



Office of the
Public Guardian

**Fundamental Review
of the
Supervision
of
Court Appointed Deputies
by the Public Guardian**

Report to Parliament

December 2014

Fundamental Review of the Supervision of Court Appointed Deputies by the Public Guardian

Report to Parliament

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Fundamental Review of the Supervision of Court Appointed Deputies by the Public Guardian

Report to Parliament

Executive Summary

Background

The Parliamentary Under-Secretary of State for Justice announced in an adjournment debate in October 2012 that the Public Guardian was to commence a fundamental review of how deputies appointed by the Court of Protection to protect people lacking mental capacity are supervised. This report is to inform Parliament of the findings of the review and to set out what measures are now being implemented.

The Public Guardian's statutory duty derives from the Mental Capacity Act 2005 (MCA). Deputies are appointed by the Court when a person loses their mental capacity and has given no other person the authority to make a decision on their behalf. The question of capacity is time and decision-specific: people can have fluctuating capacity, improving capacity, diminishing capacity, steady incapacity; capacity can be held in certain matters, perhaps around accommodation, clothes, food, while there may be no capacity on decisions regarding finance, say.

The person lacking mental capacity is at the heart of all that the Office of the Public Guardian (OPG) does. OPG must address each person based on the elements of their individual circumstances, as outlined above.

Rationale for the review

There were a number of customer, business and external drivers which led to the launch of the fundamental review.

- Customers and stakeholders described some dissatisfaction with the standard of OPG's customer service
- Some Members of Parliament were concerned at the charges being levied by professional deputies in specific cases
- The supervision caseload had more than doubled since the commencement of the MCA and growth is predicted to continue
- Digital technology opportunities became available
- A new Public Guardian provided the vision to address the customer and business imperatives

Aims of the review

The supervision review aimed to generate a responsive, case-sensitive approach to supervision, with effective and proportionate oversight, in order to ensure that the person lacking capacity is protected and their needs met.

Conduct of the review

The review needed to gain a view of the existing model of supervision, so gathered evidence from staff, customers, wider stakeholder bodies, other guardianship organisations beyond England & Wales, and other UK supervisory bodies with significant caseload. A sample of people lacking capacity were also able to give their views. The review drew heavily on 'Nudge' theory; for our purposes, that shows

that people may be encouraged into doing the right thing if they are nudged in the right direction early in the process.

A number of key design principles were established, against which to test a new delivery model. The model had to be proportionate, supportive and sustainable; and it had to be acceptable to and manageable by staff, on whom success depends. Staff engagement and collaboration were vital elements throughout the review.

Findings

The main finding of the review was that the delivery model in existence in 2012 required re-focussing. It had been effective as the means of implementing the MCA and establishing OPG. The focus on the customer needed to be reinforced. This would require a fundamental redesign of the delivery model, not marginal or incremental improvement.

Proposals from the review were included in a public consultation. Respondents were broadly supportive. The government response to the consultation was issued on 21st August 2014.

Implementation

Important changes that OPG has introduced, and others in planning, are seeing the creation of that fundamentally new delivery model by which OPG will support and supervise the growing numbers of court-appointed deputies in a proportionate way. Measures include better guidance, closer relations with the Court, early contact, digital channels, targeted visits, specialist teams taking an end-to-end case management approach, better control of professional deputy charges, fuller reporting, efficient back office IT, dynamic risk assessment and the targeting of activity quickly. Together they will provide proportionate oversight, building engagement around the needs of the deputy and risk in the case at any given time.

The most fundamental change that has taken place is the move to supervising according to deputy type, so that staff may specialise in one of the deputy types: lay, local authority or professional/ panel. They will learn about the particular challenges facing their group, and will build relationships with their assigned deputies. At the same time, staff will be empowered and accountable for resolving issues in their designated cases (with support). This is a culture change for OPG, so presents challenges; but it marks a sizeable step towards a more customer centric delivery model, creating the ability to supervise and support deputies in a way more tailored to their specific needs. This ultimately better addresses the needs of the person lacking capacity.

The new model will also provide better control of professional deputy charges. OPG has stakeholder support for several new measures, such as requiring annual plans, with work and cost estimates, which can be scrutinised both beforehand and after the fact, and a comparison made. There is also work underway to explore with the Senior Court Costs Office whether there would be benefit from more sophisticated relationships, so that we understand each other's domains better. It is the intention that these several measures will address MPs' concerns on the level of charges, and we will review whether they have done that.

Work continues on initiatives to ensure the provision of an accessible and proportionate deputyship service. OPG maintains a panel of deputies to whom the court can refer any last resort cases, ie where there is no-one who is willing, suitable, or able to act as deputy. We aim to include a wider diversity of organisation types on

the panel so that there are more options when considering how to protect people lacking capacity.

Also, as part of the overall drive to improve the service OPG offers to its customers, OPG will be seeking views via a public consultation this autumn on the fees charged for supervising deputies.

Review Conclusion

The measures taken to date, as well as those planned, will see the creation of a fundamentally new delivery model. This will benefit those people OPG supports and supervises, the growing numbers of court-appointed deputies, who in turn are the means by which people lacking capacity are protected.

New technologies will be interwoven with the new business processes to ensure that OPG maximises its effectiveness, customer service and efficiency. Customer, staff and other stakeholder satisfaction will be enhanced. The model will give a high level of assurance that people lacking mental capacity who are under a deputyship order are being protected and their needs met.

The concern amongst some MPs about the charges made by professional deputies, which was one of the drivers for the fundamental review, is being addressed in several ways, as outlined in this report. There will be review and feed forward work to ensure this is effective and satisfactory.

The view of the Public Guardian is that the fundamental review has succeeded in its aims to generate a responsive, case-sensitive approach to supervision, with effective and proportionate oversight, in order to ensure that the person lacking capacity is protected and their needs met.

Fundamental Review of the Supervision of Court Appointed Deputies by the Public Guardian

Report to Parliament

Introduction

1. The Parliamentary Under-Secretary of State for Justice, during an adjournment debate on 30 October 2012, announced that the Public Guardian was to commence a fundamental review of how the Office of the Public Guardian supported him in fulfilling his statutory duty to supervise deputies appointed by the Court of Protection.
2. This report is to inform Parliament of the findings of the review and to set out what measures are now being implemented in order to protect people lacking mental capacity.
3. This report is in five main sections:
 - 01 describes the background and why the review was launched
 - 02 sets out the objectives the review sought to achieve
 - 03 covers how the review was conducted
 - 04 gives an overview of what the review found, and
 - 05 outlines what measures will now be implemented as a consequence.

Section 1 - Background

4. The Public Guardian's statutory duty to supervise deputies appointed by the Court of Protection derives from s58 of the Mental Capacity Act 2005 (MCA). This came into effect in October 2007.
5. Deputies are appointed by the Court of Protection to cover the contingency of a person losing their mental capacity and not having given another person the authority to make a decision on their behalf. That donation of power may be made while someone has mental capacity by means of a Lasting Power of Attorney (LPA), a legal deed. There also exist Enduring Powers of Attorney (EPA); the MCA replaced these with LPAs in 2007, although EPAs made before then remain valid.
6. The types of decision which one person may make on behalf of another via an LPA include:
 - property and affairs, which includes financial matters
 - personal welfare, including healthcare and consent to medical treatment.
7. If a person has not made an LPA or EPA, at the point at which it becomes clear that they lack mental capacity and need someone to manage their affairs and/ or

welfare, the option open is for the Court to appoint a deputy. The Court of Protection is a superior court of record, with the same powers, rights, privileges and authority as the High Court. The Court has power to decide if a person has capacity to make decisions, or a particular decision; and it may appoint deputies to make decisions for people lacking capacity.

