

APPOINTEE AND DEPUTYSHIP POLICY

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1. INTRODUCTION

- 1.1 Individuals with impairments of or disturbances in the functioning of their mind or brain may, at times, have difficulties making decisions. Specifically in the context of this policy, those difficulties can impact the person's ability to manage their property and financial affairs.
- 1.2 If such an individual is deemed to lack capacity to manage aspects of, or make specific decisions about their affairs, they may appoint someone to make these decisions for them or someone may be appointed for them.
- 1.3 If the person also lacks capacity to appoint someone, the **Authorised Officer** will apply to become the person's **appointee** or **deputy** subject to the criteria specified within this policy.
- 1.4 In carrying out our duties, the Authorised Officer and its delegated officers ("delegates") will be guided by the principles and criteria within this policy and will act in compliance with the relevant statutes and official guidelines.

2. POLICY STATEMENT

- 2.1 This policy guides the Authorised Officer and its delegates, but also communicates to the public and other interested parties how the local authority will act as a public authority deputy and appointee.
- 2.2 Unless otherwise stated, this policy strictly applies to the local authority's role as a public authority property and affairs deputy, appointee and when acting as a litigation friend for the sole purpose of administering funds held with the **Court Funds Office** ("CFO").
- 2.3 This policy does not apply to **personal welfare deputyships**.
- 2.4 The Authorised Officer and its delegates must adhere to the principles, statutes and official guidelines set out in this policy.
- 2.5 Specific and detailed procedure documents provided for the Authorised Officer and its delegates are guided by this policy.

3. PRINCIPLES

- 3.1 The following principles must underpin the actions and decisions of the Authorised Officer and its delegates:

- i. Always start from the assumption that the individual has capacity to make the decision.
- ii. Empower the individual to make their own decisions by offering or ensuring they have been provided with all practicable support to maximise their capacity.
- iii. Before making a decision or acting on behalf of the person who lacks capacity, consider what else could be done that would interfere less with their basic rights and freedoms. This includes considering whether there is a need to act or make a decision at all.
- iv. Encourage participation and autonomy but balance this with safety and protection.
- v. Make decisions in the person's best interests, considering their views, feelings, beliefs, values, history and circumstances.
- vi. Be transparent and accountable.

3.2 These principles are guided by the statutes, codes of practice, standards and court judgements provided in the next section.

4. STATUTES AND OFFICIAL GUIDELINES

Statutes

4.1 The following are primary statutes:

- i. Mental Capacity Act 2005¹
- ii. The Social Security (Claims and Payments) Regulations 1987²
- iii. The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013³
- iv. The Court of Protection Rules 2017⁴
- v. Human Rights Act 1998⁵
- vi. The Data Protection Act 2018⁶

¹ <https://www.legislation.gov.uk/ukpga/2005/9/contents>

² <https://www.legislation.gov.uk/uksi/1987/1968/contents>

³ <https://www.legislation.gov.uk/uksi/2013/380/contents>

⁴ <https://www.legislation.gov.uk/uksi/2017/1035/contents/made>

⁵ <https://www.legislation.gov.uk/ukpga/1998/42/contents>

⁶ <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

Official Guidelines

4.2 The following are primary official guidelines and standards:

- i. Mental Capacity Act 2005: Code of Practice⁷
- ii. OPG Deputy Standards: Guidance for Public Authority Deputies⁸
- iii. Significant Court of Protection judgements

Mental Capacity Act 2005

4.3 The Mental Capacity Act 2005, covering England and Wales, provides a statutory framework for people who lack capacity to make decisions for themselves. It sets out who can take decisions, in which situations, and how they should go about this.

4.4 Within the framework are five statutory principles which are adopted by this policy. These principles are:

- i. A person must be assumed to have capacity unless it is established that they lack capacity.
- ii. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- iii. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- iv. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- v. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

4.5 The legal framework provided by the Mental Capacity Act 2005 is supported by the Code of Practice, which provides guidance and information about how the act works in practice.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921428/Mental-capacity-act-code-of-practice.pdf

8

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139348/opg-deputy-standards-guidance-for-public-authority.pdf

