



**In this edition of
InTouch...**

**Family care
payments**

**Annual report goes
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...and much more



Family care payments

In May this year we published guidance on family care payments, also known as gratuitous care payments. The guidance applies to court appointed lay and professional deputies with a finance and property order.

Family care payments are payments made to a family member or friend who provides care for the client without contractual arrangements such as agreed hours or annual leave. This could be full time regular care or occasional help such as cooking meals or taking them to appointments.

Many relatives provide care without expecting payment, but sometimes a payment can supplement professional care, ease the carer's own financial situation and let them carry on the caring role. As long as you follow the guidelines set out, the Public Guardian may consider this kind of arrangement to be in the client's best interests.

The guidance

Some of our deputies said they were uncertain when a payment could be made and how much it should be. The guidance, in the form of a practice note, is intended to make this clearer.

You'll find the process to follow when you make a payment like this in the legal framework section of the note.

There are two things you must consider:

1. Whether the payment being proposed is in the client's best interests.

2. Whether the decision to make a payment conflicts with your duty not to take advantage of your position as a deputy.

You should also refer to the checklist in section 4 of the Mental Capacity Act 2005.

The note also explains how to calculate the amount and frequency of payments.

The Court of Protection (CoP)

In some circumstances, you'll need to apply to the CoP for approval of payments, for example, if you're paying yourself, or the amount to be paid cannot be agreed. If the Public Guardian considers that you've exceeded your authority to make a payment, we may apply to the CoP.

Take a look at the example cases in the practice note which demonstrate the CoP's approach to family care payments. Each case can vary a great deal depending on the client's personal circumstances.

Final things to consider

When making family care payments keep careful records and review the payment amounts regularly.

You must take into account the overall family situation and what the family member or carer is doing. Remember – these payments are not intended to replace a salary, even if the carer has given up a well paid job.

If you're considering making a family care payment visit gov.uk/opg to read the practice note in full.



Health and welfare deputy – how and when to use your order

For most people becoming a court-appointed deputy will be unfamiliar territory and daunting, to say the least.

Making decisions on behalf of someone you love can be difficult, especially when giving consent to medical treatment or deciding where someone should live.

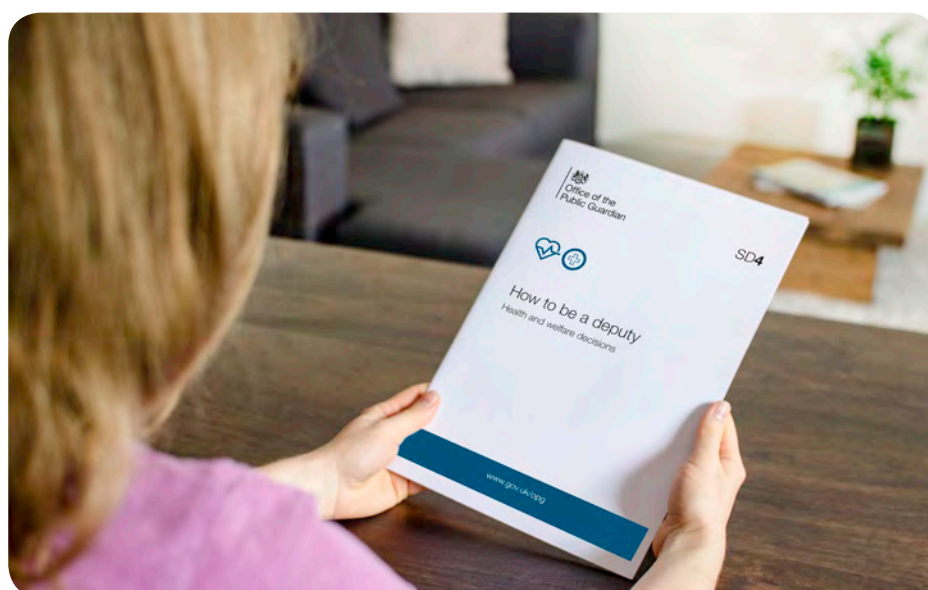
We know how important your role as a health and welfare deputy is and how challenging it can be to use your order in everyday situations.