8. The person lacking capacity is at the heart of all the OPG does. A significant body of work has been done to ensure that the culture of the organisation recognises that in practice. The stated vision, beliefs and values are all focused on this, seeking to encourage the thoughts and actions of every single person in the Office of the Public Guardian to revolve around the best interests of the person lacking capacity.

9. This is particularly important with regard to deputies. Unlike an LPA, individuals lacking capacity do not choose who will act as deputy for them. There are measures designed to ensure that the Court appoints an appropriate deputy; and the OPG will then supervise those deputies and support them in carrying out their duties, while also making sure they do not abuse their position.

10. The MCA and the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 provide the Public Guardian with powers to support and supervise, including provisions for Visitors, access to social care and health records, arrangements for security, and powers to request reports and specified information from deputies.

11. The delivery model for supervision is not prescribed and this is the responsibility of the Public Guardian.

12. The supervision model that existed prior to the fundamental review stemmed from the run-up to implementation of the Mental Capacity Act in October 2007. The then Public Guardianship Office commissioned work from Price Waterhouse Cooper in July 2006. The report outlined the elements of a proposed supervision model. These recommendations were accepted and implemented.

13. One of the key factors informing the initial design of the supervision model was the ability of the Court to make orders that would limit a deputy's powers in both extent and duration where it was deemed necessary. It followed that in the majority of cases where the deputy was given extended powers, risk of the deputy acting inappropriately was judged by the Court to be relatively low, and hence supervision of the deputy by OPG would be minimal for a significant proportion of cases. The model was further designed with features intended to deter deputies from acting inappropriately, for example, by requiring deputies to lodge annual reports ("accounts") with the Public Guardian, which could be randomly selected for full review, and through a programme of visits.

14. Risk criteria were proposed to enable this model, which was a 3 tier-one. A primary criterion was the amount of money in the case. Consistent with the approach that pre-dated the Mental Capacity Act, when the Court of Protection could issue a "short order" for those with limited assets, cases with less than £16,000 were deemed low risk – termed "Type 3" – those with more were Type 2. OPG activity was designed to be commensurate with those two types: notably, Type 3 cases would not be required to report annually to OPG, there would be some contact by OPG every 3 years to ensure that circumstances (chiefly the level of assets) had not radically altered. Type 2 cases would be required to report annually, with a percentage selected for full review. Cases where a professional deputy had been

appointed, such as a solicitor or local authority, were generally assumed to be lower risk and allocated to Type 2 supervision.

15. Type 1 cases were where an issue arose, whether on a Type 2 or 3 case. This would require closer scrutiny by OPG – perhaps an investigation. The aim was to return the case to at least Type 2, or, of course, to act on any identified abuse.

16. In 2008, it was identified that the Type 2 and 3 structure was not sufficiently flexible to apply the necessary resources to cases which fell short of needing a Type 1 investigation. Type 2A was instigated in April 2009 after a public consultation¹.

17. The 4 tiers of the former supervision model are outlined in the table below.

Former Supervision Model

Supervision level	Type 1 (close)	Type 2A (intermediate)	Type 2 (light-touch)	Type 3 (minimal)
Type of deputyship	Property & Affairs Personal Welfare	Property & Affairs	Property & Affairs Personal Welfare	Property & Affairs
Delivered by	Compliance team Birmingham	Supervision Type 2A team Nottingham	Supervision Type 2 team Nottingham	Supervision Type 2 team Nottingham
2012 Caseload²	317 (0.7%)	8553 (20.4%)	22,385 (53.4%)	10,683 (25.5%)
Supervisory activity	Allocated caseworker Time-limited intervention Investigation Applications to Court Visits Report checking	Contact with new lay deputies on appointment Letters to 3 rd parties advising of OPG role Visits Report reviews Recovery of fees, bond premiums Annual case reviews	Report collection Random 10% check of reports Random 10% visits 3 – yearly case reviews	3 –yearly case reviews Reactive advice via Contact Centre

¹ CP26/08 “Reviewing the Mental Capacity Act 2005: forms, supervision and fees”

² As at April 2012. The number of deputies would be lower as some act for more than one client

Section 2 – Rationale for the Review

18. There were a number of customer, business and external drivers which led to the launch of the fundamental review.

External drivers

19. The external drivers that influenced the commencement of the supervision review included:

- Customer and stakeholder insight
- The introduction of the Care Bill in England and the Social Services and Well-being (Wales) Bill. These would introduce new responsibilities for safeguarding partnerships
- Parliamentary/ Political/ Ministerial awareness, highlighting the experiences of constituents
- The government's Dementia Challenge, launched in March 2012, aiming to promote better understanding of dementia, and improve service design to meet the needs of people with dementia
- The government's 'Digital by Default' policy, which opened opportunities to interact with customers digitally

20. One significant element behind the review was the concern held by some Members of Parliament at the charges being levied by professional deputies. There were specific cases where a significant proportion of the assets in the case had been eroded by the charges necessitated by the deputyship activity, and MPs wished the Public Guardian to consider whether he should take a stronger role in the control of such charges.

Customer and stakeholder drivers

21. Customer and stakeholder feedback identified issues in the delivery model. The model was based on case type (Type 1-3), as described above. The type was determined by an initial case assessment on appointment of a deputy, at which point there may have been little knowledge of the needs and circumstances of the person without capacity, the deputy's abilities or the demands of the case. While OPG enhanced the assessment criteria over the years, it still did not fully address the needs, skills or experience of the deputy, particularly those acting for more than one client. Furthermore, if a case was allocated at the outset to one of the lower supervision levels, the model was not always robust enough to identify those deputies who were struggling with their role. User research showed that the needs of deputies varied widely according to whether they were professional or lay, and whether they were new to the role or longstanding.

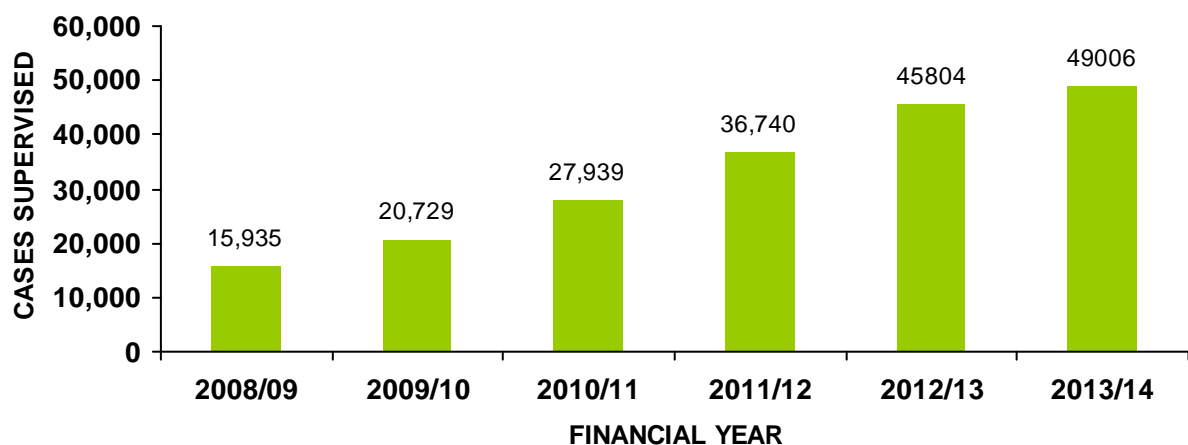
22. There was some dissatisfaction with the standard of OPG's customer service. The segmentation by case type meant that OPG letters and other communications could be issued to a deputy by several different members of staff within a short period of time, and could on occasions be contradictory. These communications sometimes steered around addressing an issue in case OPG was seen to be giving

legal advice. Overall, the emphasis was more on the supervisory aspect of OPG's role than on support. The implication was not that OPG wished to support deputies towards a good understanding of their role and responsibilities in order that they could ensure the needs of the person lacking mental capacity were met; the supervisory aspect of OPG's function was emphasised, which had the effect of alienating some of OPG's customer base.

