

CABINET

19 September 2023

Title: Appointee and Deputyship Service Policy	
Report of the Cabinet Member for Adult Social Care and Health Inequalities	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Director: Susanne Knoerr, Operational Director, Adult Social Care	
Accountable Executive Team Director: Elaine Allegretti, Strategic Director, Children and Adults	
Summary <p>LBBD offers an Appointee and Deputyship Service to support residents who lack capacity to manage their finances. The service was introduced for those who, through lack of capacity and support, have no means to appoint their own independent provider. Those managed by this service have been determined to lack capacity in accordance with Mental Capacity Act 2005 and the Care Act 2014.</p> <p>The Appointee and Deputyship Service will be engaged, through relevant court orders, to undertake the financial management of a person's assets including tenancy management. The services provided are chargeable and claimable from the appointee, deputy, or in rare cases the Litigant Friend.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Agree the Appointee and Deputyship Policy as set out at Appendix 1 to the report, to be effective from 1 April 2024; and(ii) Agree to the commencement of public consultation in respect of the proposed charges associated with the Appointee and Deputyship Policy.	
Reason(s) <p>To support the Council priorities and ensuring those who lack capacity are safe, protected, and supported at their most vulnerable, they are supported to live healthier, happier, independent lives for longer and live in good housing and avoid becoming homeless.</p>	

1. Introduction and Background

- 1.1 The Appointee and Deputyship service provides support to those are unable to manage their personal assets and finances due to mental incapacity, as defined by the Mental Capacity Act 2005 (MCA). The appointee service was provided by Barking and Dagenham as a free service.
- 1.2 An appointee is either an individual or organisation assigned by the Department for Work and Pensions (DWP) to manage someone else's state benefits and pay any costs of living. In most cases this will involve making claims and receiving benefit payments for individuals who lack the mental capacity to do so, the appointee will then use these benefits in the best interests of the individual, such as paying for necessary goods or necessary domestic or personal care services.
- 1.3 Within Barking and Dagenham it became apparent that there was a large demographic of residents who not only lacked capacity, but also any support structure to be able to manage their finances or have someone do it for them. Due to this, the service grew at a considerable rate and as such the decision was made in 2017 that a charge would be implemented. This charge was set at £8 per week, per individual, effected from 1st May 2017 and contributed to the costs of providing the service.
- 1.4 For several years, the service (two FTE staff) successfully supported many individuals, managing an average of 80 clients per week.
- 1.5 During the process of managing appointees, it was noted that a number of residents had incomes that meant an appointee could not manage them however they lacked sufficient capital assets for a private establishment to support, for example a Solicitor. This meant that there were residents at risk in the community without having adequate support to manage their finances.
- 1.6 In 2021 the decision was made to create a Deputyship Service due to the number of individuals who lacked both capacity and support, however whose income meant that they fell outside the purview of an appointee. Three full time equivalent staff would support both functions.
- 1.7 A deputy is an individual or organisation appointed by the Court of Protection (COP) to make decisions for people who lack the mental capacity to do so for themselves. Deputies are regulated by the Office of the Public Guardian (OPG) and, unlike appointees who manage the expenses and living costs of a mentally impaired individual, deputies can be responsible for the individual's entire estate; known as a property and affairs deputy. This means the Council could then support those who had larger capital assets and private incomes beyond state benefits.
- 1.8 The purpose of this report is to set out the main requirements of an appointee and deputy service and applicable charges.

2. Proposal and Issues

- 2.1 The full policy regarding the Appointee and Deputyship service is set out at Appendix 1 and an overview is detailed below.

