



Office of the
Public Guardian

Guidance

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OPG Deputy Standards: Guidance for Public Authority Deputies



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The OPG deputy standards list a number of actions you are expected to 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 Public Authority deputies; it provides additional information about meeting the standards and what actions you need to take.

Standards may apply to property and financial affairs, health and welfare or both, although OPG recognises that Public Authorities hold only a very small number of health and welfare cases.

You are expected to adhere to 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 must act with honesty and integrity and act in P's best interests.

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

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

The Public Guardian recognises that Public Authority deputies are likely to be working collaboratively with social workers and other members of the wider Public Authority team to meet the deputyship standards.

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

OPG expects Public Authority deputies to know the relevant law well enough to perform their role. You must know and understand the relevant sections of the MCA, Code of Practice and the LPA, EPA and Public Guardian Regulations 2007. You must be aware of emerging issues described in caselaw and take appropriate actions.

OPG has published practice notes on [specific issues](#) which are available on the GOV.UK website.

Best practice in relation to technical knowledge and skills required by Public Authority deputies and their staff

You should make sure that all members of staff delegated with deputyship responsibilities know about the role of the Public Guardian and their statutory duty to supervise deputies.

You should make sure that staff have access to appropriate advice and expertise on state benefits, continuing health care, NHS-funded nursing care, and funding under section 117 of the Mental Health Act 1983.

You should make sure that staff know about Public Authority funding and charges for care, and how to access appropriate expertise and advice.

You should make sure you have access to appropriate advice and expertise on inheritance planning and trusts and know how to apply for a statutory will if required.

You should make sure you have the skills to manage family conflict or access to mediation where appropriate.

You should make sure that staff know about the structure of their own organisation and are aware of when and how to seek any legal advice they may need.

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

Applicable to: Property and financial affairs, health and welfare

You must meet the obligations conferred by your deputyship order and not exceed your authority.

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 on an annual basis.

Guidance on [completing 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

Information about the 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

This standard does not apply to Public Authority deputies.

1f. Adhering to fiduciary duties

Applicable to: Property and financial affairs, health and welfare

You must make sure that the decision making process is impartial and objective and must declare any personal interests that may result in a perceived or actual conflict of interest.

You must comply with the 'Nolan Principles' of Public Life, which apply to anyone holding public office.

You must not delegate your discretionary decision making responsibilities to anyone else, although you can seek expert or professional advice in accordance with the Mental Capacity Act Code of Practice, chapter 8, paragraphs 8.61 and 8.62.

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 vary the terms of the deputyship order.

You must have a good knowledge of Court of Protection practice and procedures.

If you need to act outside the limits conferred by your deputyship order, you must request authorisation to do so from the court. Authorisation should be sought in advance wherever possible.

You must get specific authority from the court in order to conduct litigation on behalf of P. However, this is not required if the proposed litigation relates to a property and financial affairs issue to be heard in the Court of Protection.

If you are appointed as a property and financial deputy you are permitted to seek legal advice for P in non-contentious cases, but you must not proceed with litigation without obtaining authorisation from the court.

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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.

You must consider whether a deputyship is still required if P's circumstances change. For example, it may be more appropriate for a case to be managed as a DWP appointeeship if P has few assets and all their income is from state benefits.

If you decide to end the deputyship and apply for an appointeeship, you must consider any risks and safeguarding issues.

Health and welfare deputyship orders should only be required where specific actions cannot be carried out without the court's authority.

Once those actions have been completed you must consider whether a deputyship order is still required and, if necessary, apply to the court to have the deputyship discharged.

You must let your Supervision case manager know if you are intending to apply to discharge 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

This standard does not apply to Public Authority deputies.

Standard 2: Best interest decision making

All deputies must comply with best interest decision making principles.

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 on the issue in question.

You must retain full records of conversations with P and relevant persons, including evidence of P's wishes and feelings. You must make sure that formal mental capacity assessments are completed when appropriate.

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.

Standard 3: Interactions with P

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

For Public Authority deputies, evidence from reports provided by social workers will suffice to meet the requirements of this standard.

3a. Visiting P at least once a year

Applicable to: Property and financial affairs, health and welfare

You must make sure P is visited at least once a year and their needs regularly assessed.

Best practice in relation to engagement with P

You should make sure that records are retained of P's feelings, wishes, beliefs and interests, both past and present. Where possible, you should discuss these with P, their family, and care providers.

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

You should make sure that there are regular reviews of P's needs, spending, and capacity to handle money.

You should make sure that P is communicated with in an appropriate way, for example, using their preferred language.

Standard 4: Financial Management

All deputies must manage P's finances appropriately depending on the particular assets of P's estate.

You must make sure that deputyship costs are in proportion to P's assets. You must make sure that all costs claimed are in line with those permitted by [Practice Direction 19B](#)

4a. Checking claims and payments are up to date

Applicable to: Property and financial affairs

You must make sure you have applied for any benefits P is eligible for within three months of receiving your deputyship order. You should review P's benefits at least once a year.