We're here to help and support you through your journey as a deputy and ensure you make best interest decisions for your client.

If you're like most new deputies, you may have more questions than answers once you receive your new order – 'who should I tell?', 'how do I use my order?' and 'where do I go for help?'

Earlier this year, we introduced a guidance leaflet, specifically for health and welfare deputies, titled *How to be a deputy (SD4)*.

From when you receive your order to handling day-to-day care for your client – the *How to be a deputy* leaflet addresses all the key concerns for new and existing health and welfare deputies.



The leaflet includes a helpful diagram which illustrates your first seven priorities once you become a deputy:

1. Get to know your client (if you need to)
2. Check your order
3. Let people know you're a deputy
4. Contribute to the client's care plan
5. Keep a record of your health and welfare decisions
6. Pay any deputy fees
7. Write your deputy report

The detailed guidance also gives practical examples of how to use your order and the limitations of a health and welfare order.

For instance, as a deputy you can discuss your client's care plan with their health or social care professional, and ask for your comments to be included within the care plan. However, you don't have the authority to change the care plan.

If you have concerns about the care plan, discuss them with the health or social care professional. Make sure that your demands are reasonable and give staff time to respond.

Lastly, the guidance sets out what to expect from us, when supervising and supporting you in your role as a deputy.

For a copy of *How to be a deputy*, visit [gov.uk/opg](https://www.gov.uk/opg)

Annual report reminder

In September 2015, all deputies, existing and new, were asked to submit an annual report each year.

Previously, only deputies placed in general supervision (formerly case types 1, 2, 2A) were required to complete an annual report. Deputies placed in minimal supervision (formerly case type 3) did not have to submit an annual report.

However, following the recommendations from the supervision review reported to Parliament in 2014, we asked all deputies to complete an annual report.

We now have better oversight when managing caseloads, which in turn provides a greater level of supervision and support for deputies, when you need it most.

In the last edition of InTouch, we said that we'd phase in the changes to deputy reporting over the next three years.

There are over 20,000 existing minimal deputyship cases and we've converted more than 11,000 to the new way of reporting. We also ask all new deputies to submit an annual report at the end of their first year.

So far we've received 1,600 annual reports from deputies in minimal supervision and we expect this number to grow with each month.