Deputy Standards

- 4.6 The seven standards (excluding standard 7, which applies only to personal welfare deputies) set out by the **Office of the Public Guardian** (“OPG”) in its *Guidance for Public Authority Deputies* are adopted by this policy:
- i. **Obligations:** having an awareness of the relevant statutes and guidelines. Acting only within the powers granted and reviewing whether they are still required. Not taking advantage of the position and keeping accurate records and accounts. Ensuring the person is indemnified against negligence. Making only appropriate court applications.
 - ii. **Best interest decision making:** make sure that all the decisions made are in the best interests of the person, that records of decisions are kept and encouraging participation.
 - iii. **Maintaining contact with the person:** engage with the person in an appropriate manner taking into account their individual circumstances.
 - iv. **Financial management:** managing the person’s finances appropriately depending on the particular assets of their estate. Ensuring all assets and liabilities are investigated, paid, secured and kept separate. Providing the person with sufficient funds for them to use for personal expenses.
 - v. **Financial record keeping:** keep financial records up to date and recording the relevant factors as to what was spent and why.
 - vi. **Property management:** manage the person’s property in line with the deputyship order and in their best interests. Securing and maintaining property and selling property only when it is in the person’s best interests.
 - vii. **Additional obligations:** to audit internal files, report concerns about other deputies, comply with other regulatory bodies and report any investigations about us to the OPG.
- 4.7 Whilst these standards apply when we act as deputy, we will uphold the same standards (where applicable) when acting as appointee and/or litigation friend.

Appointee Standards

- 4.8 The official responsible of an appointee are to:
- i. Sign the benefit claim form; and

- ii. Tell the benefit office about any changes which affect how much the claimant gets; and
- iii. Spend the benefit (which is paid directly to us) in the claimant's best interests; and
- iv. Tell the benefit office if we stop being the appointee, for example the claimant can now manage their own affairs.

4.9 In addition to the official standards, we will

- v. Ensure benefits are maximised, i.e., all entitled benefits are received or claimed; and
- vi. Ensure the individual receives their personal allowance(s); and
- vii. Ensure any bills or payments are invoiced accurately and are due before making payment, and
- viii. Assist in producing a personal budget for the individual, where necessary.

4.10 There are limitations to an appointeeship and some of these are listed below:

- i. Receive any incomes other than those paid by the State.
- ii. Invest or manage bank accounts held in the person's name.
- iii. Make decisions about the person's debt, except that owed to the DWP.
- iv. Sign the person's tenancy agreement and/or agree any changes to it.

5. ELIGIBILITY CRITERIA

5.1 If an individual meets the following criteria, we will apply to become their deputy, appointee and/or litigation friend (for the sole purpose of administering their CFO account).

5.2 Each role (deputy, appointee and litigation friend) has its own criteria as laid out in this section.

5.3 A formal assessment of a person's capacity will be carried out by a qualified professional, who must record their assessment in a report. The report in turn will be scrutinised by a panel of relevant experts before its findings are accepted.

5.4 The panel must review whether the assessment is statutory compliant and that the report sufficiently supports the professional's findings with consideration to paragraph 28 of the judgement given in *AMDC v AG Anor*⁹.

Deputy

5.5 We will apply to be the person's deputy if:

⁹ <https://www.bailii.org/ew/cases/EWCOP/2020/58.html>

- i. The person's **ordinary residence** is within the area of the London Borough of Barking and Dagenham; **and**
- ii. The person does not already have a deputy or lasting power of attorney (or a legacy attorney); **and**
- iiia. The person has no one willing to be their deputy or lasting power of attorney; **or**
- iiib. The person has no one willing to be their deputy and they lack capacity to make a lasting power of attorney; **and**
- iv. The person lacks capacity to manage aspects of their property and affairs; **and**
- v. It is appropriate to do so.

5.6 We reserve the right to refuse to be the person's deputy:

- i. Where there is suitable family who could be the person's deputy or make arrangements for a deputyship; **or**
- ii. The person's total capital exceeds £85,000; **or**
- iii. The person has property to be managed.

5.7 If we refuse to be someone's deputy for the reasons given in 5.4 (ii) and (iii), we will apply to the **Court of Protection** and request that the person be allocated a **Panel Deputy**¹⁰.

5.8 If the person has a deputy or power of attorney but they are no longer suitable or unwilling to continue to act then we may apply to be deputy, subject to the other criteria being met.

Appointee

5.9 We will apply to be the person's appointee if:

- i. The person's ordinary residence is within the area of the London Borough of Barking and Dagenham; **and**
- ii. The person does not already have an appointee, deputy or lasting power of attorney (or a legacy attorney); **and**
- iiia. The person has no one willing to be their appointee; **or**
- iiib. The person lacks capacity to choose an appointee; **and**

¹⁰ <https://www.gov.uk/guidance/panel-deputies-list-of-court-approved-professionals>

iv. The person lacks capacity to manage aspects of their finances.

5.10 We reserve the right to refuse to be the person's appointee where there is suitable family who could be the person's appointee or could arrange an appointeeship.