23. One issue made apparent by the research was that the different Types (1, 2, 2A and 3) were not meaningful for customers and were not adding value for them. In the process of moving cases up or down the scale as circumstances changed or issues emerged, the basic issue could sometimes be lost. There could be delay as new teams reviewed the case history, and customers could receive contradictory advice from the different teams as people arrived at different conclusions, which was at best poor service and gave the perception that the person lacking capacity was not at the heart of what we do.

Business drivers

24. The supervision caseload has more than doubled since the commencement of the MCA and this growth is predicted to continue. The number of new deputy order received by OPG is approximately 12,000 a year, with about 10,000 cases ending each year. The average time that an order is active is 3.5 years. The current number of orders being supervised is over 51,000 so OPG is handling a significant and growing number of cases. Estimates are that, in future years, the number of new cases will increase, partly linked to the aging demographics of England and Wales.



25. Digital technology and the need to replace aging IT case management systems also presented opportunities to deliver supervision in new ways.

26. The appointment of a new Public Guardian (who is also the Chief Executive of the OPG) provided the vision to address the customer and business imperatives.

Aims and objectives

27. The supervision review aimed to generate a responsive, case-sensitive approach to supervision, with effective and proportionate oversight, in order to ensure that the person lacking capacity is protected and their needs met.

28. Any supervision regime was to achieve:

- appropriate protection for people who lack capacity by having mechanisms which provide assurance that their best interests are met;
- the provision of necessary support and guidance;
- prompt action to ensure compliance and in cases of fraud or abuse.

29. With these aims in mind, the objectives of the review were:

- To review fundamentally the Supervision model and establish change options which would apply the finite resources available to delivering a proportionate and reasonable level of assurance and oversight to the rapidly growing caseload, with enhanced customer and stakeholder satisfaction with the service
- To exploit the opportunities for efficiency improvements by replacing aging IT systems with an online user interface and a scaleable case management system
- To review to what extent the supervisory process should take into account the charges made by professional deputies
- To produce high level business requirements for the new replacement IT system
- To implement the new operating model with minimal disruption to deputies, stakeholders and staff

Section 3 – Conduct of the Review - Research and Engagement

30. It was vital at the outset of the review to gain an objective understanding of the effectiveness of the existing model of supervision, and to establish a robust and comprehensive evidence base about deputy user needs, to enable the review to identify what changes were needed.

31. To that end, the first phase of the review, carried out between October 2012 and April 2013, primarily focused on gathering and collating evidence from staff, customers, wider stakeholder bodies such as representative bodies, other guardianship organisations beyond England & Wales, and other UK supervisory bodies with significant caseload.

32. A number of pieces of research were conducted to gather insight and data from several sources. These took the form of 29,000 questionnaires, surveys and interviews of deputies of different types, as well as in-house studies and engagement with equivalent and similar supervisory agencies.

33. Staff performed an extremely valuable service in this research phase. There was a series of workshops with staff representatives, who described their frustrations with the existing delivery model. Staff were able to draw on some five years post-Mental Capacity Act experience, informed by their interactions with deputies. The new Public Guardian sat in on every one of those workshops and was able to gauge the capacity that existed for improvement, both in terms of service and in terms of job satisfaction, which are inextricably linked. His style of leadership was relationship-centred, based on mutuality. The McLeod Report “Engage for Success”³ made the business case for engaging the less deferential Generation Y employee. It quoted Gallup’s estimate that in 2008 the cost of disengagement to the UK economy was around £60bn. It recommended four things: strategic narrative; working together; listening to the employee voice; and integrity – values and actual behaviours overlapping. OPG recognised that organisational culture is critical and that engagement cannot flourish in a hierarchical command and control culture where behaviours do not appear to match stated values and managers are not prepared to trust and empower people. This engagement ethos was key for the supervision review (and, in due course for the new model which emerged).

34. One of the key pieces of research consisted of 60 semi-structured interviews carried out with lay, professional and local authority deputies across England and Wales. The aim of these was to explore deputies’ views on and understanding of the supervision regime, breaking this down into:-

- What led them to become a deputy and their experience with the Court of Protection
- Their thoughts on the OPG and supervision
- Clarity of guidance and correspondence, across all areas of supervision and including the customer contact centre where customer enquiries and issues are raised
- Their experience of being a deputy and the problems they encounter
- Levels of support from the OPG
- Annual Reports
- Visits
- Fees and value for money

³ <http://www.engageforsuccess.org/wp-content/uploads/2012/09/file52215.pdf>

35. The key findings of these interviews, set out in the box below, were then used to inform the planned change to the supervision model.

Overall, our findings suggest that recognising the type of deputy being supervised in a specific case – whether experienced or inexperienced, lay, professional, or local authority - is crucial. Lay, professional and local authority deputies manage their cases in different ways and have different needs. Even if a personalised ‘dedicated caseworker’ service would be unaffordable, the OPG can do more to make deputies feel OPG staff understand them and their circumstances.

There are also lessons about the importance of reputation. Those who experience poor service (eg are advised incorrectly, or receive a chasing letter despite having submitted their Annual Report) may never rely on OPG for support again. Those who have good experiences speak highly of the OPG. It is important that our staff understand the impact of the service they offer, each and every time to each and every customer.

Professional and Local Authority Deputies are generally competent and confident. They have a good understanding of decision making and nearly always involve the client and the family and friends where possible in the decision making process, but still tended to struggle with queries about gifting. Almost all visit their clients.

Most Lay Deputies were less confident, but many had read the Mental Capacity Act 2005 (MCA) or Code of Practice. Even where they had not, it was clear that most were still following the key principles of the MCA suggesting either that guidance has found its mark, or that the MCA reflects a moral ‘common sense’.

However, there was a lack of clarity about what OPG is providing in return for the fees charged. Many did not notice any appreciable difference in service or supervision when moved up or down supervision levels. There is a pressing need for more transparency about this and deputies’ expectations – depending on the level of supervision - need to be set from the outset.

For those needing support, all interaction with OPG was valued. Unsurprisingly, face-to-face visits were preferred, and the OPG InTouch newsletter was flagged by several as a useful way of sharing information and creating a sense of being part of a wider community. Deputy days were also valued.

Conversations with the person lacking capacity

36. As well as research into the views of deputies, it was important to understand how the supervision process specifically impacts the person lacking capacity, who we have termed in this section of the report ‘the client’. Therefore interviews were conducted with 28 clients with high-end capacity or who had recovered capacity, i.e. those who were able to give informed consent to participate in the research.

37. It must be stressed that these were the impressions of a relatively small number of clients – the overall deputyship caseload is currently over 50,000. Also, mental capacity is complex, not simple or binary. There are several classic profiles of capacity, such as decreasing (eg age-related), increasing (eg in some brain injuries), steady, fluctuating. Within that however, there may be people who lack capacity in one regard, such as managing their financial affairs, while retaining capacity on other aspects such as where they wish to live. And people will tend to be at different points in a capacity continuum (plus or minus a tolerance on any given day) - some people will be close to having capacity (and so some days will have it), others will be at some distance from it (so even on their best days will not have capacity).

38. This complexity is important to understand when assessing client feedback. The findings of this research with people lacking capacity highlighted the diversity and differing needs of our clients.

39. A clear message came through from all those interviewed about the diverse lives being led, with a range of wants and needs. The message was clear that we must not make the mistake of treating people as “just a number”. A clear message given by these individuals was that they had lives beyond their illness and as such wanted to be treated with respect and understanding. The principle of the MCA – “to take into account the wishes and feelings of the client” – is key in providing deputyship services to this group of people.

