



Office of the
Public Guardian

Policy

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Deputy Standards



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These standards set out what is expected of lay, Public Authority and professional court appointed deputies and form a central part of OPG's approach to supervising all three types of deputies.

Lay deputies are usually friends or family members of the person who lacks capacity to make decisions for themselves. Lay deputies are not allowed to charge fees.

If no family member is available, willing, or able to act as a deputy, the court may appoint a local authority or health body as a deputy; these are referred to as Public Authority deputies. Public Authority deputies are allowed to charge fees for their services at a fixed rate.

Professional deputies are usually appointed when there is no family member available or willing to act as a deputy and there are more complex issues to manage. They are paid for the services they provide and are usually solicitors, accountants, or financial advisors.

The standards fall into eight clear categories:

- Core deputyship obligations
- 'Best interest' decision making
- Interactions with P*
- Financial management
- Financial record keeping
- Property management
- Decisions related specifically to health and welfare
- Additional obligations

*Throughout these standards and the accompanying guidance, a person who lacks mental capacity to make particular decisions for themselves is referred to as P.

Standards apply to property and financial affairs, health and welfare, or both.

Deputies will be assessed against the standards by reviewing the responses on the annual report and through assurance visits and case reviews.

The Public Guardian expects Public Authority and professional deputies to have a higher level of technical knowledge and expertise than lay deputies.

For lay deputies OPG will provide initial support to help them meet their deputyship responsibilities. Where deputies fail to meet the standards, they may be asked to complete a number of corrective actions. A significant breach of the standards may result in an application to the Court of Protection to remove the deputy.

For Public Authorities, instances of deputies not meeting the standards will be referred to the senior management or chief executive of the Public Authority and corrective measures put in place to ensure the standards are met.

In cases where professional deputies fail to adhere to the standards, OPG will consider making an application to the Court of Protection to discharge the deputy.

OPG will investigate concerns raised regarding the actions of a deputy and make safeguarding referrals to the appropriate Local Authority where necessary. Where there is evidence of fraud or criminal negligence referrals will be made to the police.

Additional guidance tailored specifically for lay, Public Authority and professional deputies is available on GOV.UK:

The guidance provides additional material to help deputies to meet their responsibilities and make sure that all decisions made are in P's best interests.

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

Lay deputy

Deputies must have sufficient knowledge of the MCA and Code of Practice to carry out their duties.

Public Authority deputy and professional deputy

Deputies must have sufficient knowledge of the MCA and Code of Practice to carry out their duties. Deputies must keep up to date with knowledge and application of relevant case law.

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

Applicable to: Property and financial affairs, health and welfare

Lay deputy, Public Authority deputy and professional deputy

Deputies must understand the obligations conferred on them by the deputyship order, with support from OPG if necessary.

Public authority deputy and professional deputy

Deputies must understand the obligations conferred on them by the deputyship order.

1c. Submitting reports to OPG

Applicable to: Property and financial affairs, health and welfare

Lay deputy, Public Authority deputy and professional deputy

Reports must be submitted each year or when requested by OPG.

1d. Paying supervision fees

Applicable to: Property and financial affairs, health and welfare

Lay deputy, Public Authority deputy and professional deputy

OPG supervision fees must be paid on time.

1e. Ensuring appropriate security is in place

Applicable to: Property and financial affairs

Lay deputy

Annual bond premiums must be paid. Deputies may be required to make an application to the Court of Protection to vary the level of the security bond if requested to do so by OPG.

Public Authority deputy

This standard does not apply to Public Authority deputies.

Professional deputy

Annual bond premiums must be paid. Deputies must make sure that the security bond is sufficient and make an application to the Court of Protection to vary the level of the security bond if required. Deputies must take out professional indemnity insurance at the appropriate level.

1f. Adhering to fiduciary duties*

Applicable to: Property and financial affairs, health and welfare

Lay deputy

Deputies must adhere to fiduciary duties and avoid any potential conflicts of interest using the guidance provided in the Code of Practice and with relevant support from OPG as required. They must make sure that the decision making process is impartial and objective and must declare any personal interests that may result in a potential conflict of interest.

Public Authority deputy

Deputies must adhere to fiduciary duties and avoid any potential conflicts of interest. They must make sure that the decision making process is impartial and objective and must declare any personal interests that may result in a potential conflict of interest.

Professional deputy

Deputies must adhere to fiduciary duties and make sure that measures are in place to avoid perceived or actual conflicts of interest; where these do occur, deputies must follow the procedures outlined in the *Re ACC and Others* judgment.

*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

Lay deputy

Deputies must make appropriate court applications when necessary or when requested to do so by OPG.

Public Authority deputy

Deputies must make appropriate court applications when necessary.

