



Office of the
Public Guardian

Guidance

February 2023

OPG Deputy Standards: Guidance for Lay Deputies



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The OPG deputy standards list a number of actions you must take as a deputy appointed by the Court of Protection to make decisions for a person who lacks capacity to make particular decisions for themselves (referred to as 'P' throughout this guidance).

This guidance has been written specifically for lay deputies; it provides additional information on how to meet the standards and what actions you need to take.

Standards may apply to property and financial affairs, health and welfare or both. You are expected to meet all the standards that apply to your appointment type and provide evidence of this when required to do so.

You must retain copies of records, letters, receipts, invoices, appointments, and details of any significant decisions made on behalf of P.

As a deputy you are expected to act with honesty and integrity and act in P's best interests. You must use the same care, skill, and diligence in making decisions for P as you would in the management of your own affairs.

Certain standards are only applicable to professional or public authority deputies. The guidance will state where standards do not apply to lay deputies.

When first appointed as a deputy you will be assigned an OPG Supervision case manager who will be your point of contact for any questions you may have about your role as a deputy. You will receive a settling-in call at the start of the deputyship.

OPG aims to commission a Court of Protection visitor to visit all newly appointed lay deputies in the first year.

In addition to the core standards, this guidance will cover actions that may be considered best practice.

Standard 1: Deputyship Obligations

All deputies must understand and meet their obligations and have the skills and experience to perform their role.

1a. Awareness of the Mental Capacity Act 2005 (MCA); the Code of Practice; and guidance published by OPG

Applicable to: Property and financial affairs, health and welfare

As a lay deputy you are not expected to be a legal expert, but you must have enough understanding of the law to perform your role. The Mental Capacity Act [Code of Practice](#) provides guidance on important topics and is available online.

We strongly recommend that you read chapters 1 to 5 and chapter 8.

Guidance is available for [newly appointed deputies](#) on the GOV.UK website.

OPG has published more detail guidance, called [practice notes](#), on specific issues such as gifting.

1b. Understanding the authority and obligations of the court order appointing the deputy

Applicable to: Property and financial affairs, health and welfare

You must understand and act within the authority conferred by your deputyship order. The court order appointing you as a deputy will include a section listing certain actions you may or may not take as a court appointed deputy. These will vary according to individual circumstances. For example, the order may allow you to purchase property on behalf of P. Your Supervision case manager will be able to assist you with any questions you may have regarding your deputyship order.

You must make sure that you understand your limited authority to give gifts from P's estate.

Additional information related to your deputyship order

The court can appoint two or more deputies to act in one of three ways:

- 'jointly' - deputies must always act together, must all agree on decision or actions, and all sign any relevant documents
- 'jointly and severally' - deputies can act together, but they can also act independently
- 'jointly' in respect of some matters and 'jointly and severally' in respect of others.

You should make sure that you make decisions in accordance with your appointment type.

1c. Submitting reports to OPG

Applicable to: Property and financial affairs, health and welfare

You must [complete a deputy report](#) and submit it to OPG when requested to do so, usually once a year.

Guidance on [competing and submitting reports](#) is available on GOV.UK.

You must make sure that all information provided on the deputy report is accurate and the report includes details of any significant decisions made on behalf of P.

1d. Paying supervision fees

Applicable to: Property and financial affairs, health and welfare

You must pay OPG Supervision fees when asked to do so. Information about fees and how to [apply for help paying them](#) is available on the GOV.UK website.

1e. Ensuring appropriate security is in place

Applicable to: Property and financial affairs

The Court of Protection will ask you to take out a bond before your deputyship order is issued. The value of the bond will be set by the court.

You must pay annual premiums to the bond provider.

If there is a significant increase or decrease in the value of P's estate, you must consider whether the amount of cover provided by the bond is still appropriate. For example, if P receives a payment from a medical negligence claim the level of security may need to be increased and you will need to apply to the court to increase the value of the bond.

1f. Adhering to fiduciary duties*

Applicable to: Property and financial affairs, health and welfare

As a deputy you must not take advantage of your position and your personal interests must not conflict with your duties as a deputy. This is explained in more detail in the Code of Practice chapter 8, paragraphs 8.58 and 8.59.