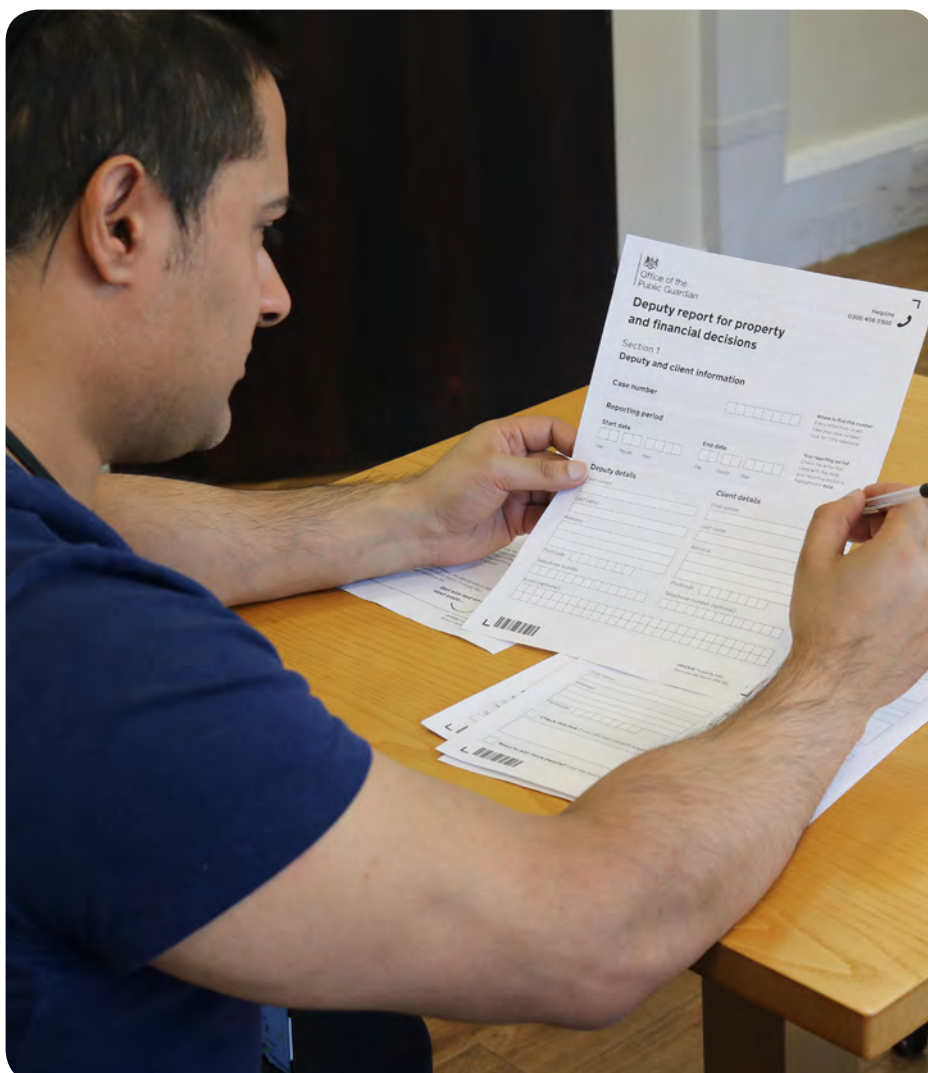
We'll continue to make contact with you ahead of your first report. We'll call and write to you to explain the process and answer any questions.

To make reporting simpler, we introduced new report forms in July – property and financial decisions (OPG102), property and financial decisions short form (OPG103) and health and welfare decisions (OPG104).

The new forms are clearer with improved guidance designed to make them easier to complete.

We're also phasing in digital reporting (see page 5 for an update).

To complete a deputy report form, visit gov.uk/opg



Annual report goes digital

In June, we launched a service that allows lay deputies to update their details and complete annual reports online.

The online service has been designed around feedback from deputies to ensure the system supports you in your deputyship.

Since we launched the service, over 400 deputies have submitted their report online. We know from user feedback that the system is easy to use and reduces the amount of reports returned as incomplete – now, if a deputy misses a section, they can't submit the report.

During the development of the online service users told us that they often struggled with the

accounts section on the paper report. We used that feedback to develop an accounts section that checks everything balances from the money paid in and out. If it doesn't, the system will highlight the differences.

