

# Planning for long-term care

Karen Vidler looks at the challenge presented in investing for Court of Protection cases



#### ABOUT THE AUTHOR

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**A**fter a period of apparent improvement at the UK Office of the Public Guardian (OPG), there has been a sharp rise in complaints. It is an unfriendly environment for the uninitiated, but also presents real challenges for the professionals.

In the wake of very public 'will they, won't they' discussions regarding the future of interest rates in the UK; personal representatives and deputies are now faced with the challenge of finding a reasonable rate of return on the funds they administer, while taking on board the fragile economic climate and the need for access.

According to recent Parliament Statistics; GBP3 billion is held at the Court Funds Office on behalf of 18,000 clients, which equates to an average of GBP169,000 per account. In fact, according to the same publication, there are many more accounts held on behalf of younger people with damages awards; at 101,000 this is almost six times the amount held for Court of Protection clients. Younger individuals often present very different financial considerations, very high maintenance costs combined with longevity is a toxic conundrum. Inflation is a major issue for most of us, but for those requiring care and support, it is a real threat even over the medium term.

A few years ago Liberal Democrat Party research indicated 70,000 properties were sold every year to fund long-term care.



This represents a high number of deputies/attorneys and families having to think about how to make the funds last as long as possible. Instinct says deposits are best for what may be a short period, but experience suggests long-term issues should be considered. We are now in a period when hindsight wisdom is commonplace, and we may all be judged with the benefit of such wisdom. Never before has it been more important to consider what might have been the previously unthinkable; longevity in long-term care, combined with a prolonged period of depressed interest rates.

#### Erosion of capital

Even the hawks on the Monetary Policy Committee don't expect to see interest rates above 2.5 per cent in the next few years. The current rate is 0.5 per cent per annum for monies held on special deposit at the

Court of Protection monies. To put it this into context, for a higher-rate tax payer, this equates to just 0.3 per cent per annum, and 0.4 per cent per annum for a basic-rate tax payer. The problem is compounded once you take mortgage rates out of the equation in terms of calculating inflation. We are currently seeing a true rate of inflation, for those not in work and with no mortgage, of in excess of 5 per cent per annum. Clearly, this means there is erosion in terms of the true value of capital left on deposit at rates significantly below this.

Personal representatives and deputies are in an unenviable position. The nature of ageing is that we tend to become more unwell and therefore knowing when a long-term strategy is required and a short-term one is more appropriate is, quite often, impossible.



A particular memory for me is a lady who entered a nursing care home, having suffered some years of ill-health, she was well into her 80s at the time. The prognosis was not good. Some five years later, we were very relieved that we had put in place some 'long-stop' strategies. She actually thrived in a well-run care-home environment and indeed lived there for almost nine years. Had we left funds on special deposit for Court of Protection clients, the capital would have been exhausted after six years or so; whereas there was a healthy residue to pass to her only daughter, something that had long been an ambition of this lady.

In the majority of cases, when full nursing care is required, there is inadequate income to cover this. Any investment strategy therefore needs to anticipate erosion of capital and the aim should be to minimise this as far as possible, without undermining liquidity. This is a fine balance.

Just recently, I was consulted by a deputy who had taken what he thought was the most appropriate course of action, i.e. to leave funds on a special deposit at the Court of Protection for his client who was in her 90s and in generally declining health.

I met him five years after his client had entered full-time nursing care, and he was now facing prolonged questioning on the part of his client's beneficiaries as to why the funds had been so 'uncompetitively invested' and, more sensitively, why consideration had not been given to inheritance tax mitigation.

Whether a duty of care exists as to mitigating inheritance tax is open to question. Strictly speaking, the client will not be the one paying the inheritance tax liability and therefore acting in the best interests of the client should mean that inheritance tax issues are not a consideration. However, as the Court of Protection will approve gifts for inheritance tax mitigation purposes, and there are currently available inheritance tax mitigation strategies that involve no gifting, it is difficult to see how complete disregard of inheritance tax issues will not prove contentious.

Rather than taking decisions in isolation, it is far more helpful, and indeed comprehensive in terms of presenting a case for what has been done or in some cases not done, for there to be linked consideration of tax issues combined with investment returns. There will be some cases where, frankly, leaving funds on deposit is the right thing to do and it is then merely a case of ensuring that the

deposit account generates a competitive rate of return. As is increasingly the case for trustees, personal representatives and deputies need to demonstrate that they have sought professional advice or at least appropriate advice in this regard.

The Trustee Act 2000 has set the stage for increased scrutiny of actions taken by those acting on behalf of others. Surely this trend will continue and expand into the area of Court of Protection cases.

### Inadequate income

Where the elderly are concerned, Court of Protection often means that there is limited life expectancy and therefore one cannot take a very long-term view in terms of investment strategy. Combined with this, however, you have much increased expenditure. The average retired couple in the UK have a net income of GBP26,416 per annum with average annual expenditure of GBP16,692, according to the National Statistics office – but this relates to 2006/7, so pre-date the huge rise in gas and electricity prices that has occurred in the last 18 months. The average retired single man's income is GBP13,884 and it is GBP12,480 for a single woman

Basic care home fees are in the region of GBP30,000 per annum and if nursing care is required, this can double. Therefore, serious consideration needs to be given as to how the gap can be breached from an 'ordinary income' of GBP13,000 compared to ongoing care/support costs of costs of GBP30,000 per annum or more.