40. Although each individual client’s needs and wishes varied greatly, some themes emerged from the findings of these interviews. These key themes are set out in the box below.

Views from a sample of people lacking capacity

Knowledge & Awareness – There was little knowledge or understanding of the deputyship itself. Knowledge of the OPG and the Court of Protection (CoP) was poor. Clients were aware that they had a deputy but on the whole had little understanding beyond that.

General Involvement – The levels of involvement varied greatly. It appeared dependent both upon the level of capacity and also on the client’s personal wishes: some clients showed high levels of capacity (in one case the client had just concluded a course at University) but had very limited involvement in their finances or decision-making. Some clients were content with the involvement, others felt it could be greater.

Support – Again, the picture was patchy. The support that each client received differed greatly and the main support did not always come from the deputy. In a small number of cases clients had little to no interaction with the deputy, preferring to use a third party to liaise/negotiate on their behalf. In most cases clients required support with memory and understanding; in some cases, the client felt this was lacking, but in others the level of support from the deputy was felt to be fine.

Relationships – The client/deputy relationship varied greatly, some having a positive and happy relationship whilst others found the relationship challenging (seeing the deputy as authoritative, lacking understanding or compassion). In some lay deputy cases, the client worried about the pressures of the role. Relationships outside of the deputyship were sometimes difficult for clients. There were cases where family relationships had broken down due to the illness, family members asking for money and loneliness due to lack of social networks.

Communication – Clients with lay deputies saw better communication than those with professional deputies. Very few clients with professional deputies received financial statements but most had an annual review where they discussed asset levels and the needs of the client for the forthcoming year. Most communication from professional deputies was done by telephone, with the annual review being face to face. Many clients with professional deputies would have liked better/more communication. Some clients felt the communications/methods were poor, being left confused/upset as they either didn’t understand what they were being told or they didn’t remember what they had been told. Thus methods of communication were critical for this group to ensure that they understood and/or were given explanations that reassured them – this group of clients would have benefitted from their communication needs being better understood and communication adapted to suit those needs.

Independence - For clients still under a deputyship the level of independence varied from little/no independence to high levels of independence. Deputies reacted to clients' improvements in mental capacity and financial capabilities. As they improved deputies tended to increase the responsibility the client had over their finances. However independence to make decisions was not as widely observed, in the main being limited to clients making decisions on how to spend their personal allowance and/or asking for more money when they needed something.

Satisfaction – Overall satisfaction with the deputyship was high, however only a small number of these clients had no complaints. The areas that clients were most dissatisfied with were a lack of communication, and finding the deputyship restrictive. The clients who were dissatisfied overall with the deputyship were those who had gone on to make successful applications to the court to be reinstated to management of their own affairs.

Positives of having a deputy – The positives of having a deputy were seen to be:-

- o It's a safeguard
- o Clients would have spent the money by now if they hadn't had a deputy; and
- o It takes away the worry/stress of managing their own money.

Negatives of having a deputy – The negatives of having a deputy were seen to be:-

- o Loss of independence
- o Costs involved
- o Lack of communication (being kept in the dark).

Behavioural research – 'Nudge Theory'

41. The essence of nudge theory for our purposes is that people may be encouraged into doing the right thing if they are nudged in the right direction early in the process. Nudge theory argues that positive reinforcement and indirect suggestions to try to achieve non-forced compliance can influence the motives, incentives and decision making of groups and individuals alike, at least as effectively – if not more effectively - than direct instruction, legislation, or enforcement.⁴ This has been applied to a range of social behaviours, a common one being seat belt wearing; another being speed limits, where electronic signs inform drivers of their speed as they enter a built-up area.

42. There is separate research evidence which dovetails neatly with nudge theory. HMRC published research in 2012⁵, based on work in 2007 and 2010, which suggested that their customer constituency could be segmented into five main categories: the "willing but needing help" segment was 21% of the population, the "willing and able" was 53%, so together three quarters were inclined to do the right thing. A further 11% were "unaware", by which HMRC meant were mainly PAYE / taxed at source and therefore were low risk in terms of the tax at stake. "Potential rule breakers" amounted to 11%, and "boundary pushers/ rule breakers" were at 4%.

⁴ Nudge Theory is usually credited to Richard Thaler, Professor of Behavioural Science and Economics at the University of Chicago Booth School of Business. Also Daniel Kahneman, an American psychologist. "Nudge: Improving Decisions About Health, Wealth, and Happiness", by Thaler and legal scholar Cass R. Sunstein, 2008.

⁵ "Individuals Segmentation Enhancement", October 2012, HMRC research report. <http://www.hmrc.gov.uk/research/report193.pdf>

43. This is broadly consistent with what the Public Guardian for Scotland, in discussion with its public body auditors, understood about populations when it built its supervisory model: that, in any population, about 80% of people will be keen to do the right thing but may need support; about 18% will do the right thing if they are persuaded of it or feel they will be seen if they do not comply; and about 2-3% are criminally intent and need close monitoring and prompt action.

44. The review embraced nudge theory as a principle, and also acknowledged the research indications on the behaviour of populations. The design of OPG's model needed to be proportionate, allowing staff to apply whatever level of engagement is appropriate to each individual case at any point. This is a continuum. At one end, the engagement might involve information, guidance, support and light touch supervision as the default, so that deputies are completely clear on their role, responsibilities, powers and limitations, as well as on OPG's role in supervising their activity in a proportionate way. Then there would be closer supervision and engagement for those indicating a tendency to waver at any given time, so that they are persuaded to return to compliance. And at the other end of the range, there would be investigation functions and close scrutiny for the small rump who do not comply with the court order or OPG's regime - whether that is abuse, fraud, or failing to protect the person lacking capacity. At the extreme, deputies need to understand that non-compliance is likely to be identified and will be actively pursued, in conjunction with other agencies as necessary.

45. In 2013, OPG conducted an internal review of available information relating to the abuse of the vulnerable⁶. This captured material which explored potential causes and triggers for financial abuse of vulnerable adults. It contributed further perspective into OPG's design of its support and supervision model, ensuring that all necessary and appropriate safeguards are built in.

Data analysis

46. The findings of the data-gathering stage were analysed and used to create an evidence base about the current issues and the design principles which a new delivery model would need to meet. The design principles are tabled below (with some indication shown of how the work in progress or planned will satisfy them).

⁶ "OPG Review of Information on the Abuse of Vulnerable Adults", August 2013

Design principles

Key Design Principles	Definition	Delivered
Compliant	The model must be demonstrably compliant with relevant legislation and directives aimed at the PG protecting the person lacking capacity	The basis for the new supervision delivery model is the Public Guardian's statutory duty to supervise deputies appointed by the Court of Protection derives from s58 of the Mental Capacity Act 2005 (MCA). It also takes into account wider legal requirements, e.g. the requirement for protective measures to be subject to regular review (UN Convention for the Rights of Persons with Disability)
Strategic Fit	<ul style="list-style-type: none"> ➤ The model must ensure that MOJ's strategic requirement of OPG, to safeguard a person lacking capacity, is met by allocating sufficient resource to the operating priorities, taking account of known constraints across the public sector as a whole or in partner organisations ➤ The model must minimise the involvement of the Court of Protection 	A detailed resource model has been created to enable OPG to plan and forecast changes in resource requirements for the new supervision delivery model. The model makes best use of developing digital technology in line with MOJ and OPG's strategic direction.
Defensible	The model must be evidenced-based and demonstrate a reasonable assignment of resource to workload. The PG must feel confident that he can justify the model as a reasonable arrangement to give positive outcomes for the person lacking capacity	Customer insight research has given an evidence base for the changes to the model. The resource model and introduction of new digital and case management systems will enable direction of staff resources to value-added case management activities.
Sustainable	<ul style="list-style-type: none"> ➤ The model must be future-proofed, to the extent that it is possible to predict caseload (and attendant activity) for 3 years ahead 	The resource model includes caseload forecasts up to and including the 2017-18 business year.