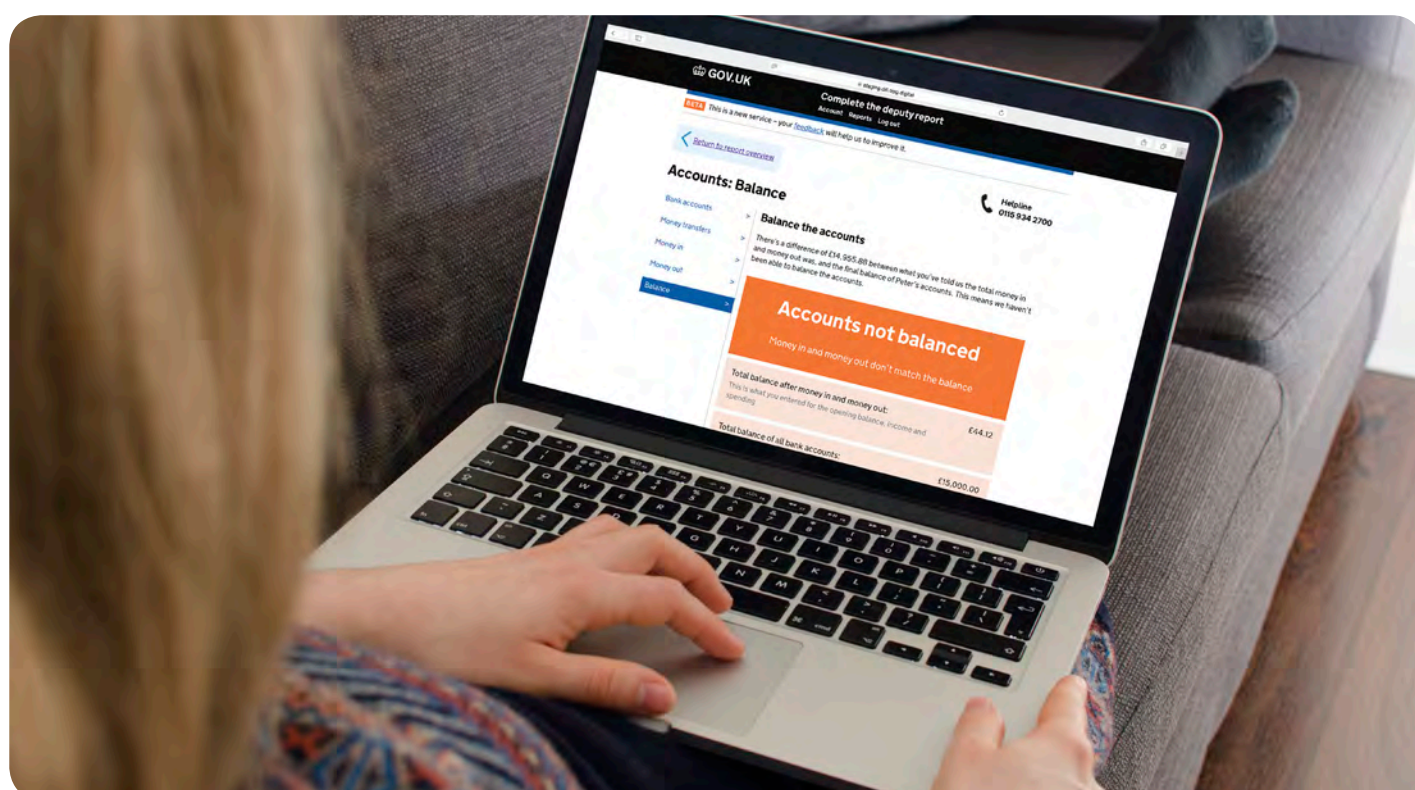
To ensure we safeguard adults at risk we've built in a section to monitor how often a deputy visits their client. We also ask for information on major changes planned in the next 12 months.

Deputies can log into the service at any time throughout the year and record and save decisions as they happen. There's guidance built in throughout to

help answer any questions, or alternatively you can speak to one of our specialists on 0300 456 0300 who will be able to help.

The service is currently only available to lay deputies but we've already started talking to public authority deputies to develop the service further.

If you'd like to complete your annual report online please go to gov.uk/complete-deputy-report. To create an account you'll need your case number (the OPG reference number on letters received) and your email address.



InTouch readership survey results

We want to make sure we're producing engaging content in the style and format our readers enjoy. To gauge your thoughts on the content, frequency and format of InTouch, we included a survey in the last edition.

The survey was sent to 6000 deputies and nearly 10 per cent responded. Thank you to all those who took part, we've gathered some really helpful feedback.

We found that most respondents were satisfied with the newsletter content.

When asked, 90 per cent said that the newsletter had the right balance between health and welfare and property and finance topics.

At present, InTouch caters for lay, professional and public authority deputies but we wanted to know if deputies would prefer separate publications – one for lay and one for professional and public authority deputies.

Interestingly, over 75 per cent said they're satisfied with a combined publication.

We asked readers how often they'd like to receive the publication – over 60 per cent of those we surveyed said they would like InTouch on an ad hoc or quarterly basis.