You must not delegate your decision making responsibilities to anyone else although you can seek expert or professional advice. See the Code of Practice, chapter 8, paragraphs 8.61 and 8.62.

*A fiduciary duty means a deputy must not take advantage of their position or allow their personal interests to conflict with their duties.

1g. Making appropriate court applications

Applicable to: Property and financial affairs, health and welfare

You may be required to make applications to the Court of Protection when necessary; for example, to request authority to vary the terms of the deputyship in order to sell P's property. You can pay the court fee using P's money.

Your Supervision case manager will tell you if an application needs to be made. Guidance about [how to make a court application](#) is available on GOV.UK.

1h. Considering whether a deputyship is still required

Applicable to: Property and financial affairs, health and welfare

You must apply to the Court of Protection if P regains capacity to manage their own affairs.

If P's circumstances change you should also consider whether a deputyship is still required, and if necessary, apply to the court to have the deputyship ended.

You must let your Supervision caseworker know if you are intending to apply to end your deputyship.

You must inform OPG if P dies.

1i. Informing OPG promptly of any changes in the responses provided in the COP4

Applicable to: Property and financial affairs, health and welfare

You completed a deputy declaration form (COP4) when you applied to become a deputy. If any of the information you provided changes, you must inform your Supervision case manager. You must let OPG know if:

- you are convicted of a criminal offence
- you are declared bankrupt, are made the debtor under an Individual Voluntary Arrangement, or are subject to a Debt Relief Order
- a business you are involved with becomes subject to a recognised insolvency regime
- you become aware of any conflicts of interest which may impact on your role as a deputy
- you are unable to continue to act as a deputy due to ill health or other factors

You must inform your Supervision case manager of any changes in your contact details and the contact details for P

Standard 2: Best interest decision making

All deputies must comply with decision making principles that are in the best interests of P.

2a. Complying with section 4 of the MCA including consideration of views of relevant persons

Applicable to: Property and financial affairs, health and welfare

You must make sure that all the decisions you make are in the best interests of P. When making decisions you must take into account P's past wishes and feelings, and the beliefs and values that would have influenced their approach to the issue if they had retained capacity.

You must consult other people for their views on P's best interests where it is appropriate and practicable to do so. This could include carers, family members and anyone previously named by P as someone to be consulted about that issue.

Chapter 5 of the Code of Practice provides further detail on best interest decision making.

2b. Including P in decision making

Applicable to: Property and financial affairs, health and welfare

You must involve P in the decision making process as far as possible. You must consider P's capacity to make particular decisions at the relevant time.

Chapter 3 of the Code of Practice explains how to help people make their own decisions and take part in the decision making process.

Chapter 4 of the Code of Practice provides further detail on how to assess a person's mental capacity.

Standard 3: Interactions with P

All deputies must engage with P in an appropriate manner taking into account P's individual circumstances.

3a. Visiting P at least once a year

Applicable to: Property and financial affairs, health and welfare

You must visit P and regularly assess their needs; visits must be made at least once a year.

Best practice in relation to engagement with P

You should discuss and record P's feelings, wishes, beliefs and interests, both past and present, with P, their family and care providers.

You should stay in regular contact with family members and carers, and make sure they are involved in making best interest decisions for P when appropriate.

You should regularly review P's needs, spending, and capacity to handle money.

You should use appropriate ways to communicate with P, for example, in their preferred language.

Standard 4: Financial Management

All deputies must manage P's finances appropriately, taking into account the particular assets of the estate.

4a. Checking claims and payments are up to date

Applicable to: Property and financial affairs

You must make sure you have applied for any eligible benefits for P within three months of receiving your deputyship order. You should review P's benefits at least once a year. Full details of [current benefits](#) are available on the DWP website.

4b. Separating funds

Applicable to: Property and financial affairs

You must make sure that P's funds are kept separate from those of the deputy unless there is a longstanding arrangement; for example, if the deputy and P are married or in a civil partnership. You can find out more about separation of funds in the Code of Practice chapter 8, paragraph 8.67.