	<p>➤ The model must be capable of accommodating changes to the Public Guardian's powers which are identified by the review</p>	<p>Changes to the process will be made via the change control policy through Continuous Improvement activity.</p> <p>The model is flexible and adaptable should the PG powers change.</p>
Proportionate	<p>The model must include interventions which provide reasonable oversight of the deputy, balancing the value for money elements of effectiveness and economy to deliver efficiency</p>	<p>The introduction of a continuous risk evaluation and end to end casework ensures that oversight of a case is maintained and a variety of interventions or actions can be taken as required.</p> <p>The new model separates Lay, LA, Professional and Panel Deputy types to provide a proportionate level of support according to experience and needs.</p>
Timely	<p>The model must be engineered to react quickly and activate interventions at the right time whenever an issue is reported, in order to protect the person lacking capacity</p>	<p>The internal reorganisation which removes supervision levels and aligns deputyships investigations with supervision will remove hand-offs between supervision and investigations whenever an issue is reported, enabling a faster and more efficient response</p>
Supportive	<p>The model must seek to support deputies as the default position, using behavioural insight and multiple channels of guidance & advice, and be capable of a timely escalation as necessary</p>	<p>The introduction of numerous processes at the outset of a new deputyship, including an introductory call and settling in call to establish the supportive nature of OPG's role from the outset. Thereafter contact is continued by case managers or by tailored, supportive visits.</p>
Acceptable	<p>The model must be clear and acceptable to the staff working in the organisation, reflecting motivations, strengths and weaknesses in their protection of the person lacking capacity</p>	<p>Staff engagement and pulse surveys show that staff have welcomed the changes. The new learning</p>

		suite will provide them with greater skills to ensure case management decisions are taken in the best interests of the person lacking capacity
Effective & Measurable	The model must lend itself to the generation of performance measures that demonstrate in a value for money way (low-cost and highly motivating) that positive outcomes are achieved for the person lacking capacity by proportionate and timely activity	Systematic indicators of emerging benefits will be gathered over the coming months and beyond, through surveys with staff and deputies to measure/indicate how effective they judge us to be over the coming months

Section 4 - Findings of the Fundamental Review

47. The delivery model for supervision is not prescribed by the Mental Capacity Act; it is the responsibility of the Public Guardian. It has been the function of the fundamental review of supervision to take the vision, values and beliefs which the Public Guardian has and test the delivery mechanisms against them.

48. The main finding of the review was that the delivery model in existence in 2012 required re-focussing. The model had been designed to ensure that the new OPG organisation became effective as quickly as possible after 2007 as part of implementing the MCA. Now, the focus on the customer needed to be reinforced, against a backdrop of increasing caseload.

49. The findings from all of the data sources were pointing in the same direction - OPG needed to take action to put the person lacking capacity at the heart of all we do. This would require a fundamental redesign of the delivery model, not marginal or incremental improvement.

Public consultation

50. In late 2013, OPG took the findings which were emerging from the fundamental review and drafted a number of proposals. These formed one part of a public consultation (the other part referring to the Lasting Power of Attorney). The consultation paper *'Transforming the services of the Office of the Public Guardian - enabling digital by default'* was published on 15th October 2013 and ended 26th November.

51. On supervision, the consultation sought views on how the current model might be restructured to meet the needs of customers and provide greater and more tailored support to deputies. It reiterated our longstanding intention to move to a segmented delivery model that provides supervision proportionately according to deputy type and offers tailored guidance, support and monitoring; and it sought opinions on:

- The support deputies would require
- The level of contact deputies should have with the OPG, and
- Whether the OPG should review the fees charged by deputies as part of the supervision process.

52. People were broadly supportive of the proposals emerging from the fundamental review of supervision. The government response to the consultation was issued on 21st August 2014.⁷

53. OPG is now actively planning the implementation of a range of measures which, together, constitute a brand new delivery model for how OPG supports and supervises court-appointed deputies. The model will provide proportionate oversight, building engagement around the needs of the deputy and OPG's judgement of risk in the case at any given time. Where issues are raised, they will be investigated and managed swiftly. The design of the new model includes:

⁷ <https://www.gov.uk/government/consultations/transforming-the-services-of-the-office-of-the-public-guardian-enabling-digital-by-default>

- Better information to the general public about the need to create an LPA
- Better guidance to people who apply to the Court of Protection
- Early OPG contact shortly after the deputyship order - for lay deputies and new professional deputies
- A digital communication channel option, designed to ease the deputy's burden and improve the two-way contacts
- Targeted visits to those deputies who need face-to-face support
- Standards for professional and local authority deputies which set out good practice
- An emphasis on assurance visits to professional and local authority deputies
- Staff who specialise in their deputy type, who take an end-to-end issue resolution approach to their allocated cases, who build relationships with their deputies, and who are trained, qualified and accountable, sustained by the entire resources available to the OPG to support and supervise their deputies
- Evidence-based risk assessments conducted throughout the lifetime of the case, resulting in risk ratings (Red, Amber, Green) which will be transparent and will determine the extent of OPG's engagement
- Compliance and investigations resources, which will be more closely engaged with case managers in order to maintain the circle of knowledge, action, lessons learned
- Improved legal resources and support
- Continuous improvement culture
- Better control of professional deputy charges through annual plans; asset inventories; estimates of charges; fuller annual reporting; and the better understanding of the professional deputy caseload resulting from the specialist teams building their knowledge and relationships
- New back-office technology supporting the case managers effectively and efficiently

Section 5 - Implementation

Early implementations

54. Analysis of the data gathered identified a number of quick changes which could be implemented, and this happened during 2013. These were, on the whole, operational improvements to the current processes that could be achieved within existing legislation and OPG structures. However, in late 2013 and early 2014, fundamental change began.

Segmentation of supervision teams & end-to-end case management

55. The most fundamental change which has resulted from the review is the move to a delivery model that supervises according to deputy type. As detailed above, the findings of the customer research showed that the former tiered model was not working, either for deputies or for staff. The segmentation of supervision staff into separate teams dealing with lay, local authority and professional deputies will allow them to learn about the particular challenges facing their deputy type, and to build relations with their assigned deputies. At the same time, there was a shift to end-to-end case management, as opposed to the previous model which was task focused. Under the new supervision model, staff take personal accountability for issue resolution (with the aid of appropriate support from managers, buddies or other experts where necessary); as such, staff carry out all activities associated with former supervision levels without the need to hand-off cases to other teams, which was wasteful.

56. This marked a significant step towards a more customer centric delivery model which allows the ability to supervise and support deputies in a way more tailored to their specific needs. This ultimately better addresses the needs of the person without capacity.

57. This is a fundamental culture change for OPG.

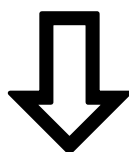
58. These changes were preceded by the delivery of 465 days of training for the 75 front line staff. It typically equated to 6 days per member of staff. This covered the end-to-end approach, "Get it Write", tone of voice and telephone negotiation skills.

59. These complex structural, logistical and cultural changes were implemented in a phased transition, with three stages between November 2013 and April 2014. The aim was to minimise disruption to staff and customers so as to maximise the likelihood that the changes would be successful and the new culture embedded.

60. Staff have embraced this major change. This has been demonstrated in various "stand-up" meetings with business heads and in back-to-the-floor sessions, as well as being measured through several pulse surveys intended to monitor buy-in and uptake of the new ways of working. Early feedback from deputies and representatives of the wider stakeholder community is positive.