Therefore, we've decided to produce the publication twice a year (every six months), which is a happy compromise between ad hoc and quarterly.

Based on feedback, we'll continue to send the publication by post to existing lay deputies. However, all new lay deputies, public authorities and professional deputies will receive the publication by email.

All the feedback given was invaluable and we'll look to use comments to inform future publications.

"The last few newsletters seemed more useful compared to previous issues."

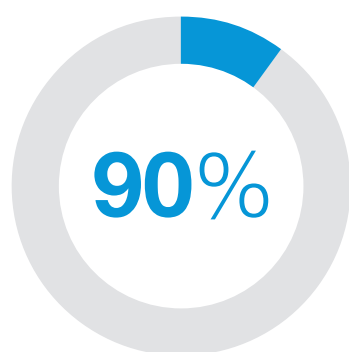
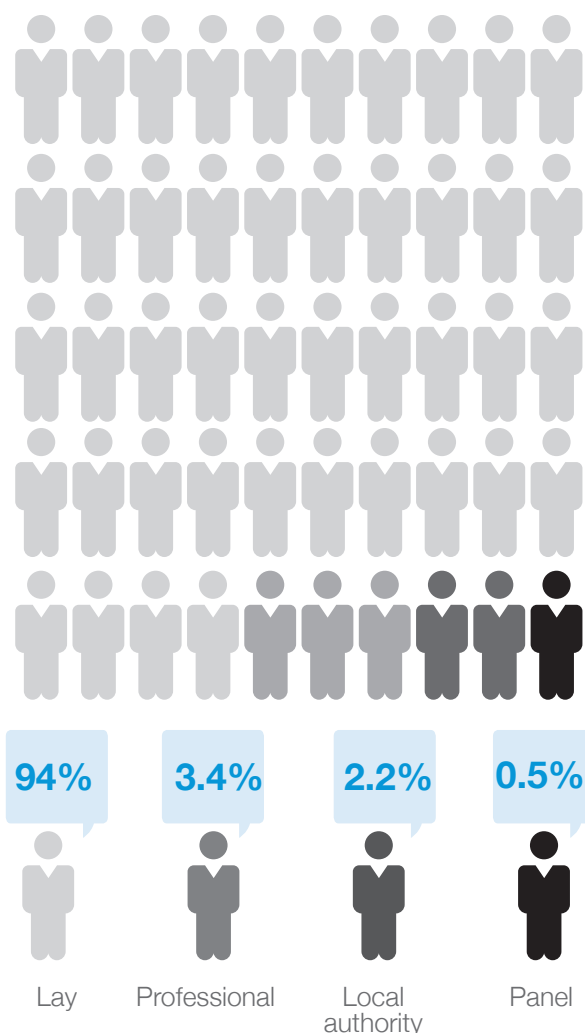
Local authority deputy

"I liked the 'Banking on a better service' [article], so more commercial [topics] would be good."

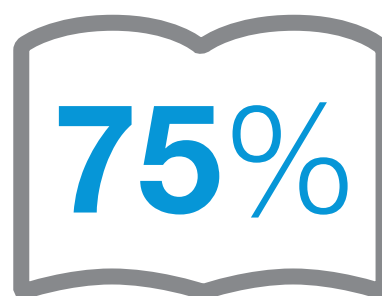
Lay deputy

"The case studies are very useful."

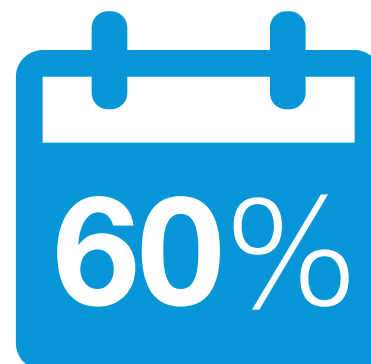
Lay deputy



said that the magazine had the right balance between health and welfare and property and finance.



said they were satisfied with a combined publication.



of those we surveyed said they would like to see InTouch on an ad hoc basis.

