as compared with using the Equity ITF, needs to be measured and monitored.

#### 6.6.2 Eire

As noted above, this is a very simple system. It is not proven in practice, since it is also a very new system.

The arrangements for benchmarking asset classes and individual portfolios, and for monitoring performance are not known, although the simplicity of the system lends itself to doing this very efficiently and effectively.

#### 6.6.3 Policy Points

Competition and choice are key to demonstrating value for money. CFO may wish to consider how best to open the present stockbroker mandate to competition at some time in the future. This might include considering ways to maximise the number of firms who might wish to bid. Location requirements are one aspect of this. Since most private client fund managers now prefer to offer discretionary services, the nature of the mandate may be another factor.

CFO may wish to consider modifications to the SLA to allow it form the basis of any future requirements specification.

The advisory nature of the mandate begs questions concerning the role of the CFO in scrutinising the manager's recommendations. It is clear that the CFO only scrutinises those aspects of the broker's work which it is qualified to scrutinise (see 4.3 above). However, it is not clear that all of this scrutiny needs to be carried out on a transaction-by-transaction basis rather than being covered by SLA obligations and a contract management process.

CFO may wish to consider structuring the relationship so that as much as possible is left to the broker's discretion, subject to specific obligations in the SLA, with contract reviews and performance monitoring providing the required assurance that the broker is acting in the best interest of the client.

At present, CFO is implicitly endorsing the use of segregated portfolios by using a broker at all. If asked to justify this, the CFO might be required to demonstrate the broker's performance on an overall basis, as a manager of equities and/or gilts. At present, it seems that this would be a difficult challenge to meet.

Improved monitoring of the broker at the asset class level could also provide assistance in resolving policy decisions concerning the choice between gilts and cash. If overall performance on gilts were monitored, the choice could be left to the broker, in the knowledge that poor judgement would be reflected in poor results.

There is an argument in equity that sundry cases should be monitored as well as portfolio cases. Doing this at some level would be a pre-requisite for the effective monitoring of the broker's overall performance as a manager of equities and/or gilts.

## **6.7 Case Review**

At present, reviews are carried out every 6 months on portfolio cases. The scope of these reviews includes the balance between asset classes, and a review of portfolios at the stock selection level. In all cases, the stockbroker will be sent a current Certificate of Funds, the DMO balance and a 5 year payment history. For patients, an updated Form 8 is provided by the OCP annually. In children's cases, there will usually be no new input from the client.

### **6.7.1 England & Wales**

Children's cases are not reviewed at present, either for change of circumstance or to adjust asset balances. The client may approach the court to request a review. Arrangements for a full periodic review are under consideration.

All patients' cases are given a full review annually. The client is consulted on any proposals to change investment strategy.

### **6.7.2 Eire**

A 6-monthly review is mandated by law, although it is not clear what the scope of this review is. There is evidence that the balance of the assets within each fund is reviewed 6 monthly, and each person holding those units will then automatically have his asset allocations adjusted as a result. However, this would not cater for changes in client circumstance, where a shift in unit holdings between one fund and another might be called for. There is no evidence that the client is consulted – the tendency appears to be not to consult.

### 6.7.3 Policy Points

It is important to be clear about the different options for the scope of a case review. A full review will include gathering fresh forward-looking information<sup>8</sup> from the client about investment needs and spending plans, then re-assessing the investment strategy. This can then be followed by a review of the balance of the portfolio at the asset class level, and, if needs be, the individual stock selections.

Although a review may omit the first one or two stages of this process, the more stages are omitted, the greater will be the risk that the eventual investment outcome may be unsatisfactory.

## 6.8 Raising Cash

Cash is paid out by order of the court, order under a Minor of Age form, and if necessary the requirement to pay out is then transmitted to the stockbroker by the CFO to allow securities to be sold and rebalancing of the holding to be performed.

It may be necessary to sell securities to raise the required cash, or it may only be necessary to rebalance the portfolio as a result of the reduction in cash. The stockbroker has guidelines in the SLA which cover these possibilities, and he will make recommendations to the CFO accordingly.

### 6.8.1 England & Wales

In children's cases, cash is paid out by order of the court, which then comes to the CFO.

If there is not enough cash to meet the need, the Public Trustee will be requested to advise on sales of securities. If there is enough cash on hand, the Public Trustee may not be consulted, and rebalancing may not occur.