4b. Separating funds

Applicable to: Property and financial affairs

When appointed as a deputy you must open a deputyship account in P's name.

OPG has published guidance on best practice for managing P's funds. The [Solicitor client accounts](#) practice note has been written for solicitors acting as court appointed deputies and aims to make sure that appropriate safeguards are put in place. However, the principles apply to all deputies who charge for their services.

4c. Meeting tax obligations and planning

Applicable to: Property and financial affairs

You must make sure that all tax obligations are met. You should 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 maximise returns, with minimal risk. You may seek professional or expert advice if P's investments are complex.

You must consider your fiduciary duty when managing investments and act in P's best interests.

Best practice in relation to management of investments

You should regularly review P's investments to check if they are still suitable and whether they should be varied accordingly. You may need professional or expert advice to help with this.

You should consider P's circumstances such as their age and life expectancy, the size of their estate, any financial consequences of variation and their future financial needs.

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 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 will be required 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.

All investments should be made in P's name unless you have authorisation not to do so. If, for any reason, it is not possible to register the investment in P's name, you will need a declaration of trust or some other record acknowledging P's beneficial interest in the asset.

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, consider their 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 first appointed as deputy you should identify and secure 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 deputy for P. You should also notify any additional providers of income such as private pension companies.

You should seek to recover any money or assets owed to P, by the way of debts and loans, for example, rent from lettings or utility accounts in credit.

Best practice in relation to the financing of care provision

When appointed as deputy, you should contact any care providers, inform them of your appointment, 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.

Where P is in Public Authority funded care, you should get a financial assessment to make sure that charges are accurate and based on up-to-date financial information

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 regarding gifting 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 are in place and that you understand the terms of the insurance 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 any appropriate persons, if possible, including P and P's family before making this decision. You must make sure that the property is sold at market value and get at least 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 receive your deputyship order

Public Authorities can make sure that P's property is protected if they are away from home as described in section 47 of the Care Act 2014. In practice many of the actions listed below may be completed by social workers working for the appropriate local authority rather than directly by the deputy themselves.

You should find out who owns the property, through [HM Land Registry](#)

Where there is no other living owner able to do so, gain access to the property and check it is secure.

If P has been moved into residential care, 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 and 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). You should consider taking out landlord's insurance.

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 receive your deputyship order

You should consider whether the property meets P's needs. You should consider commissioning a care plan or occupational therapy report and make sure that 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, you should 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 that relate to 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 someone from having contact with P if they are a named person in your deputyship order. 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 to P. If you believe prohibiting a named person from having access to them is in P's best interests, you will need to make an application to the Court of Protection.

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. You should also consider what decisions are likely to be required in the coming year. If there is ongoing treatment, you must clearly describe it in the deputy report.

Best practice in relation to the provision of health care

When first appointed as deputy, you should notify clinicians, 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

You must make sure that case files are regularly audited.

8b. Meeting professional obligations

Applicable to: Property and financial affairs, health and welfare

If the Public Authority team includes regulated professionals, for example social workers or accountants, you must make sure that they follow their respective regulatory guidance.

You must consider relevant public sector obligations regarding managing money, equality requirements, and provision of public services.

Best practice in relation to professional obligations

You should consider having written policies in relation to the decision to accept or refuse, or seek discharge of, a deputyship case.

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 P is subject to a police investigation or civil proceedings.

You must make OPG aware of any internal or external investigations into the running of the department.

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.

Best practice in relation to effective internal office processes and organisation for Public Authority deputies

You should establish clear governance between the named deputy and staff delegated to carry out the day-to-day functions of the role.

You should maintain a record of all staff with delegated authority to carry out tasks by the deputy, including a list of signatories.

You should demonstrate sufficient senior internal supervision of the overall deputyship process.

Where decision making is delegated, you should make sure that the criteria for decision making requiring the authorisation of the deputy are clearly defined and understood.

You should make sure that documented agreements of accountability are in place for any duties performed by staff outside the Public Authority (outsourced). You should carry out appropriate oversight and monitoring and demonstrate that the named deputy remains fully accountable for decisions taken about P.

You should make sure that all necessary financial, security, management, organisational and quality control systems are in place with regards to accounting systems; cash handling, banking, and access to bank accounts; separation of P's funds, IT, and information assurance.

You should maintain clear policies on data protection, business continuity, banking, and money handling.

You should make sure that process are in place to protect confidentiality on all matters relating to P.

You should complete regular reviews of the ratio of staff to deputyship cases.

You should make sure that translators and interpreters are available as needed.

You should make sure that all parties understand the complaints handling procedure and that options are available for the timely resolution of disputes.

You should make sure that all staff are aware of procedures for handling safeguarding issues and making referrals to the relevant authority.