When is a gift appropriate – making the right decision

Giving gifts is a way to express our love for our families and friends. It helps maintain relationships, especially when someone can't make gestures like this for themselves.



As a deputy making financial decisions you may have faced the uncertainty of when to give a gift and how much to give. You might not know what you can and can't do.

Following some high profile court cases where a deputy or attorney has inappropriately bought expensive gifts, we've introduced new guidance to support you in these decisions.

The guide 'Giving gifts for someone else' (OPG2) is a companion to the practice note 'Gifts: Deputies and EPA/LPA attorneys.' It will help you decide if the financial decision you're making counts as a gift, and is within your authority.

Only deputies or attorneys with authority to make financial decisions can give gifts. Your authority to give gifts is set out in the court order appointing you as deputy. It's normally limited to customary occasions such as births, marriages or celebrations, and is limited to people who are connected to the person whose affairs you manage, or charities they may support. The gift must be reasonable, taking into account all the circumstances.

A gift could be a present for a grandchild's birthday, a donation to a long-supported charity or paying a dependent's school fees. A loan or living rent free at a donor's property also counts as a gift. Particular care must be taken if you're considering making or accepting a gift to

yourself, as this could be a conflict of interest with your role as deputy.

An important starting point when thinking about gifts is that the person should be given every opportunity to help decide whether to give a gift – if they have mental capacity.

The guidance includes tests of the person's mental capacity which will help you show that you have followed the correct process. There are also tips on how to help them make the decision about the gift if they have mental capacity.

It also looks at how to make decisions about gifts for them if they don't have mental capacity to decide. Remember you don't have to give gifts and you mustn't let anyone pressure you into it if you're not sure.

We explain the concept of 'reasonable value' where you're asked to think about the size of the person's estate and their life expectancy.

The leaflet gives example situations featuring fictional deputies to help you if you're uncertain. If you're still unclear, a checklist tells you if you should apply to the Court of Protection for permission to make the gift.

As always, this guidance is about protecting the person's best interests and helping you make the right decision.

You should record gifts in the same way that you record any financial decisions you make when acting as a deputy.

If you give a gift beyond your authority or that isn't of 'reasonable value', we may ask you to pay it back, apply for retrospective approval or launch an investigation. To read the guidance and practice note visit gov.uk/opg

“A gift could be a **present** for a grandchild's birthday, a **donation** to a long-supported charity or paying a dependent's school fees. A **loan** or living rent free at a donor's property also counts as a gift.”

A day in the life of an OPG investigator

Senior investigator, Heather, is part of a team of investigators based in Nottingham.

Heather investigates deputyships where case managers have concerns. Heather says: "Every week we hold case forums with supervision case managers."

Representatives from the OPG court applications team also attend the forums, where three decisions can be made:

- the case manager goes back out to find out more information
- we accept the case for investigation
- it goes straight to the Court of Protection (CoP).

Cases referred to the CoP are often where the deputy is 'non-compliant' - that is they haven't reported back to OPG.

Heather adds: "When we accept a case for investigation, there's a timescale to write a report for the Public Guardian's approval. There are different types of investigations with different deadlines for reporting to the Public Guardian."

Before Heather investigates a case, a supervision case manager has already spent time looking into it.

"Our supervision case managers support deputies day-in-day-out on complex cases. It's a challenging role where they

"Keep accurate and transparent records from day one – it will make reporting so much easier, and always respond to the Public Guardian when asked."

balance offering support for deputies with seeing where they have overstepped the mark." Only a small number of deputyships are investigated by OPG.

"There are over 58,000 deputyship orders in place, but we're only investigating 50 cases this month. This shows that it really is the last resort when it comes to investigations. We start an investigation when there's evidence that the deputy has not acted in the client's best interests."

When Heather writes a report she makes sure that the client's best interests are protected.

"I have to be impartial when writing the reports. I have a variety of cases, every single case is different and each outcome is different according to the concerns that have been identified."