In patients' cases, payment out is authorised by the PGO. The CFO is directed to make the payment if there is enough cash on hand, and the broker is instructed of there is not. Any rebalancing will be done at the next case review, if not sooner. Rebalancing is to be carried out annually for non-broker cases, although these arrangements are not in place yet.

### 6.8.2 Eire

There is no specific information on this. It is assumed that cash would be raised by selling units in an in-house fund. If the client held units in only one fund, then there would be no further need for rebalancing.

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<sup>8</sup> Or confirming that the status quo remains unaltered



## **6.9 Case Closure**

Children's investments may be cashed on case closure, the investments transferred to the client or a hybrid of these two. The same applies to patient cases that are closed although in the case of a deceased patient the cash or transfer of holdings will normally be to the client's beneficiaries.

### **6.9.1 England & Wales**

The arrangements for the management of children's funds in the period approaching the majority date are under review because former clients will soon be able to keep units they acquired in the Equity ITF while clients. This may change the present view, which tends towards payment out in cash.

Where a patient has no beneficiaries, or the beneficiaries do not wish to inherit investments, there is a tendency to move towards cash as life expectancy decreases. Otherwise life expectancy has little effect on investment strategy.

Equity ITF units cannot be handed on in wills.

### **6.9.2 Eire**

There is no specific information on this, although it seems possible that since units in the in-house funds will be available to the general public, these investments could be retained.

### **6.9.3 Policy Points**

There is a policy question concerning the correct action to take in anticipation of case closure.

The view could be that all investments are to be paid out in cash, or that investments should be left intact and handed on in specie, or that the correct course of action depends on the circumstances.

Where there is the possibility that investments are to be cashed on case closure, consideration needs to be given to the timeframe over which liquidation takes place. It could be advisable to follow something like the practice of a pension fund, where liquidity is gradually increased as the end date approaches.

## **6.10 Arrangements after Case Closure**

A child reaching majority (or a recovering patient) may become a private client of Cunningham Coates, or may choose another investment manager. As a private client, a former client of the CFO will receive a different service, since they will now be a direct client of the investment manager and that relationship will be subject to regulation.

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Beneficiaries of a deceased patient or child may acquire investments under a will and become private clients of an investment manager.

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## 7 Recommendations

### 7.1 Clarifying the Court Service's Investment Objectives

- R1 **Key** CFO should establish agreed metrics for long-run rates of return and volatility, for each of the strategic asset classes which it uses, or would consider using for clients investments. It may require external technical advice to do this.
- R1 **Key** CFO should establish estimates, (based on the agreed metrics from R1), for probabilities of certain sizes of loss or gain over relevant time periods, for each of the strategic asset classes which it uses, or would consider using. It may require external technical advice to do this.
- R3 **Key** CFO, possibly in conjunction with the judiciary and other interested parties, should confirm who is responsible for determining acceptable levels of investment risk for its client base generally, and in each client's case.

### 7.2 Sources of Advice for the AG

- R4 **Key** CFO should consider what kinds of advice the Court Service and judiciary might need, to whom that advice should be provided, and the kinds of party best placed to provide it. This should take into account the need to avoid conflicts of interest in the application of the advice received.
- R5 **Key** Specifically, CFO should consider what the role of an Advisory Board would be.
- R6 CFO should consider whether there are any conflicts of interest arising from Cunningham Coates roles in advising on both asset allocation and portfolio management, and what, if any, risks might arise.

### 7.3 Asset Classes

- R7 **Key** CFO should review the choice of asset class benchmarks, particularly the equity benchmark, taking into account the relative volatilities of the various indices available for this purpose. It may require external technical advice to do this.
- R8 CFO should work with DMO to identify whether there is a sustainable role for DMO in the future management of CFO cash deposits and/or gilt investments, and if so, what that role might be.
- R9 **Key** CFO should consider making arrangements for benchmarking the performance of gilts against the better of gilts and cash, so that, especially while returns from gilts and cash are so similar, decisions to

invest in gilts rather than cash are explicitly assessed for their effectiveness.

- R10 **Key** CFO should make arrangements to monitor and benchmark the performance of the equities under Cunningham Coates' management as a whole.
- R11 **Key** CFO should make arrangements to monitor and benchmark the performance of the gilts under Cunningham Coates' management as a whole.
- R12 CFO should consider aligning the benchmark used for equities (presently FTSE 100) with the "equity universe" agreed with Cunningham Coates (presently FTSE 350).
- R13 CFO should enter into discussions with DMO and other potential providers to identify the most advantageous option for investing in pooled gilt funds, as a market comparator of value for money for the present segregated gilt portfolio arrangements.