Litigation Friend

5.11 We will apply to be a person's litigation friend if:

- i. All litigation has ended; **and**
- ii. The person has money held with the Court Fund Office; **and**
- iii. The person lacks capacity to manage the funds paid in court.

5.12 We reserve the right to refuse to be a person's litigation friend for any lawful and fair reason.

6. THE PERSON'S ESTATE WHEN THEY DIE

6.1 When a person dies and it appears to us that no suitable arrangements are in place to wind up the person's estate and/or dispose of their body, we will carry out work toward "**winding up**" the estate and any statutory duties under Section 46 of the Public Health (Control of Disease) Act 1984¹¹.

6.2 Work that we may carry out will be, but is not limited to:

- a. Arrange for disposal of the deceased's body
- b. Search for a Will
- c. Search for information about the estate
- d. Value the estate
- e. Filing the appropriate forms
- f. Search for next of kin / genealogy
- g. Secure property
- h. Gather together estate assets and liabilities

6.3 The amount of work we do will vary depending on the circumstances. At a minimum, we will try to locate a Will or next of kin and dispose of the body when required under Section 46.

¹¹ <https://www.legislation.gov.uk/ukpga/1984/22/part/III/crossheading/disposal-of-dead-bodies>

6.4 Where there is no Will nor next of kin, we will refer the estate to the Government Legal Department acting on behalf of the Crown who will take lawful possession of the estate.

7. COSTS AND CHARGES

7.1 **Appendix 1** (“the schedules”) list all costs and fees payable to us and some common costs to third parties. All costs, fees and charges are payable from the person, or as indicated.

7.2 The local authority has no statutory duty to be someone's deputy, appointee or litigation friend but recognises there is a local need. In delivering this service we are mindful of how a non-statutory service impacts and burdens taxpayers. To reduce this burden a charging model has been adopted that aims to cover the service running costs.

7.3 The charges will be reviewed periodically to ensure that they continue to be:

- i. Fair and reasonable
- ii. Affordable
- iii. Compliant with relevant statutes and official guidelines
- iv. Not for profit

7.4 The costs and fees we charge are considered remuneration for the work we do. We do not intend to profit from the work and any surplus above the costs for carrying out the work will be used to invest in the service.

7.5 We reserve the right to not charge for our costs, charge less than and no more than the amounts in the schedules or, for deputy fixed costs, no more than allowed under Practice Direction 19B (which may change before the schedules can be updated).

7.6 Fees and costs to third parties, such as the Court of Protection and the Office of the Public Guardian are not set by this policy and may differ from what is shown in the schedules. The amount payable is whatever is charged by these organisations and other third parties.

Deputyship Fees and Costs

7.7 Public authority deputies are entitled to take costs for the work that they have carried out throughout a management year.

7.8 When we are appointed deputy, the Court of Protection make a court order outlining our authority as deputy. One such authority is the entitlement to be paid in respect of the work done on behalf of the person. Under the “Costs and expenses” section of the court order, the judge will outline how we should be remunerated, which is typically either fixed costs or detailed assessment by the **Senior Courts Costs Office**.

- 7.9 Practice Direction 19B¹², which supplements Part 19 of the Court of Protection Rules 2017 sets out the fixed costs public authorities may charge in remuneration for their work as someone's deputy.
- 7.10 Where a court order provides for a detailed assessment of our costs, we may decide to take fixed costs in lieu of a detailed assessment, but this is not mandatory.
- 7.11 Fixed costs are not expected to cover our costs however, there is no intention to have our costs assessed within the first year of this policy taking effect. If we decide to have our costs assessed, we will publish an updated assessed costs schedule.

Appointee Fees and Costs

- 7.12 A person whose income is solely from state benefits have a fixed income, and this will be the circumstance for the majority of persons whom we act solely as appointee. As such, a fixed costs model is deemed the most reasonable and affordable model.
- 7.13 There is a disparity of work required for an appointee acting for a person in the community and for a person living in a nursing/care home or hospital. This is reflected in the fixed costs. However, where someone occupies a nursing/care home or hospital setting but in practice require a similar amount of work as those in the community, we may charge a fee up to the amount charged to those in the community.

Litigation Friend Fees and Costs

- 7.14 Unless we are the person's deputy, the relevant costs in the schedules for work carried out as the person's litigation friend apply.