"I give careful consideration to my recommendations to the Public Guardian in order to protect the client. Wording can make the difference to whether my recommendations are accepted or not. One of the best parts of the job is when the Public Guardian accepts them."

Heather has some sound advice for deputies: "In the eight months of cases that I've seen I'd say make sure you read your court order and understand what it means – don't put it in a drawer."

"Keep accurate and transparent records from day one – it will make reporting so much easier, and always respond to the Public Guardian when asked."

"Sometimes the reason we escalate things is because we can't work out what's going on."

"If you need help – contact us. We're here to help you carry out your duties as a deputy."

The public authority team – a responsive service

We're always looking for new ways to improve our services.

Over the past two years, our dedicated public authority team has worked with deputies to develop a better way to improve communications between OPG and public authority deputies.

The public authority team is responsible for over 160 public authorities who manage between 1 to 1500 (or more) cases.

Beforehand, public authorities would receive up to 20 letters or emails a day, acknowledging receipt of reports, confirming change of addresses for clients or chasing overdue fees.

Often public authorities would be corresponding with more than one OPG case manager. This would result in a duplication of efforts and add to the public authority's workload.

Following user feedback, the public authority team worked with a small group of deputies to develop, what is in essence, a progress report. Initially trialled in 2014, it is now used by over 100 public authorities.

The public authority team log any actions carried out on cases during the month. It is then sent to each public authority every month who update this with comments as appropriate

before sending it back to the appointed senior case manager in the public authority team.

Each public authority has a designated spreadsheet which details information on the deputy, point of contact in the public authority, updates on annual reports, and changes in client details.

With its introduction, we've reduced the amount of hardcopy letters and daily correspondence sent to public authorities.

We also introduced a single point of contact, so public authorities are no longer contacted by multiple case managers from the team.

We're now able to make comments on the management of deputyship orders, and in turn, public authorities can respond without the need for unnecessary email or mail correspondence.

This has been a welcome change for public authorities – we've seen improvements in client account management and we've been told by users that the spreadsheet has helped to manage workload.

If you're a public authority deputy and you'd like OPG to contact you using the spreadsheet email opg.pa@publicguardian.gsi.gov.uk



New security bond provider

Surety bonds (also called security bonds) are a type of insurance that all deputies (except for public authority deputies) have to take out on behalf of those they're making decisions for. The bond covers and reimburses the client if their deputy abuses or damages their finances.

The Public Guardian has a number of statutory functions in the Mental Capacity Act 2005, which includes making arrangements to set up an approved scheme for security bonds.

Howden UK Ltd has recently been awarded the contract to manage our approved scheme for security bonds. The contract was awarded competitively and fairly to the provider who could provide the best value for money for our clients.

From 1 October 2016, OPG and the Court of Protection will only direct deputies to Howden UK Ltd for any new security bonds.

If you hold an existing bond with any of our previous approved suppliers, such as Deputy Bond Services (DBS), you don't have to transfer these to Howden UK Ltd. These suppliers will continue to honour and manage all bonds that have been taken out with them after their contract with OPG has ended.

You can continue to take out new bonds with other bond providers if you wish to but Howden UK Ltd is

OPG's current approved bond supplier. We'll only monitor the levels of service provided by our approved security bond supplier.

For more about our new providers, visit www.howdengroup.co.uk



Is your Court of Protection order outdated?

Are you still using an order that was granted by the Court of Protection (CoP) before the current Mental Capacity Act (MCA) 2005 was implemented in October 2007?

If so, you may want to think about applying to the CoP to replace it with a deputyship order.

Before the MCA was implemented, the CoP made two types of orders under the Mental Health Act 1983: receivership orders and short orders.

Short orders were typically issued where someone's assets were below £16,000. They granted limited authority to act on someone's behalf, and did

not fall within the transitional terms of the MCA, so are not subject to supervision by the Public Guardian.

Before October 2007, the former Public Guardianship Office would close some receivership cases if someone's assets fell below the £16,000 limit.