#### **7.4 Setting Investment Strategy**

- R14 **Key** CFO should consider the information which should be gathered to form the basis of investment proposals for its clients, in the light of the practice of regulated private client investment advisors, making allowance for any differences in client requirements and/or risk factors.
- R15 CFO should consider the factors which are presently used in determining the term of a client's investment, with a view to bringing practice into line with private sector approaches to long-term management of investments.
- R16 CFO should consider whether fund size is in itself a barrier to equity investment, or whether sufficiently cost-effective investment vehicles are available to enable small funds to enjoy equity growth over the longer term where other factors allow.
- R17 **Key** CFO should consider adopting a range of investment strategies involving standard mixes of cash, gilts and equities, to reflect the different needs of its clients. This could aid comparability among similar cases, and thereby improve performance monitoring.
- R18 **Key** CFO (and possibly the judiciary) should consider at what point a new client should be advised of the investment strategy which has been determined for him, and the best ways to explain the implications in terms of risk and reward. Similarly when a strategy is modified for any reason.

#### **7.5 Use of broker(s)**

- R19 CFO should consider making explicit reference in the Service Level Agreement to the broker's roles as (1) advisor on allocations to asset

classes (2) advisor on composition of segregated portfolios and (3) advisor on selection of pooled equity vehicles.

- R20 OCP should consider whether it should, in equity, monitor the performance of its clients' funds which are *not* held in court.
- R21 CFO should consider using a discretionary mandate rather than an advisory one, accompanied, if needs be, by additional safeguards in the SLA. This could result in a wider choice of possible bidders for the work, a more efficient service and lower costs. It is acknowledged that this may need amendments to present regulations and/or judicial practice.
- R22 It is recognised that major changes such as withdrawing money for spending and making changes to investment strategy should remain subject to external control. Subject to this, CFO should consider ways to enable the investment manager to operate without reference to the court or the Accountant General in the day-to-day management of each portfolio in the widest possible range of cases. It is acknowledged that this may need amendments to present regulations and/or judicial practice.
- R23 CFO should consider re-competing the present broker mandate in the near future. It is understood that the present SLA is valid until the end of March 2004.
- R24 CFO should research alternative charging structures, e.g. an ad valorem management fee, which minimise possible conflicts of interest between the broker and the client while still offering good value for money.

#### **7.6 Client Monitoring & Reporting**

- R25 **Key** CFO should make arrangements to benchmark each client's portfolio as a whole (including cash), to provide a comparator for the actual client portfolio performance. CFO should calculate the "whole portfolio" performance of each client's portfolio at least once per year, and report actual against benchmark.
- R26 **Key** CFO should provide a regular statement, including a statement of investment performance, to all of its clients.

#### **7.7 Pooled Equity Funds**

- R27 CFO should negotiate rebated rates with the broker for the management of unit holdings in pooled funds.

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- R28 CFO should research the relative costs, performance, flexibility and volatility of the funds now recommended by its brokers compared with those now being used in England & Wales and Eire. This should be done with a view to establishing (a) whether the funds now being used are best value and (b) what else to use instead if they are not. It may require external technical advice to do this.

#### **7.8 CFO Fact Finding**

- R29 CFO should consider circulating the briefing papers it prepares after fact-finding meetings to the other parties involved in those meetings. This would enable comment and cross-checking, and minimise misunderstandings.

## 8 Suggested way forward

The CFO is invited to consider and discuss the recommendations in this paper in the light of their relative importance, whether they are capable of being advanced quickly and with readily available resources, and any other factors affecting the time scale for making progress with the different aspects of this situation.

AMTEC recommends a further and more detailed consultancy phase, taking as its focus the priorities and desired timescales established in discussions on the present paper. The purpose of a second study would be to establish specifically which issues require what kind of action to progress them (technical, legal, commercial, policy) and the likely timescales and resource costs for implementation. As an example, it may be that changes to broker mandates and changes to investment strategy-setting could be looked at as parallel work streams, each of which would involve different kinds of work, and may have different realistic time scales. Any inter-dependencies would need to be recognised and made explicit.

Such information would be drawn together into a draft programme plan, which, after discussion and agreement with the CFO would form the final deliverable from that stage.

Based on its experience with detailed scoping of similar work in England & Wales, the consultancy effort needed to carry this out is estimated at 30 days<sup>9</sup>.

A third stage, which CFO could commission at a subsequent decision point, would be to finalise and implement the agreed plan. The timescales and resourcing for this stage would clearly depend on the content and structure of the plan.