The current property market will probably heighten sensitivities with regard to the 'capital lost'. A property that could have previously been sold for GBP600,000 may well reach GBP450,000 in the current market. This could be the difference between beneficiaries receiving something and nothing whatsoever. While in some circumstances there is nothing that can be done, it is imperative that efforts are demonstrated and consideration has been given to investment return and ongoing tax implications. Inheritance tax is not the only tax to consider after all!

Mitigating income tax will improve the net rate of return. This in turn will therefore reduce the gross rate of return required to achieve the income necessary. Or, as in most cases, it will simply reduce the rate of risk needed to be adopted to try and keep pace with the endless demand upon capital that care home fees can, and often do, present.

### Thorough review

Don't get me wrong; there is not a solution to each and every case but too many cases are put to one side because the individual is 'unwell' and the fact is, hindsight wisdom is coming up on the inside and will steal a march if we don't all take the opportunity to do a thorough review and to ensure that there has been advice, even if the advice is to do nothing other than to leave on deposit at competitive rates. The fact is, advice has been sought and due consideration given to the options viable for the circumstances, in order to preserve capital.

If we add into the mix the demographics that indicate we will see a further rise in longevity, particularly for men, we can see this is going to become a major area of an individual's lifetime planning. While longevity is expected to increase quite significantly for men, it is not so for women; the healthy years are, worryingly, not correlated with life expectancy. The latest statistics from the National Statistics Office suggest that men will experience four years' ill-health in retirement, whereas for women this increases to over five years. So a period of 25 per cent of your retirement, as an average, should be anticipated to be in serious ill-health, and that takes some planning financially!

### Making the best of it

So here we have an area needing advice that is set to grow significantly in the coming years. It needs serious and structured attention. Leaving things as they are is simply not an option. As we know ill-health is a symptom of growing older, and one cannot put everything on hold pending recovery; the fact is that full recovery rarely occurs. One medical condition merely transforms to another; hence the rise of the increasing role of the 'geriatrician'. This represents recognition on the part of the medical community that medical issues for the aged often become inter-linked and almost symbiotic. Prolonged life expectancy with medical/health issues is likely to be the norm both now and in the future.

In a perfect world we would have interest rates higher than at present and we would also have a stock market that is more buoyant than it is now. We all have to work with what we have at our disposal and the fact is we need to maximise any investment return, through whichever means reasonable, while paying due regard to the need for security and liquidity.

Action can and should be taken in most

instances. There are rates currently available significantly above the 0.5 per cent per annum Court of Protection special deposit rate. Some will require committing funds for a minimum period, but many accounts are transferable, so early redemption penalties can often be avoided in the event of premature death.

For the younger clients with damages awards, etc, a spike in inflation in the next three to five years is a very real and menacing threat, financially. The difference of circa 2 per cent between the current special deposit rate and real inflation could spread to 3 or even 4 per cent in the near future. This would be very damaging for a long-term strategy where the individual has reasonable life expectancy, and could impact upon their expenditure funding in the future. A settlement that was adequate for the individual's needs just two years ago could be rendered insufficient within the next few years, unless action is taken to ensure that inflation is at least matched, but preferably exceeded.

Another major point to consider is the impact of tax: whether it is erosion of Age Allowance for the elderly, or higher rates of tax for younger individuals with substantial awards for damages. Just reducing the tax payable will boost the net position and therefore assist in the battle to meet care fees and fight-off inflation.

Minimising tax, maximising returns and sacrificing some liquidity are the ingredients necessary to achieve true efficiency for the majority of Court of Protection cases, whether an elderly client or younger one is involved. There are some situations when nothing can be done and any good advisor will tell you that. For example, where the rate of required expenditure is so excessive, compared to the capital available, that frankly any medium-term planning is wholly irrelevant, nothing more can be done other than to ensure that the rate of interest achieved on cash deposits is as competitive as possible.

Let us take as an example the average Court of Protection Deposit of GBP169,000

and the average care home fees of GBP30,000 per annum. Clearly, the capital will be depleted by the expenses – unless interest rates leap to 20 per cent or over; more than unlikely!

There are currently rates available for cash deposits fixed for up to nine months at 2.25 per cent per annum and for three years at 4.25 per cent per annum. Assuming two years' fees on the nine month rate, one year on instant access (the special deposit remains relatively competitive in this regard), and the balance on the three-year rate we have potentially generated GBP4,000 per annum additional interest compared to leaving all of the funds on special deposit; not an insubstantial sum. With greater funds available, the advantages of tax-planning could increase the uplift further.

Not all cases offer the opportunity to provide such value: very short life-span or expenditure on fees that will exhaust capital swiftly limit the scope, but rarely can no advantage be secured if advice is sought. ■

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