Best practice in relation to the separation of funds

If funds are held in a joint account, you should consider whether this continues to be in P's best interests once the deputyship is in place.

When a joint account is closed the funds are usually divided between the named account holders. If P holds a joint account, you must agree with the other account holder(s) how funds should be split. The agreed arrangement must be in the best interests of P.

You may need to seek approval from the court to agree a separation of funds where there is a potential conflict of interest.

4c. Meeting tax obligations and planning

Applicable to: Property and financial affairs

You must make sure that all tax obligations are met. You must consider whether specialist advice is required to help you do so.

4d. Managing investments

Applicable to: Property and financial affairs

You must manage P's investments to get the maximum return possible, with minimal risk. You may seek professional or expert advice if P's investments are complex.

Best practice in relation to management of investments

You should regularly review P's investments to consider their suitability and whether they should be varied accordingly. You may need professional or expert advice to support this review.

When deciding the level of risk and investment term, you should consider P's circumstances, such as their age and any physical or mental health conditions.

You should also consider their age and life expectancy, the size of their estate, any consequences of varying the investments and their future financial needs.

You should try to make investment arrangements in line with P's previous pattern and wishes if this continues to be in their best interests.

You should consider P's immediate and future needs when considering the length of investment, such as whether funds need to be available to pay for care.

Short-term, low-risk investments are generally more appropriate if P has a lower anticipated life expectancy (less than 5 years) through old age or a life-limiting condition. A longer-term investment with a low to medium level of risk may be appropriate for a younger person without any life limiting health conditions if they have considerable funds.

4e. Managing financial liabilities

Applicable to: Property and financial affairs

You must make sure that P's debts are paid on time, for example care fees and utility bills.

4f. Providing personal allowance to P

Applicable to: Property and financial affairs

You must make sure that P has enough personal allowance to pay for items such as toiletries and chiropody if they are in residential care. If P is living in their own home or in sheltered accommodation you must consider P's best interests and capacity to handle money and provide enough spending money for their needs.

Best practice in relation to the management of P's finances

When appointed as deputy you should identify and keep safe all assets and investments held by P.

You should get a copy of P's will, if possible. Make sure that any specific items listed as bequests are kept safe. You should get individual items valued where appropriate.

You must notify banks and financial institutions where P holds an account that you have been appointed as their deputy. You should also notify any additional providers of income such as private pension companies.

You should find out if P is owed any money or assets, for example, rent from lettings or utility accounts in credit. You should try to recover these debts.

Best practice in relation to the financing of care provision

When appointed as deputy, you should contact any care providers, let them know you have been appointed and provide contact details.

You should make sure that P's care provision is good value for money, and appropriate to the level of funds available.

If you, or a member of P's family, are taking payment for providing care you may need to seek approval from the court. OPG has published detailed guidance on [family care payments](#).

Standard 5: Financial record keeping

All deputies must keep records of financial decision making and spending. When you complete the deputy report you will be expected to include records of any financial decisions made on behalf of P.

5a. Keeping financial records up to date

Applicable to: Property and financial affairs

You must keep receipts and invoices for all financial transactions carried out on behalf of P. You must keep records of all significant financial decisions.

When you complete the deputy report you will be expected to include statements related to financial decisions made on behalf of P.

5b. Showing how financial decisions are made and relevant factors considered

Applicable to: Property and financial affairs

You must make sure that all significant financial decisions are made in the best interests of P and the decision-making process is free from any conflicts of interest.

You must make sure that any decisions about gifts are in line with the authority conferred by your deputyship order. OPG has published [guidance on gifting](#) which is available on GOV.UK.

Standard 6: Property management

All deputies must manage P's property in line with the deputyship order and in P's best interests.

6a. Protecting P's property

Applicable to: Property and financial affairs

You must make sure that P's property is secure and maintained appropriately. You must make sure that appropriate building and contents insurance is in place and that you understand the terms of the policies.

6b. Selling P's property

Applicable to: Property and financial affairs

You must make sure that any decision to sell P's property is in their best interest. You must consult appropriate persons, if possible, including P and P's family before deciding to sell P's property. You must make sure that the property is sold at market value and get three valuations if possible.