- 2.2 Whilst the Appointee and Deputy Service is not a statutory duty, if they are provided then the following Acts and Statutory responsibilities apply:
- Mental Capacity Act 2005 and Code of Practice (MCA)
 - Office of the Public Guardian (OPG) Public Authority Standards
 - Court of Protection Rules 2017 (COP)
 - Social Security (Claims and Payments) Regulations 1987
 - Care Act 2014
 - Care and Support Statutory Guidance
- 2.3 It was agreed that the principles of the appointee and deputy service would be to:
- Maximise the individual's capacity to decide and act before interference.
 - Adopt the least restrictive approach, unless necessary.
 - To act in the best interests of the individual.
 - Balance independence with safety and protection and encourage participation and self-reliance.
 - Maintain the individual's environment and values.
- 2.4 Before any appointee or deputyship is undertaken, a full Mental Capacity Assessment must be undertaken; this assessment determines an individual's capacity to manage their finances or a specific aspect of it and whether they have capacity or a wish to appoint someone of their choosing. This assessment must be carried out by a qualified professions and in compliance with the Mental Capacity Act 2005 and its code of practice.
- 2.5 The Council will have a duty to notify parties it deems relevant or who are affected by the application to the COP.
- 2.6 The Council will apply for any court orders it deems applicable in order to support the deputyship application. Examples would be a Investigate and Report order that allows the authority to undertake searches in respect of an individual to ascertain their financial asset or an order that allows the LA to manage an individuals' tenancy.
- 2.7 The Council will comply with all regulated terms and conditions as defined by the Court of Protection including Annual Reports, HMRC Income Tax Returns and audited visits.
- 2.8 As Deputy, the Council agrees to act in the best interests of the individual and within the terms of the court order. The individual's wishes in respect of managing their financial affairs will be included in decision making in all appropriate circumstances.
- 2.9 The Council will manage the individual's finances and assets in a manner that is in their best interest, including decisions regarding:
- Budgeting
 - Investments
 - Decisions regarding the upkeep of the home
 - Maximising their income
 - Support regarding property maintenance

- 2.10 The COP published practice directives which inform an authority of the level of fee's that they are able to charge individuals for the work they undertake on their behalf. These are shown in **Appendix 1**. The authority intends to implement these charges in respect of each Deputy it manages and the authority reserves the right to waive these charges where appropriate. It should be noted that the charging directives establish that any charges applied cannot be for profit making purposes, they must be equal to the cost of service provided. A profit is allowable however only if the profit is reinvested into the service and enhancing its provisions.
- 2.11 As there are existing appointees in place, the Council intends to utilise advocates to allow consultation on the new proposed charges for services. Any deputyship applications that are currently being considered will be included in the consultation.
- 2.12 The new proposed appointee charges will be an annual charge based on whether the care is residential or domiciliary (homecare). The charge differs between residential and domiciliary as residential placements have less financial requirements, this is because their needs are met within the residential placement and not charged separately. Someone who receives care at home requires financial management for rent, shopping, gas, electric, water whereas residential placements include all these in the fees.
- 2.13 The charges to be introduced will now include a set up administration fee as well as a discharge fee due to level of administrative work required on the on/off boarding. All bank charges will be passed to the appointee and dictated by the bank. All appointees and deputies will be managed using a Lloyds banking platform and have their own bank accounts held by LBBB Appointee Deputy Service.
- 2.14 For comparison purposes an existing appointee now will pay £416 per annum and under the new policy an appointee in residential care will pay £500 per annum and those in domiciliary care will be charged £650. New appointees will incur a £150 set up fee and a £75 discharge fee, should they leave our services.
- 2.15 These charges are under market value, comparative checks on private organisations who offer these services ranged from £15 to £25 per week, £780 to £1,300 per annum. It was also noted that some packages were offered at basic, premium and enhanced/elite rates and the level of service was dedicated by how much you paid. Our service provides all options on all packages offered up to and at enhanced or elite and were substantially cheaper.
- 2.16 As Appointees or Deputies the Service can manage an individual's financial assets to ensure stability, avoid debts and put in place support mechanisms that allow the resident to live a fulfilled and supported life. Financial matters are intrinsically linked to mental health and by avoiding exacerbated mental health issues we reduce the risk of increased care costs, which effect the council and homeless prevention.
- 2.17 Of the 77 appointees in place now, a minimum of 52 of these will be moved to a Deputyship, this is because they have capital exceeding £16,000 which is the upper limit for appointee's, require tenancy management or have private incomes. The authority also manages a few appointees whose income is such that a deputyship should be in place however emergent action was required to support the individual and an appointee was undertaken as an interim option.

- 2.18 The 52 appointees who will need to be moved to a deputyship will incur £90k in first year fees, £1,736 individually. These are the fees that are applied to onboard a Deputy excluding Court Costs however these fee's drop after year one to £866 per deputy held. This means these same 52 deputies will be charged £45k per annum for the service on an ongoing basis. This is broken down as follows:

Deputyship	Fixed Fee	
	Year 1	Year 2
Application Fee	£745.00	
Annual Management	£775.00	£650.00
Annual Report Fee	£216.00	£216.00
Total	£1,736.00	£866.00

- 2.19 Before any appointee is moved a full review and updated mental capacity assessment will be undertaken to ensure appropriate action and controls are in place.
- 2.20 The policy will be applied, subject to consultation and Cabinet approval, from 1 April 2024.