Former Supervision Model

Supervision level	Type 1 (close supervision)	Type 2A (intermediate supervision)	Type 2 (light-touch supervision)	Type 3 (minimal supervision)
Type of deputyship	Property & Affairs Personal Welfare	Property & Affairs	Property & Affairs Personal Welfare	Property & Affairs



New Supervision Model

Specialist End-to-End Deputyship Support & Supervision Teams			
Lay Deputies	Local Authority Deputies	Professional & Panel Deputies	Health & Welfare cases

61. The move to specialist deputy teams is complete; however embedding the new culture has required considerable support, it is a significant undertaking, and work will continue into 2015.

62. In addition to supporting the teams as they continue to learn and adopt the new culture and ways of thinking, a number of new ways of working are being planned for introduction over the remainder of 2014 and into 2015. The implementation approach is deliberately measured in pace so as not to overload and destabilise business operation. An incremental approach will allow support to be provided, minimising the risk of change fatigue or resistance, which could be catastrophic for the changes made so far. So the road to the new delivery model stretches into 2015. In addition, OPG has a culture of continuous improvement of its processes and ongoing monitoring of the outcomes, benefits and internal impacts.

Post-consultation implementation plans

63. OPG can now utilise the responses to the consultation to inform and implement further measures. The main elements of the new delivery model outlined above which are still to be implemented include:

- More sophisticated relationships between the Court of Protection and OPG so that customers have a clear understanding of roles, responsibilities and the processes which affect them

- Better guidance available to the general public and to deputies in particular, partly enabled by new digital channels
- Introduction of annual deputyship plans, asset inventories and charging estimates
- Closer working between OPG and the Senior Court Costs Office
- A new and fuller deputyship reporting regime
- Standards for professional and local authorities, with dynamic risk assessment
- The use of new back office IT to support our customer service and supervision framework efficiently, retaining the human contact where needed

In addition, the work which has already begun on early contact will be enhanced.

64. This next section of the report touches on those outstanding tasks, and some others.

Earlier contact with newly appointed deputies to provide greater support at the outset

65. One of the key findings of the user research was that deputies required more support during the first few months of their deputyship. The new supervision model therefore focuses on providing support to deputies as the standard, with supervision where necessary or appropriate. Support begins with better written guidance, whether on the internet or printed, consolidated by early contact, by telephone and face to face when needed. This is particularly aimed at lay deputies and new professionals. Contact will be maintained from time to time throughout the case.

66. A dedicated case manager now contacts a newly appointed deputy to introduce themselves and OPG. At this point, further settling-in contact is arranged. This early intervention is to ensure the deputy understands their role, powers and responsibilities, as well as OPG's supervisory responsibility and what that will involve in practice. This commences the beginning of a constructive relationship with the deputy. Behavioural insight / 'nudge' theory says early intervention is important in persuading people to comply. Other theories emphasise the importance of relationships in generating desirable outcomes. This is being borne out by early feedback from stakeholders – see the "Testimonials" section later in this report. Early contact can also allow OPG to provide advice on queries or issues, such as if the deputy has had difficulty having their court order acknowledged by other agencies and institutions.

67. Support will continue as necessary. For lay deputies in particular, a targeted visit would be considered. There will then be a follow-up telephone conversation with the deputy after six months to check on progress and to begin the lead-up preparations for the first annual report.

Improved correspondence and guidance

68. Many of the criticisms raised regarding our written communications to deputies have been addressed. There has been a review and revision of all correspondence, combined with ‘tone of voice’ training to provide staff with the skills to write and communicate more effectively. As a result, deputies now receive much clearer and professional correspondence which uses plain language and is easier to understand.

69. Further work to review and improve guidance is underway, in conjunction with the information OPG will make available more broadly over the coming months. This will ensure that the guidance deputies receive is simple, clear, timely and more tailored to individual needs.

Assurance visits for local authority and professional deputies

70. OPG has introduced a new assurance approach to visits to local authority and professional deputies. In developing this, OPG has utilised lessons learned from how we engage with our panel of deputies of last resort. The panel exists to provide a deputy where there is no other. At present, the majority of panel deputies are lawyers (though we are seeking to broaden the base – see “Panel deputy diversification” below).

71. We engage with panel deputies by examining their infrastructure for running the affairs of their deputyship clients, reviewing case management systems, as well as dip sampling a number of their cases to validate the described approach. The result is an audit trail which evidences the deputy’s governance framework. This proportionate approach, with a rational view of risk, allows OPG to take reasonable assurance that the deputy is supporting the person lacking capacity appropriately. It allows good practice to be identified.

72. This approach to overseeing panel deputies offers OPG an effective and efficient method for supervising professional and local authority deputies. In the former supervision model, visits used to be commissioned to professional and local authority deputies on single cases and it was not consistently part of the process to consider if the deputy held multiple cases. The focus was on the management of that individual case and the deputy’s process for managing overall caseloads was not discussed nor was the extent of the deputy’s knowledge assessed. The deputy was not routinely visited and the visitor would typically speak to the deputy over the telephone to gain the necessary information. This was a result of the single approach to supervising all deputies, regardless of their professional status.

73. In the new delivery model, OPG will take its assurance by looking across a deputy’s caseload as a whole, rather than at individual cases in isolation. The new process now means that a sample of clients is visited in their homes, or a nursing home/ hospital, and a separate visit is also commissioned to the deputy at their office. The face-to-face meetings with a small number of clients will provide the confidence that what the deputy describes to us is actually happening in practice.

74. Since the segmentation of deputyship teams, OPG staff have developed a much greater understanding of the specific circumstances of the deputies in their assigned caseload. As a result they are developing knowledge and expertise relevant to the specific needs. This allows them to decide on the appropriate timing of assurance visits – see “Continuous risk evaluation”, below. This knowledge and expertise will increase over time.

Standards for professional and local authority deputies

75. There is a direct link between these assurance visits to professional and local authority deputies and the standards OPG is producing, in conjunction with stakeholders. The intention is that the standards will outline what good practice should look like, they will not duplicate the requirements set out in the Mental Capacity Act, the Code of Practice, the court order, governance body regulation or any other relevant legislation; instead they will seek to promote good behaviour in the key deputyship tasks.

76. For instance, essential responsibilities include gaining insight into the client's circumstances so that the deputy can make best interests decisions; and securing client finances and assets. The standards will include ways in which those things can be demonstrated. So it is good practice for there to be consultation with the client, the family, care providers, etc. at the outset and regularly; similarly regular review of capacity, with client engagement where capacity allows and subjects are appropriate.

Continuous risk evaluation

77. Continuous risk evaluation by case managers will replace the current process of risk assessing at the outset and the case being allocated a type. Under the new model, risk will be assessed at each stage of interaction between the deputy and OPG and the appropriate next step decided. OPG may use a Red, Amber, Green rating to indicate the timing and frequency of OPG's next engagement with that deputy. Risk assessment will be an integral function of the new back office IT as well as a responsibility for case managers each time they refer to the case.

78. OPG is in discussion with stakeholder groups over whether the Red, Amber, Green rating would be of benefit if viewable by stakeholders outside the organisation.

New annual reporting strategy

79. The requirement for deputies to report to the Public Guardian is one of the key ways in which he discharges his supervision duty. The move away from supervision levels towards supervision by type of deputy has prompted a re-evaluation of the current strategy and mechanisms by which deputies are required to report to the Public Guardian. Current "Type 3" cases are not required to report annually to OPG; there is some contact by OPG every 3 years to ensure that circumstances (chiefly the level of assets) have not radically altered. It is quite often the case that some circumstances will have changed in that time: the deputy may have moved house and be hard to trace; or may have died; or the person lacking capacity may have died.

80. It is therefore our intention to maintain more frequent contact with deputies and to require formal submissions on a regular basis. We will do this by means of a new digital tool. This will allow deputies to record transactions as they happen, then to submit them to OPG at year end. The tool is also likely to support other communications mechanisms, such as periodic reminders.

