

## TG – 12 June 2024, before Judge Whalan

The hearing before Master Whalan concerned three issues:

1. Time spent authorising payments by the Grade A Deputy, claimed at 3 minutes per payment
2. Time spent conducting financial reviews in accordance with the SRA, claimed at 6 minutes per task.
3. Time spent reconciling bank statements and transactions, claimed at 6-12 minutes per statement

The case concerning TG, with Kingsley Napley acting as Deputy, was claimed at £15,834.10 and reduced to £11,413.33 on provisional assessment. By way of background, TG had an estate of over £2.7 million at the time of assessment, income of £325,000 during the period in question and 4 separate bank accounts managed by the named Deputy, Simon Hardy at Kingsley Napley.

Stephanie Kaye of Clarion represented the Deputy in the hearing. The hearing was funded by the Professional Deputies Forum due to the interest of all Deputies in the outcome.

### Authorisation of payments

The first issue was in relation to authorisation of payments. In the case of TG, the Grade A fee earner claimed 3 minutes for authorising each payment that was made on behalf of TG, in addition to the 3 minutes claimed by the Grade D fee earner arranging the payment. Those payments concerned irregular payments covering TG's care, therapy, education fees, OT fees etc and were of significant value. The time claimed for this was 5 hours 33 minutes at Grade A which was entirely disallowed on assessment by the Costs Officer and subsequently on re-assessment.

Each item claimed was describes as follows in relation to the relevant payment:

#### **Online authorisation of payment from Deputyship account for care fees.**

Clarion argued that it was the named Deputy's personal appointment and therefore personal responsibility to authorise these payments as the book stopped with them. In addition, the amounts claimed (6 minutes in total for the payment) were not unreasonable and the transaction itself had been delegated as far as possible, but it was not possible to delegate the authorisation due to the nature of the appointment.

Costs Judge Whalan raised that the reductions made by the Costs Officer were on a matter of principle, but was satisfied that there was no rule preventing the recovery of this work. The work should not have been disallowed in its totally. Judge Whalan stressed that this was on a case-by-case basis and not every payment required a Grade A authorisation. It was for the Deputy to mitigate how often this happened.

He went on to advise that, for example, where the Deputy has agreed to a care plan concerning sessions of therapy at £100 per hour, the Deputy has already agreed to those costs and therefore authorisation was not required every time a payment was due. He was of the same view with payments such as utilities, in that the Deputy has already made a

decision about which provider to go with, therefore authorising every payment was not a sustainable approach.

Judge Whalan said that it was not unreasonable to incur this time for irregular payments but was of the view that automatically charging time against every payment was not sustainable. He advised that there needed to be consideration of prior authorisation to payments.

Judge Whalan agreed to allow 3 hours at Grade A against the 5 hours 33 minutes claimed on assessment.

#### Monthly reviews of the bank accounts

The second issue was in relation to conducting monthly review of the Deputyship account. The time claimed for this was 2 hours 12 minutes undertaken by a Grade C fee earner, with all the time disallowed by the Costs Officer marked as "supervision/overheads" on assessment.

Each entry was claimed as follows:

Conducting monthly review of the deputyship account as per rule 10.1(b) of the SRA Accounts Rules 2019 operation of clients accounts. Considering the level of expenditure and funds required for care and expenditure.

Supervision / Overhead

Clarion argued that this work was not an overhead, but in fact a requirement of the SRA Account Rules and the OPG Deputyship Standards. It was also a fundamental part of the Deputy's role to manage the finances, including reviewing the accounts.

Judge Whalan agreed and was of the view that this time should not have been disallowed as "overheads", and commented that the work was a specifically required task. The charge of 1-2 units was *prima facie* reasonable for this case, however, Whalan made clear that time in excess of 2 units would be considered on a case-by-case basis.

Judge Whalan agreed to allowing the time as drawn in this instance.

#### Analysing the accounts and preparing reconciliations

The third issue, similarly to the monthly reviews of the Deputyship accounts, concerned TG's bank accounts. The work however was different in nature as it was in relation to preparing reconciliation statements and analysing the accounts to assess the income and expenditure. This work claimed totalled 5 hours 24 minutes at Grade D.

Each entry was described as follows:

Analysing the Protected Party's accounts to assess the management of his income and expenditure. Assessing activity levels to note any discrepancies. Preparing reconciliation statements to show any differences between figure comparisons. Preparing calculations to move matters forward.

As per OPG guidance

The SRA Account Rules 8.2 and 8.3 and the OPG Deputyship Standard 5a were referred to as requirements for the Deputy to carry out the work. On assessment, the time claimed by the Grade D was reduced by 2 hours 36 minutes.

Judge Whalan commented that it was for the Costs Officer to guard against excessive charges being claimed. Judge Whalan commented that the tasks undertaken were reasonable by the Grade D fee earner and were not unnecessarily high.

Judge Whalan agreed to allow a further 2 hours 27 minutes at Grade D, reinstating the time almost in full.

Judge Whalan would not make a written judgment on this case. Clarion agreed to write a note to share with PDF members on the outcome of the hearing, which has also been shared with Judge Whalan. This note may or may not be circulated to the Costs Officers, but Judge Whalan confirmed that the outcome would be communicated to them.