If you're still relying on a short order or receivership order to manage someone's finances, you should consider applying to the CoP for it to be replaced

with a full deputyship order. This is particularly important if your client's funds have increased above the old £16,000 limit.

A full deputyship order will give you the appropriate authority to act on your client's behalf. We can provide supervision and support in line with the MCA, once you become a court-appointed deputy.

For more information on deputyship orders, [visit gov.uk/opg](https://www.gov.uk/opg)



Welsh services

As a Welsh deputy you might use Welsh more than English when speaking to the person whose affairs you look after. If so, it could be a surprise to know that you can communicate with us in Welsh as well.



Using the same language to speak to OPG as you do with the person whose affairs you're looking after can help avoid constant translation and retranslation of often complicated affairs. When trying to engage with a vulnerable or frail individual it could bridge an emotional gap and help you make decisions on their behalf appropriately. If the person regularly speaks with their family member or friends in Welsh, using their language could be the path to a stronger relationship with them.

Under the Welsh Language Act 1993, every public body providing services to people in Wales has to prepare a scheme setting out how it will provide those services in Welsh. Where appropriate and

reasonably practical we treat the Welsh and English languages on the basis of equality. We're currently revising our Welsh language scheme which sets out our commitment to providing services in Welsh.

At OPG we offer Welsh language resources to you when carrying out your duties as a deputy.

These include:

- all written communications with us can be in the Welsh language if that is your preference
- Welsh language versions of our web pages are available on GOV.UK
- our deputy report form (OPG 102) is available as a bilingual version

- many of our guidance and practice notes are available to download in Welsh from GOV.UK and those that aren't, are available from us on request

We're working with organisations supporting elderly people and those who need help in managing their affairs in Wales, to improve the services we offer.

Public Guardian Alan Eccles meets the Welsh Language Commissioner every six months and he is keen to extend and improve the services we offer to Welsh speakers.

OPG is also hosting its annual Safeguarding Roundtable in September in Cardiff where we'll talk to representatives from partner organisations about our services and safeguarding work. Here, we hope to strengthen partnerships that we already have in place throughout Wales.

To find out how OPG can work with you in Welsh please get in touch with opgpolicy@publicguardian.gsi.gov.uk

Useful contacts

Office of the Public Guardian (OPG)

OPG is responsible for registering lasting and enduring powers of attorney, so that people can choose who they want to make decisions on their behalf if they can not. We maintain the public register of deputies and people who have been given lasting and enduring powers of attorney. We also supervise and support deputies appointed by the Court of Protection and look into reports of abuse carried out by registered attorneys or deputies.

The Office of the Public Guardian, PO Box 16185,
Birmingham
B2 2WH

www.gov.uk/opg

OPG Contact Centre

Tel: 0300 456 0300

9am to 5pm – Monday to Friday
10am to 5pm – Wednesday

Calls are charged at no more than the national call rate

Email: customerservices@publicguardian.gsi.gov.uk

If you have speech or hearing difficulties and you have access to a textphone you can use the textphone on 0115 934 2778

Fax: 0870 739 5780

To download deputyship forms or guidance please visit www.gov.uk/becomedeputy

OPG Visits team

Email: opgvisitorsoffice@publicguardian.gsi.gov.uk

Court of Protection

The Court of Protection (CoP) is a specialist court for all issues relating to people who lack capacity to make specific decisions. The court makes decisions and appoints deputies to make decisions in the best interests of those who lack capacity to do so.

Court of Protection, PO Box 70185,
First Avenue House,
42 - 49 High Holborn,
London,
WC1A 9JA

Tel: 0300 456 4600

To download CoP forms visit HMCTS Form Finder <http://hmctscourtfinder.justice.gov.uk/HMCTS/FormFinder.do>

To see information on CoP decisions visit www.bailii.org/ew/cases/EWHC/COP

Contact InTouch

Office of the Public Guardian
PO Box 16185, Birmingham, B2 2WH

[**intouch@publicguardian.gsi.gov.uk**](mailto:intouch@publicguardian.gsi.gov.uk)