It is recognised that the need to conduct a formal procurement for further consultancy support may arise at some stage, depending on the scale of the support required. AMTEC will be pleased to work with CFO to structure the work in such a way as to facilitate meeting the procurement requirements expeditiously.

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<sup>9</sup> The relationship between effort and elapsed time in work of this kind necessarily depends on the speed with which the client is able to make any decisions which may arise during the work.

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## 9 Appendices

### A.1 References

<b>Ref</b>	<b>Date</b>	<b>Author</b>	<b>Title</b>
A	1979		Court Funds Rules (NI) 1979
B	2 Feb 1996	[unclear]	"Flexible Order" (High Ct)
C	19 Dec 1996	Fraser	[unclear]
D	1999	OCP	F8 (Sample)
E	28 Aug 2002	Cunningham Coates	6 Month review letter to AG of NI
F	2 Sep 2002	Philpott	Application for Changes (County Ct)
G	2 Sep 2002	Cunningham Coates	Contract Note
H	To 3 Dec 2002	Various	Investment Strategy Review Group papers
I	12 Feb 2003	Laurene McAlpine	Court Funds Investments
J	26 Feb 2003	CFO	Portfolio Valuation
K	28 Mar 2003	Frank Duffy	Fact Finding Visit to CFO, Dublin
L	June 2003	CFO	Cunningham Coates SLA 2003/2004
M	11 Jul 2002	Corrigan	Lodgement/Payment Schedule (High Ct)
N	26 Sep 2003	James Daniel	Notes on visit to CFO (not circulated)
O	29 Sep 2003	CFO	Certificate of Funds in Court (Sample)
P	Undated	Tim Horgan	Investing Funds in Court Funds Office



## **A.2 Active Management and Passive Management**

The difference between active management and passive management is that whereas active management seeks to out-perform a benchmark by increasing exposure to those investments which are expected to outperform (and reducing exposure to those expected to under-perform), a passive manager will adopt weightings which precisely reflect the benchmark, and adjust to keep in line with those weightings from time to time.

Both kinds of manager will measure the difference between actual performance and that of the benchmark - the difference is that an active manager will seek to achieve a consistent and positive difference, whereas a passive manager will expect a scatter of small positive and negative differences over time.

There is substantial independent research to suggest that, in the long run, and on average, the active approach to pooled fund management produces no better returns than the passive one, whether considered at the level of asset allocation or at the level of individual stock selection. Charges for active funds are, however, distinctly higher, and the position net of fees is that the average passive manager outperforms the average active manager.

The variability of long-run returns among passive managers of pooled funds is much less than the variability of long-run returns among active managers. Moreover, while it is possible to use consistent past under-performance of an active manager to indicate future under-performance, there is no reliable basis for selecting an active fund manager who will produce consistently above-average performance for any given future period. Although no comparable research is available for segregated funds, there is no *a priori* reason to doubt that similar conclusions would apply to segregated funds.

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**A.2 Comparison: Belfast / London / Dublin**

<b>Topic</b>	<b>Belfast</b>	<b>London</b>	<b>Dublin</b>
<b>Client Risk &amp; Reward</b>			
Who chooses / determines the Investment Strategy (Strategic Asset Allocation)?	CFO, from list (see Appendix D of Ref L.) according to criteria based on client characteristics. Stockbroker determines the allocations for securities, if any.	Children: Judge, from options on Form 212 (probably moving to a list of options advised by SIB) Patients: Receiver, subject to CoP consent, based on a list of options advised by SIB	CFO, according to criteria based on client characteristics, from an approved list of options
Is the client shown the investment strategy for comment before/when it is set?	Representatives of patients and children are shown the strategy at a case conference, where there is one. Apart from this, strategies are not automatically referred to the client for approval when set or changed. Any client can request information on the strategy at any time.	Children: depends on the judge – there is usually discussion Patients: Yes	No
Does the strategy as seen by the client make investment risks and returns explicit?	Yes –allocations to strategic asset classes are explicit	Children: No – Form 212 makes no reference to strategic asset classes or levels of risk Patients: Yes – allocations to strategic asset classes are explicit	Yes –allocations to strategic asset classes are explicit