81. The requirement for deputies to report is the main mechanism by which OPG can gain assurance that a deputy understands their role, their responsibilities and is protecting the person lacking capacity, ensuring their needs are met. It gives the OPG a level of confidence, for which a measure can be developed. Over a phased transitional period, all deputies will report on all cases each year. There will be a full review by OPG in the first year and commensurate with judged risk thereafter. New report formats are being devised which will reflect the judged level of risk. This strategy will give OPG a greater likelihood of identifying issues and so help us support deputies in the discharge of their responsibilities. It strengthens the safeguards present. The proposed strategy:

- takes into account the UN Convention on the Rights of Persons with Disabilities, which requires regular review of protective measures for persons with disabilities
- is publicly defensible as a means to gain safeguarding assurances
- will deter fraud
- will identify issues earlier
- will ensure OPG data is more up to date, leading to better assessment of risk and the most appropriate case management action. There will also be a forward look element – see “Annual plans”

Panel deputy diversification

82. A key factor in ensuring that everyone is afforded the empowerment and protection built into the Mental Capacity Act 2005 is the provision of an accessible and proportionate deputyship service. OPG maintains a panel of deputies to whom the court can refer any last resort cases, ie where there is no-one who is willing, suitable, or able to act as deputy. We aim to achieve this by:

- ensuring that the court can refer to a panel which offers an appropriate variety of choice to ensure that the correct deputy is located for each client
- ensuring that the panel is easily accessible and that the processes involved are streamlined and transparent
- ensuring that all deputies on the panel are able to demonstrate a high degree of care or skill when carrying out their duties, as required by section 8.57 of the MCA Code of Practice.

83. OPG aims to include a wider diversity of organisation types on the panel to help facilitate a greater suite of options for people lacking capacity. Response from non-legal sectors to previous panel recruitment has been limited. OPG is engaging with organisations beyond the legal sector to identify the enablers and barriers that would affect their involvement in deputyship work.

84. OPG is also working with the Court of Protection to refine the panel deputy appointment process by improving the information available and speed up panel deputy appointment times.

85. To establish a new panel, an inclusive and rigorous recruitment process is being designed, looking at the practice overall: experience and abilities, costs, corporate structure and governance. There will be a new service level agreement for the panel that incorporates the standards developed for professional deputies – see above

86. In 2015, OPG will have a new, more diverse, panel who will continue to be exemplars of good practice and provide an invaluable contribution to the protection of people lacking capacity.

Controlling professional deputy charges

Working with Senior Courts Cost Office on professional fees

87. One of the drivers for the fundamental review of supervision was concern amongst some MPs about the charges made by professional deputies. Several ideas are being pursued to address this:

- Closer relations with the Senior Court Costs Office (role outlined below)
- Annual plans
- Asset inventories
- Charging estimates
- Comparison of plans with actuals
- Review and possible revision of the costs Practice Direction

88. Professional deputies obtain their costs from the estate of the person lacking capacity. Governance is by the Senior Court Costs Office (SCCO), part of the Ministry of Justice and responsible for the detailed assessment of costs relating to all proceedings in the Chancery, Family and Queen's Bench Divisions of the High Court, the Court of Appeal (Civil Division), the county courts and district registries, and various tribunals. It is an appeal body for the determination of costs in the Crown Court. It also deals with costs in matters involving the Court of Protection. Professional deputies have two options in regard to their costs: they may apply fixed costs as set out under a Practice Direction; or they may apply to the SCCO for their costs to be assessed.

89. The current Practice Direction is commonly viewed by professional deputies as not offering adequate coverage for costs, so professional deputies typically submit their bills for assessment by SCCO. OPG is exploring with SCCO whether there would be benefit from more sophisticated relationships, so we understand each other's domains better: costs officers could brief OPG case managers on current approaches; OPG could inject information about the deputy's anticipated spend for the year, or the assets in the case, to ensure the proportionality requirement on professional deputies is met.

90. There is policy work underway to consider whether the Practice Direction should be changed.

Annual plans

91. At present, deputies report to the Public Guardian retrospectively on financial decisions they have taken during the year. OPG believes there would be value in having sight of major decisions deputies are anticipating making in the coming year - for example, sale of property, major investments, or gifts - in order to understand the circumstances of a case and to intervene if it seems a deputy is likely to be contravening their authority. For customer ease, it is intended that this plan will be combined with the annual deputy report format to provide both a backward look and forward plan.

Asset inventory

92. At present the only record OPG has about the assets at the outset of the deputyship is the information held on the application made to the Court of Protection for the deputy's appointment. In many cases, further assets are discovered after the deputyship order is received, and it is sometimes the case that valuable assets are discovered. OPG feels there would be value in asking deputies to lodge an inventory of assets with the OPG at an early stage in the deputyship in order to provide a baseline against which to assess and monitor. It would be one criterion in the assessment of risk in the case. This information would be updated annually as part of the reporting process.

Charging estimates

93. As part of the annual planning round, OPG will ask professional deputies to estimate the amount of activity they anticipate being required on the case in the coming period, and the costs attendant on that. Our first consideration would be whether the proposed charges are proportionate to the size of the estate. If they are not, we would enter into dialogue with the deputy before the costs are incurred.

94. OPG proposes that this estimate would be shared with the Senior Court Costs Office to improve the data they have available for their assessment. We will also encourage professional deputies towards greater transparency of costs with the person who lacks capacity (where appropriate) and /or their families, which is good practice already.

95. At year end, OPG would compare the actual fees incurred, as stated in the annual report, back to the plan. Actuals above reasonable tolerances would initiate a conversation with the deputy: there will inevitably be scenarios where legitimate costs could not be foreseen. There would then need to be engagement with SCCO.

Digital deputyships tool and new case management system

96. This report has touched at various points on the benefit of new technologies but it is a fundamental change and worthy of a dedicated section.

Digital deputyships

97. OPG wants deputies to have the best possible interaction with the OPG so that they are able to protect the person lacking capacity. We know that many deputies find current paper-based processes onerous, and that OPG often misses out on

important information from deputies. To help solve this, OPG is developing a digital service so that deputies can interact with the OPG online. This will make it quicker and easier for deputies to remain accountable to the OPG and to be given support and guidance about their role.

98. OPG is currently building an 'alpha' or prototype service to meet this need, which is focusing on allowing deputies to fill in their annual reports online. We are testing this prototype service with some deputies and maturing the system based on their feedback. Then we will launch the service to a small group of deputies and act on that feedback too. The ambition is to have the new service available in 2015.

Replacement case management system

99. OPG staff need internal services which support them as they apply the new ways of working outlined in this report. Those services need to be intuitive, efficient and as automated as possible, so that staff can focus on the priorities in their cases. To do this, OPG is in the process of replacing legacy case management system with an internal digital service; rather than buying a system off the shelf, we are building a system to suit our specific needs, with our internal users at its heart. We aim to deliver this in 2015.

100. The new IT systems will give OPG the ability to handle the increasing caseload while at the same time increasing the frequency and quality of our customer engagement, so as to maximise the protection provided by the deputy to the person lacking capacity.

New fees strategy

101. OPG is funded by the fees it charges. Those fees are taken by the deputy from the estate of the person lacking capacity. We need to make sure that OPG continues to remain cost effective for its users, especially in a challenging financial environment. This has been one of the tenets of the fundamental review – providing a proportionate oversight which maximises the confidence the Public Guardian may take about the caseload. There is ongoing monitoring to ensure that OPG's resources are appropriate to the task; considerable work has been done to improve OPG's resource analysis mechanisms as the many changes described in this report are implemented.

102. This autumn, OPG will be seeking views on its fees from our customers and stakeholders by means of a public consultation.