Deceased Person Fees and Costs

- 7.15 Section 46 of the Public Health (Control of Disease) Act 1984 places a duty on us to dispose of the deceased's body where it appears to us that no suitable arrangements for the disposal of their body have been or are being made. The same act allows for us to recover our costs for carrying out this work from the deceased's estate.
- 7.16 We will also charge a fee for our costs winding up a deceased person's estate. Our costs are for work carried out concluding a deceased person's estate, to whatever extent is required or considered necessary. The work carried out will vary depending on the circumstances, size and complexity of the person's estate. As such, our costs are based on the time we spend on this work.

¹² <https://www.judiciary.uk/wp-content/uploads/2022/09/pd-19b-fixed-costs-1.pdf>

Miscellaneous Fees and Costs

- 7.17 We will charge our costs for work carried out putting together records and accounts. Records and accounts will only be provided where it does not breach statutes or the confidence of the person (whether alive or deceased) who the records and accounts pertain to. Our fee is payable by the person or organisation requesting the service unless they are acting on behalf of another person, then it is payable by that person or their estate.

APPENDIX 1 – COSTS AND CHARGING SCHEDULES

DEPUTY FIXED COSTS SCHEDULE		
Category	Detail	An amount not exceeding*
Category I	<p>Application Fee</p> <p>Work up to and including the date upon which the court makes an order appointing us or another person or organisation as deputy for property and affairs.</p>	£745
Category II	<p>Annual Management Fee**</p> <p>a) In the first year:</p> <p>b) For the second and subsequent years:</p> <p>c) Where the net assets of the client are less than £16,000:</p>	<p>£775</p> <p>£650</p> <p>3.5% of the total value of the client's net assets on the anniversary of the court order appointing the local authority as deputy</p>
Category III	<p>Annual Property Management Fee**</p> <p>Work involved in preparing property for sale, instructing agents, conveyancers, etc or the ongoing maintenance of property including management and letting of a rental property or properties where 'P' is a tenant.</p>	£300
Category IV	<p>Annual Report Fee</p> <p>Preparation and lodgement of a report or account to the Public Guardian.</p>	£216 per report
Category V	<p>HMRC Income Tax Return Fee</p> <p>Basic Return (Preparation of bank or NS&I interest and taxable benefits):</p> <p>Complex Return (Basic return with a small investment portfolio):</p>	<p>£70</p> <p>£140</p>

Disbursements	Disbursements We can use a person's funds to pay for specialist services that they would normally have been expected to pay if they had retained capacity. These services include but are not limited to conveyancing, obtaining expert valuations and obtaining investment advice.	Actual cost as charged by the supplier.
Travel Rates	Travel Fee Deputies can claim travel costs for each hour spent travelling, regardless of the pay or position in the organisation of the person travelling.	£40 per hour
Outsourcing of Work	Outsourcing of Work When we outsource deputyship work, client's will not be expected to pay any more than they would if the work had been carried out by us.	the fees stated above for their respective service or disbursement.
<p>*The fixed costs are set by <i>Practice Direction 19B Fixed Costs in the Court of Protection Practice Direction</i>. If the practice direction fixed costs differ from this schedule, the costs of the practice direction are overriding.</p>		
<p>**Charged pro-rata (a proportional amount will be charged if the anniversary date is brought forward, e.g., if the deputyship ends or the client no longer has property to manage).</p>		

DEPUTY ASSESSED COSTS SCHEDULE		
Category	Description	Cost
General Management	Remuneration and Costs When the Court of Protection provides an order for our costs and charges to be assessed.	The amount agreed by the Senior Courts Costs Office.

COURT OF PROTECTION – FEES*		
Category	Description	Cost
Application Fee	Payable on making an application to start court proceedings or on making an application for permission to start proceedings.	£371
Appeal fee	Payable on filing an appellants notice appealing a court decision or seeking permission to appeal a court decision.	£234
Hearing fee	Payable where the court has held a hearing to decide the application and has made a final order, declaration or decision.	£494
Copy of document fee	Payable on requesting a copy of a document filed during court proceedings.	£5

***All fees are recoverable from the person the application is about. Fees may not apply or may be reduced if a successful application (COP44a) for an exemption or reduced fee is made.**

The Court of Protection publish these fees online:
<https://www.gov.uk/government/publications/court-of-protection-fees-cop44>
If the fees differ to this schedule, the fees published by the court are overriding.

OFFICE OF THE PUBLIC GUARDIAN – FEES*		
Category	Description	Cost
General supervision fee	An annual supervision fee.	£320
Minimal supervision fee	Applies to some deputies managing less than £21,000.	£35

***All fees are recoverable from the person with the deputy. Fees may not apply or may be reduced if a successful application (OPG120) for an exemption or remission is made.**

The Office of the Public Guardian (OPG) publish these fees online:
<https://www.gov.uk/government/publications/deputy-fees-remission-or-exemption>
If the fees differ to this schedule, the fees published by the OPG are overriding.