3. Options Appraisal

- 3.1 **Do Nothing** – The existing charge can be left and not increased and the Deputyship Service provided free of charge, this would be at a financial cost to the authority. As the service is not a statutory function it would be providing staff and resources to with no return or grant support. As the service grows the resourcing requirements would increase, further impacting the financial costs.
- 3.2 **Remove the services** – Both appointee and deputy services are not a statutory function and can be removed. Whilst this could provide an initial saving in staff resourcing there would be a considerable risk to the existing appointees and future appointee's. The service was created to support those who did not have the capability, family or friends to find an alternative, the burden would then fall to the support worker to enable this activity. This would increase the workloads of the support worker and if not undertaken, leave the resident at risk of failing to pay rent, utilities, care, be evicted or financially abused.
- 3.2 **Implement New Charges** – This would allow for the provisions of both services, provide greater financial stability within the service and the ability to take on more residents needing this service.

4. Consultation

- 4.1 The proposals in this report were considered and endorsed by the Adults Improvement Board on 16 August 2023.
- 4.2 Full consultation will be undertaken with those effected by this policy with the support of advocates and any supporting friends or family, prior to its implementation on 1 April 2024.

5. Financial Implications

Implications completed by: Paul Durrant, Finance Manager

- 5.1 Currently based on a cohort of 77 clients, the full year income for annual fees equates to £32k.
- 5.2 If the proposal was adopted the annual fees for appointee ship would generate £15k and deputy ship would generate £51k (£66k in total).
- 5.3 There are additional fees to be charged for application and set up costs, which would be dependent on the number of new starters each year.
- 5.4 The appointeeship set up costs are £150, with discharge costs of £75. Given the size of the cohort of 25, this is likely to generate less than £1,000 per annum.
- 5.5 The deputyship set up costs are £745. Given the size of this cohort of 52 and assuming five new clients per annum. this is likely to generate £4k per annum.
- 5.6 In total, the proposal, would general £70k per annum, which is currently £38k more than the current charges.

6. Legal Implications

Implications completed by: Sarah (Okafor) Dawkins, Barrister Consultant on behalf of the Chief Legal Officer, Alison Stuart

- 6.1 There appear to be no external adverse legal implications arising for the Council from the proposed recommendations as set out.

7. Other Implications

- 7.1 **Risk Management** – Those being consulted on have mental impairments which effect their ability to make financial decisions independently. An advocacy service has been engaged to aid all affected persons through the consultation process and/or any family/friends or PA's in place.
- 7.2 **Corporate Policy and Equality Impact** – By nature of the service, all clients fall under the protected characteristic of disability. All clients in need of appointee or deputyship are identified by social care and as a result of the Council providing this service, we are able to support these vulnerable residents, and prevent these clients from having to pay for this service in the private market, often at a greater cost.

Both appointee and deputy services are non-statutory functions, but the removal of which would put both existing and future appointees at significant risk. The service was created to support those who did not have the capability, family or friends to find an alternative, the burden would then fall to the support worker to enable this activity.

Throughout the consultation process we will be using Disablement Association of Barking and Dagenham (DABD), as advocates for all clients. They will be contacting clients and meeting with them in person to get to know them. This will

allow them to identify what our clients understand, and what elements of the decision-making process they can partake in. Where clients lack the capacity to fully engage, DABD will act as advocates on their behalf to ensure that their voices are heard throughout the consultation process. Attached at Appendix 2 is the full Equality Impact Assessment.

- 7.3 **Safeguarding Adults and Children** - Adults being consulted on have mental impairments which effect their ability to make financial decisions independently. An advocacy service has been engaged to aid all affected persons through the consultation process and/or any family/friends or PA's in place.

Public Background Papers Used in the Preparation of the Report:

- Mental Capacity Act 2005 Code of Practice [Mental-capacity-act-code-of-practice.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262222/mental-capacity-act-2005-code-of-practice.pdf)

List of appendices:

Appendix 1: Appointee and Deputyship Policy

Appendix 2: Equality Impact Assessment