Staff skills – a learning suite

103. The fundamental review identified the need to enhance the knowledge held by staff so that they recognise the message from people who lack capacity – that deputyship is part of their wider lives – and so that they have the information needed to involve other agencies as necessary, or have the confidence to engage assertively with experts in legal firms or local authorities. OPG is requiring staff to take an end-to-end approach to their cases: they must resolve the issue that confronts them, not escalate it to another team. They can have recourse to internal expertise, such as case manager buddies or investigations colleagues or legal advice, but the first step is consideration by the case manager.

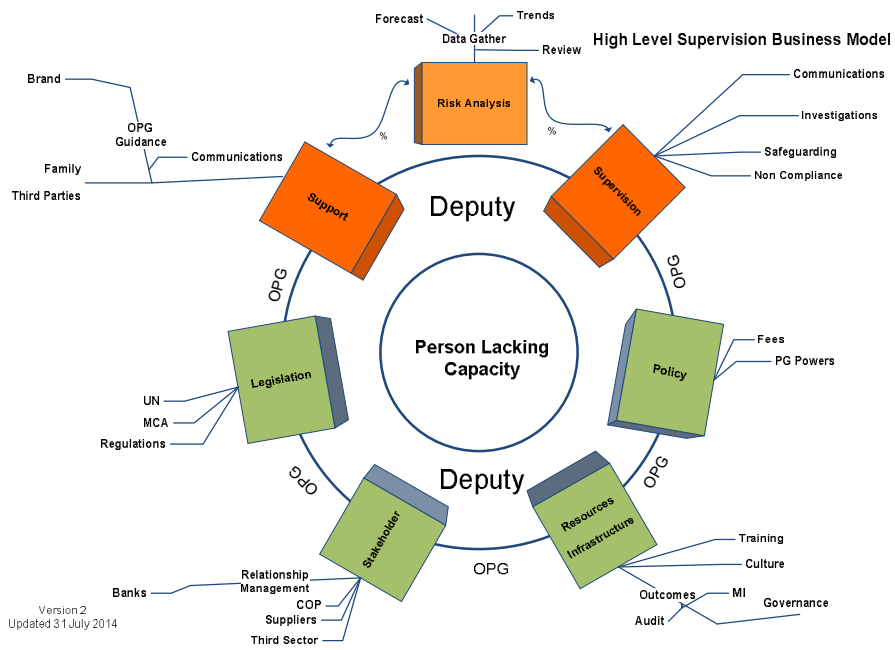
104. This may cover serious safeguarding issues, where someone is at immediate physical threat; or there may be issues around the care package or care generally; or there may be question marks over the extent of the benefits being claimed, or whether damages have been paid into the Court Funds Office; there may be queries to do with wills, or probate, or investments, or property sales. There will be considerations around the charges a deputy is seeking to apply. There will be questions about assessing someone's capacity. There will be cases where it appears the deputy is not compliant with the court order. There may be cases where we feel the need to investigate apparent fraud, or need to seek the discharge of the deputy. There are questions about what gifts may be made.

105. OPG needs to ensure it has a skilled, well trained workforce able confidently and effectively to guide, inform and support deputies, both proactively and reactively, to ensure case management decisions are taken in the best interests of the person lacking capacity. As such, we are currently working on the development of a deputyship staff learning suite that will enable operational staff to understand and work with various partner organisations in the field of safeguarding vulnerable adults.

Internal organisation improvements - aligning investigations and supervision

106. In order to embed end-to-end case management work and to ensure more joined-up working, OPG will be implementing an internal structural reorganisation. One product will be the creation of a deputyship-specific compliance team, as opposed to the OPG-wide team which exists now. And then we will ask the deputyship investigations staff to work closely with the support and supervision teams. This is anticipated to improve the knowledge which is available across the organisation, with lessons to be learned from investigations being quickly available to case managers. It may also see a reduction in the number of investigations commissioned because advice from investigators can demonstrate how further case work might resolve issues or risks.

Visual depiction of the new support & supervision model



Benefit - Early Testimonials

107. Significant benefit will flow from the implementation of the review findings. Primarily, this will be in terms of the protection provided to the person lacking capacity, both their personal welfare and their property and affairs. This will incorporate the assurance stakeholders can take that deputies are acting appropriately and also charging appropriately and proportionately.

108. There will also be benefit for OPG's staff, on whom success depends. There has been a strong pull from staff to enhance the service provided to customers; the organisation changes and the new ways of working are creating roles which are satisfying for staff and allow them to deliver the Public Guardian's vision. The change management formula that is applicable here is: $DxVxM>R$, where D is dissatisfaction with the status quo, V is the vision of the future, M is the method of change and R is resistance. The staff and other stakeholder engagement which OPG has undertaken are seeing "R" at very low levels; we are not complacent about that but are confident that it can be maintained with continued efforts.

109. Benefit has already started to be felt by our deputies. This is indicated by the positive comments below, from a small number of professional deputies.

110. OPG confidently anticipates that the remaining new elements of the new delivery model will enhance benefit. This will be measured systematically over the coming months and from time to time.

"As a Panel Deputy and Professional Deputy, I have seen first-hand the significant improvements that have taken place within the supervision team at the OPG, such as the segmentation of teams so that there is now a specialised professional team, as well as specialised panel deputy support team, which has created increased knowledge and expertise among such teams, and which has led to more efficient support for Deputies."

Sunil Kambli,
Partner, Premier Solicitors

"Solicitors for The Elderly promotes good practice within its membership and welcomes The Public Guardian's review of the supervision of Deputies. It is important that the most vulnerable members of our society have the very best legal and professional advice in the management of their affairs, and more focused supervision of professional deputies will help to achieve that. We support the recent changes already introduced which places different types of Deputies within separate specialise caseworker teams, which we believe can only assist with support and cross working between the Deputy and the OPG. The supervision of a lay deputy should focus on different issues to the supervision of a professional deputy"

Karon Walton
Associate, Solicitors for The Elderly

“A very useful session and a real success showing an organisation willing to engage with its stakeholders. By listening to those dealing with matters on the ground I feel that the Office of the Public Guardian is continually driving up standards and protecting the vulnerable people it is designed to protect”

David Hall

Partner, mwsolicitors.co.uk

Conclusion

111. The main finding of the review was that the delivery model in existence in 2012 required re-focussing.

112. The model had been designed to ensure that the new OPG organisation became effective as quickly as possible after 2007 as part of implementing the MCA. Now, the focus on the customer needs to be reinforced, against a backdrop of increasing caseload. The findings from all of the data sources were pointing in the same direction - OPG needed to take action to put the person lacking capacity at the heart of all we do. This would require a fundamental redesign of the delivery model, not marginal or incremental improvement.

113. The measures taken to date, as well as those planned, are seeing the creation of that fundamentally new delivery model by which OPG will support and supervise the growing numbers of court-appointed deputies in a proportionate way. Prompt action will be taken when fraud or abuse are identified. Customer, staff and other stakeholder satisfaction will be enhanced. The model will give a high level of assurance that people lacking mental capacity who are under a deputyship order are being protected and their needs met.

114. Over the coming months, and beyond, OPG will gather systematically measures and indicators from customers, staff and other stakeholders to show the effect and benefit of the new model.

115. The concern amongst some MPs about the charges made by professional deputies, which was one of the drivers for the fundamental review, is being addressed in several ways, as outlined in this report. There will be review and feed forward work to ensure this is effective and satisfactory.

116. New technologies will be interwoven with the new business processes to ensure that OPG maximises its effectiveness, customer service and efficiency.

117. The view of the Public Guardian is that the fundamental review has succeeded in its aims to generate a responsive, case-sensitive approach to supervision, with effective and proportionate oversight, in order to ensure that the person lacking capacity is protected and their needs met.

Alan Eccles
Public Guardian and Chief Executive

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