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<b>Topic</b>	<b>Belfast</b>	<b>London</b>	<b>Dublin</b>
<b>Independent Investment Advisors</b>			
Is there an independent advisor on investment strategy?	No – CC cannot be considered to be independent, since they have a financial interest in certain outcomes	Yes – SIB provides independent advice on investment strategy	Yes – Mercer provides independent advice on investment strategy. The Investment Committee advises on this.
Is that advisor a "Regulated Person"?	CC is regulated. No other party involved is regulated.	No – SIB has been advised that it would not require regulation to carry out its role, even if were not a Crown body	Yes – Mercer is regulated
Who receives their advice?	The AG of NI	The PGO, OSPT and CFO. Extending the remit so that SIB may advise the judiciary is under consideration.	Unclear. The Investment Committee appears to advise the judiciary and the civil service.
Is there an independent advisor on investment performance monitoring	No – non-statutory advisory body under consideration	Yes – SIB provides independent advice on monitoring the investment performance of PCFMs and the Equity ITF investment manager	Yes – Mercer appears to provide independent advice on investment performance monitoring. The Investment Committee advises on this.
Is that advisor a "Regulated Person"?	N/A	No – see above	Yes – Mercer is regulated
Who receives their advice?	N/A	The PGO, OSPT and CFO.	Unclear. The Investment Committee appears to advise the judiciary and the civil service.

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Is there an independent advisor on the selection and appointment of investment managers?	No non-statutory advisory body under consideration	Yes – SIB provides independent advice on the selection of the PCFMs and the Equity ITF investment manager No – see above	Unclear who played a role in selecting or appointing the tracker fund manager, and who advised on the selection of Mercer. Unknown, but presumed to be so
Is that advisor a "Regulated Person"?	N/A		
Who receives their advice?	N/A	The PGO, OSPT and CFO.	Unclear. The Investment Committee appears to advise the judiciary and the civil service.
Is there an independent advisor on the selection of stocks and shares?	Yes - CC	Children: Yes – Public Trustee Patients: Mixed – PCFMs for most cases. Smaller cases receive guidance from PGO.	No – CFO selects in-house fund units to purchase in accordance with client's investment strategy.
Is that advisor a "Regulated Person"?	Yes	No – the Public Trustee does not require regulation. However, a non-Crown body carrying out this task would require regulation/	N/A
Who receives their advice?	The AG of NI	Public Trustee advises the CFO. Brokers advise PGO/CoP patients	N/A

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Topic	Belfast	London	Dublin
<b>Investment Management: Case Reviews</b>			
Are cases reviewed regularly between initial investment and case closure?	Mixed: "Portfolio" cases are reviewed by CC every 6 months; Only ad hoc reviews for sundry cases at present. Annual/fixed-time reviews are being considered. (e.g. 18 months before date of majority.)	Children: No – action only occurs if the representative applies to court Patients: Yes – PGO reviews each case annually	Yes – every 6 months by law
Do these reviews include a re-assessment of the client's situation?	Patients: F8 is updated and copied to CFO each year by OCP. CFO copy F8 to stockbrokers. Children: Updated financial info is sent by CFO. Client input is not sought.	Children: No – reassessment only occurs if the representative applies to court Patients: Yes – spending needs are reviewed and the receiver agrees any change to the investment strategy	Unknown
Do these reviews include a review of the client's portfolio?	Yes – Each 6 months for Portfolio cases and each time reviewed for sundry cases.	Children: No – annual reviews are being considered Patients: Continually (by the broker) if the receiver uses a broker. Annual portfolio reviews for "non-broker" cases are being introduced	Yes – asset allocation and portfolio review are the same thing in this case

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<b>Topic</b>	<b>Belfast</b>	<b>London</b>	<b>Dublin</b>
<b>Reporting and Accounting</b>			
Are regular portfolio valuations sent to clients?	No – certificates of funds are sent out by CFO on request. CFO reconciles monthly with CC.	Children: statements sent out by CFO 6 monthly Patients: statements sent out 6 monthly by brokers, or on request	Unknown
Is the investment performance of each client's portfolio measured?	Mixed – portfolio cases only	Children: No – to be introduced with new investment strategies Patients: Yes.	Unknown, but presumed to be so
Do statements to clients show investment performance?	No – broker's letter to AG of NI shows performance. Statements for clients show all holdings, their market price and value. 5 year payment history is also set out.	Children: No – cash flows and asset values only Patients: Yes	Unknown