APPOINTEE COSTS SCHEDULE		
Category	Description	An amount not exceeding
Setup Fee	All work up to and including the date we receive the first benefit payment.	£150
Management Fees	A annual fee from the date of first benefit payment received. Community-based: Care/Nursing home or hospital based:	£650* £500*
*Charged pro-rata (a proportional amount will be charged if the anniversary date is brought forward, e.g., if the appointeeship ends before the annual charge is due).		

LITIGATION FRIEND COSTS SCHEDULE		
Category	Description	An amount not exceeding
Setup Fee	Work involved but not limited to setting the person up on our systems, banking platform, and registering with the Court Fund Office.	£150
Administration Fee	Work involved but not limited to account drawdowns, book and record keeping, spending, arranging and reviewing spending schedules and reporting. Administrative work: Travel:	£35 per hour £40 per hour

PREPAID PAYMENT CARD COSTS SCHEDULE		
Category	Description	Cost
Finance Management	Prepaid cards – If applicable	Actual cost as charged by the supplier or third party

BANK ACCOUNT COSTS SCHEDULE		
Category	Description	Cost
Banking	Bank account management costs	Actual cost as charged by the bank

DECEASED PERSON COSTS SCHEDULE		
Category	Description	Costs
Final Disposition – Burial, Cremation, Donation to Science.	Work carried out under Section 46 of Public Health (Control of Disease) Act 1984	
	Administrative work:	£35 per hour
	Travel:	£40 per hour
	Disbursements:	Actual cost as charged by the supplier or third party
“Winding Up” Costs	Work carried out with winding up the estate.	
	Administrative work:	£35 per hour
	Travel:	£40 per hour
	Disbursements:	Actual cost as charged by the supplier or third party

MISCELLANEOUS COSTS SCHEDULE		
Category	Description	Costs
Records Request	For the work involved in putting together records and accounts.	
	Administrative work:	£35 per hour
	Travel:	£40 per hour
	Disbursements:	Actual cost as charged by the supplier or third party

APPENDIX 2 – DEFINITIONS

Word or Term	Definition
Appointee	An appointee is a person or organisation that is registered with the Department for Work and Pensions (DWP) to manage a person's benefits if they lack capacity to do this themselves.
Authorised Officer	The authorised officer is the person in the local authority, usually at director level, who has been appointed to perform the duties of an appointee or deputy. NB the day-to-day management of these duties is delegated to specialised officers.
Court Funds Office	The Court Funds Office provides banking and investment services for money paid into court. The office deals with the assets of people who are unable to manage their own financial affairs.
Court of Protection	The Court of Protection is a specialist court that makes decisions about the property, finances and personal welfare of those who lack the mental capacity to take decisions themselves.
Deputy	A deputy is someone appointed by the Court of Protection to deal with the property and financial affairs of a person who lacks the mental capacity to do so themselves.
Lacks Capacity / Incapacity / Lack of Capacity / Lacks Mental Capacity	A person who lacks capacity is someone who at the material time they are unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
Litigation Friend	A litigation friend is someone who helps a “protected person” with their legal issues. A protected person is an adult who cannot manage their own affairs as a result of lacking the necessary mental capacity to make legal decisions about the issue in question.
Mental Capacity	Mental capacity is a person's ability to make decisions for themselves, at the time a decision needs to be made.
Office of the Public Guardian	The Office of the Public Guardian in England and Wales is a government body that, within the framework of the Mental Capacity Act 2005, polices the activities of deputies who act to protect the financial affairs of people who lack the mental capacity for making decisions about such things.

Ordinary Residence	A person's ordinary residence is typically in the area in which they resided immediately before they began to receive care under the Care Act 2014. Further nuance is provided within the Care Act 2014 ¹³ .
Panel Deputy	Some professional deputies are called “panel deputies”. They are appointed by the Office of the Public Guardian. The Court of Protection chooses from a list of panel deputies when no one else is willing or able to act as a deputy for someone who lacks mental capacity.
Personal Welfare Deputy	A personal welfare deputy makes decisions about medical treatment and how someone is looked after.
Senior Courts Costs Office	The Senior Courts Costs Office assess the costs incurred by deputies appointed by the Court of Protection in respect of general management.
Winding Up	Winding up, for the purpose of this policy, refers to the work carried out concluding a deceased person’s estate, to whatever extent is required or considered necessary.

¹³ <https://www.legislation.gov.uk/ukpga/2014/23/part/1/crossheading/establishing-where-a-person-lives-etc/enacted>