You can only sell P's property if your deputyship order gives you authority to do so.

Best practice in relation to P's property (if they don't live there) when you become their deputy

You should find out who owns the property. You can search for that information on the [HM Land Registry](#) website. Where there is no other living owner able to do so, you should get access to the property and check it is secure.

If P has been moved into residential care, you should consider whether it is appropriate to bring items of sentimental value for P to their new home.

You should consider completing an inventory of P's belongings.

If you decide to sell items belonging to P you should keep records of all items sold.

You should make sure that post is redirected and that any necessary utilities continue to be provided.

If P is in public authority funded care, you should consider setting up a deferred payment arrangement where this is appropriate and in the best interests of P.

If any family members are living in the property, you should review any pre-existing arrangements consider whether it may be appropriate for regular payments to be made to P.

If P's property is let, you should consider whether notice should be given to terminate the tenancy. You should make sure correct legal tenancy agreements are in place and maintained. (You will need to make sure that you have authority from the court to terminate a tenancy agreement and may need to consider seeking specialist property law advice.)

Detailed guidance on [letting properties](#) is available on the GOV.UK website.

There will be a tax obligation if rental income is generated from P's property. Guidance on [paying tax as a landlord](#) is available from HMRC.

Best practice in relation to P's property (if they live there) when you become their deputy

You should consider whether the property still meets P's needs. You should consider whether a care plan or occupational therapy report is required and make sure any necessary adaptations are made.

You should review any tenancy or mortgage arrangements and get the deeds of ownership if necessary.

If there is a tenancy agreement in place, you should consider taking out tenants liability insurance.

You should make sure that gas check certificates are obtained for gas fires, boilers, and appliances.

You should make sure that electrical checks are carried out and electrical certificates are available. If P is responsible for paying utility bills, agree any contributions to be made from other household members.

Standard 7: Decisions related specifically to health and welfare

All deputies appointed in health and welfare cases must comply with the authority conferred by the deputyship order and make sure that OPG is informed about key decisions made on behalf of P.

7a. Deciding where P should live

Applicable to: Health and welfare

You must include details in your deputy report of any decisions you have made about where P should live.

Best practice in relation to deciding where P should live

If P is paying for their own accommodation, you can choose any accommodation for P provided it meets their needs and you apply the principles of the MCA. If P is not paying for their own accommodation, you should work alongside the funding provider and try to come to a mutual agreement in the best interests of P.

7b. Deciding who should have contact with P

Applicable to: Health and welfare

You will not have the power to prohibit a named person from having contact with P when you apply to be appointed as a deputy. Any restrictions you want to put on contact with P will need to be carefully considered as they might require a court order.

You must include details in your deputy report of any decision to restrict contact or access of P. You will need make an application to the Court of Protection to prohibit a named person from having access to P if you believe this to be in P's best interests.

7c. Consenting to treatment

Applicable to: Health and welfare

You must include details in your annual report of any decisions you have made to allow or refuse health care for P. (Deputies do not have authority to refuse life sustaining treatment for P.) You should also consider what decisions are likely to be required in the coming year. If there is ongoing treatment, you must clearly refer to it in the deputy report.

Additional considerations related to the provision of health care

When appointed as deputy, you should notify doctors, care providers and other health professionals about the court order.

You should review P's health and welfare needs at least once a year to make sure their needs have not changed and are still being met.

Standard 8: Additional obligations

Deputies must consider the following additional obligations:

8a. Auditing internal files

Applicable to: Property and financial affairs, health and welfare

This standard does not apply to lay deputies.

8b. Meeting professional obligations

Applicable to: Property and financial affairs, health and welfare

This standard does not apply to lay deputies.

8c. Informing OPG promptly of any ongoing investigation or proceedings

Applicable to: Property and financial affairs, health and welfare

You must inform your Supervision case manager if either you or P are subject to a police investigation or civil proceedings.

8d. Informing OPG of concerns about other deputies

Applicable to: Property and financial affairs, health and welfare

You must inform your Supervision case manager of any concerns you have about the actions of another deputy.