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<b>Topic</b>	<b>Belfast</b>	<b>London</b>	<b>Dublin</b>
<b>Investment Management: Segregated Portfolios</b>			
Are segregated portfolios used?	Yes – for “portfolio” cases only.	Children: No – unithised investments and cash only Patients: yes – managed by Panel or non-Panel PCFMs	No – investment in in-house unithised funds and cash only
Who manages segregated portfolios?	Cunningham Coates (“CC”)	Patients: 2 x Panel and various non-Panel PCFMs <sup>10</sup>	N/A
Who is the portfolio manager’s client?	The AG of NI	Patients: The Receiver, acting as agent for the patient	N/A
What is the nature of the mandate?	Advisory. CC advises the AG of NI, according to a “universe” specified by AG of NI – currently FT 350	Patients: Mostly discretionary, with advisory where preferred by the Receiver.	N/A
What is the term of the appointment?	Indefinite – SLA reviewed annually	Patients: 3-yearly	N/A
What is the charging basis?	Small ad valorem management fee, plus dealing commissions.	Patients: Ad valorem management fee, plus small fixed charge per transaction	N/A
Is the manager’s overall performance for each strategic asset class measured?	No. For Portfolio cases, performance monitoring includes a weighted average of gilts and equity performance, per client.	Patients: Yes.	N/A

<sup>10</sup> Non-Panel PCFMs are now allowed to manage portfolios held in court. Presently Brewin Dolphin is the only one which does so.



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Is the investment performance of each segregated portfolio measured?	Yes – portfolio cases	Patients: Yes.	N/A
How is the performance benchmarked?	Cash: Not benchmarked Gilts: FTSE All Stocks Index Equities: FTSE 100	Cash: E&W Special Account Rate Gilts: N/A – treated as cash Equities: Same benchmark as used for the Equity ITF	N/A
Is there an investment performance target?	Yes – 85% of cases to fall within 5% of the benchmark performance in any 6 month period	No – performance and volatility are monitored by SIB, but there is no set target	N/A

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Topic	Belfast	London	Dublin
<b>Investment Management: Pooled Funds</b>			
Are pooled funds used?	Yes – commercially-available investment trusts etc are bought for "portfolio" and sundry cases by CC	Children: Yes – Equity ITF, bought by CFO. There are still considerable holdings in commercially-available vehicles bought before Equity ITF Patients: commercially-available vehicles bought by brokers. Equity ITF is now available to some patients – planned to be available to all.	Yes – in-house index tracker funds only. No commercially-available funds used.
Is there an in-house fund available?	Yes – Equity ITF is available, but is not used	Yes – Equity ITF	Yes – four in-house index tracker funds
Who manages the in-house pooled funds?	Legal & General manages the Equity ITF	Legal & General manages the Equity ITF	Bank of Ireland Asset Management
What is the term of the appointment?	3 yearly, renewable to 5, subject to performance	3 yearly, renewable to 5, subject to performance	Indefinite
Can the Government investors change the investment manager without disinvesting from the fund?	Yes – some minor transitional costs may be incurred but no CGT for clients	Yes – some minor transitional costs may be incurred but no CGT for clients	No – switching costs would be incurred by the fund and CGT would be incurred by clients
Is the in-house fund open to the general public?	No – ex-clients may retain units bought while clients	No – ex-clients may retain units bought while clients	Yes

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Is investment performance of in-house fund(s) specifically monitored?	No – pooled fund performance is monitored as part of the client's portfolio	Yes – SIB monitors Equity ITF performance	Unclear, but presumed to be so
Is there an investment performance target set for in-house fund(s)?	N/A	Yes – SIB advises that the tracking error must be less than 0.5% in two out of every three consecutive years	Unknown – the funds are index trackers, but the arrangements for management of tracking error are not known.
What is the typical level of annual management cost?	Unknown for the specific funds held - the industry norm for commercial utilised funds is around 1% p.a. The client would incur broker fees in addition.	Variable – currently under 0.25% p.a. Clients using a broker would incur broker fees in addition, rebated to 0.25% p.a.	Unknown – the industry norm for such funds ranges from under 0.1% p.a. to 0.75% p.a. according to size and structure

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Appendix 4

List of Witnesses  
who Gave Oral Evidence  
to the Committee



## List of Witnesses who Gave Oral Evidence to the Committee

- Mr Nick Perry, Accounting Officer, Department for Justice DoJ;
- Mr David Lavery, Director of Access to Justice, DoJ;
- Mr Ronnie Armour, Accountant General and Accounting Officer, NICTS;
- Mr Richard Ronaldson, Deputy Accountant General, NICTS;
- Mr Kieran Donnelly, Comptroller and Auditor General (C&AG); and
- Mr Jack Layberry, Treasury Officer of Accounts, Department of Finance and Personnel.









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