Professional deputy

Deputies must make court applications when necessary. Deputies must consider the authority they will need to manage a particular case when making the deputyship application.

1h. Considering whether a deputyship is still required

Applicable to: Property and financial affairs, health and welfare

Lay deputy

Deputies must consider whether a deputyship order remains the less restrictive option for P. If P has regained capacity, deputies must make applications to the Court of Protection to end the deputyship.

If P's income is derived entirely from state benefits, deputies must consider whether a deputyship is still required as P's financial affairs could be managed through an appointeeship. In health and welfare cases deputies must consider whether the intervention of a deputy is still required.

Public Authority deputy and professional deputy

If P has regained capacity, deputies must make applications to the Court of Protection to end the deputyship.

If P's income is derived entirely from state benefits deputies must consider whether a deputyship is still required, as P's financial affairs could be managed through an appointeeship. However, any decision to discharge a deputyship in favour of an appointeeship must consider any additional risk and safeguarding factors. In health and welfare cases deputies must consider whether the intervention of a deputy is still required.

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

Applicable to: Property and financial affairs, health and welfare

Lay deputy and professional deputy

Deputies must inform OPG of any changes in matters declared in the COP4 deputy declaration form.

Public Authority deputy

This standard is not applicable 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

Lay deputy Public Authority deputy and professional deputy

Deputies must comply fully with section 4 of the MCA following the guidance available in chapter 5 of the Code of Practice and make sure that relevant persons are consulted as required.

2b. Including P in decision making

Applicable to: Property and financial affairs, health and welfare

Lay deputy

Deputies must include P in decision making wherever possible. Records of conversations including evidence of P's wishes and feelings must be kept. Deputies must consider P's mental capacity to make decisions using the guidance available in chapter 4 of the Code of Practice.

Public Authority deputy and professional deputy

Deputies must include P in decision making wherever possible. Records of conversations including evidence of P's wishes and feelings must be kept. Deputies must make sure that formal mental capacity assessments are carried out as and when appropriate.

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

Lay deputy

Deputies must visit P as often as reasonably necessary, and at least once a year.

Public Authority deputy

Deputies must make sure that P is visited as often as reasonably necessary, and at least once a year.

Professional deputy

Deputies must visit P at least once a year; deputies must demonstrate an awareness of P's circumstances and provide justification for more frequent visits if required. Deputies must make sure that cases where P makes frequent contact with the deputy are managed appropriately with minimal additional cost to P.

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

Lay deputy

Deputies must make sure they have applied for any eligible benefits for P within three months of receiving the deputyship order; OPG will give advice as needed. Deputies must review benefits at least once a year.

Public Authority deputy and professional deputy

Deputies must make sure they have applied for any eligible benefits for P within three months of receiving the deputyship order. Deputies must make sure that benefits are reviewed at least once a year.

4b. Separating funds

Applicable to: Property and financial affairs

Lay deputy

Deputies 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.

Public Authority deputy and professional deputy

Deputies must make sure that P's funds are kept separate and account management is fully transparent.

4c. Meeting tax obligations and planning

Applicable to: Property and financial affairs

Lay deputy, Public Authority deputy and professional deputy

Deputies must make sure that all taxes are paid and relevant documents filed, and should consider whether specialist advice is required.

4d. Managing investments

Applicable to: Property and financial affairs

Lay deputy, Public Authority and professional deputy

Deputies must try to get the best return possible on savings with the least amount of risk. The financial management of P's estate must be optimised using appropriate and cost-effective measures.

4e. Managing financial liabilities

Applicable to: Property and financial affairs

Lay deputy, Public Authority deputy and professional deputy

Deputies must make sure that any debts owed by P are paid on time.

4f. Providing personal allowance to P

Applicable to: Property and financial affairs

Lay deputy, Public Authority deputy and professional deputy

Deputies must make sure P is provided with an adequate personal allowance whether they are living in residential care or in their own home.

Standard 5: Financial record keeping

All deputies must keep records of financial decision making and spending.

5a. Keeping financial records up to date

Applicable to: Property and financial affairs

Lay deputy

Deputies must keep records of all significant financial decisions and make sure that receipts and invoices are kept.

Public Authority deputy

Deputies must keep full financial records and make sure that accounting systems are in place.

Professional deputy

Deputies must keep full financial records and make sure that accounting systems are in place, complying with the Solicitors Regulation Authority's (SRA) or other regulators' requirements as appropriate.

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

Applicable to: Property and financial affairs

Lay deputy, Public Authority deputy and professional deputy

Deputies must provide explanations for all significant financial decisions in the annual report.

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

Lay deputy, Public Authority deputy and professional deputy

Deputies must make sure that P's property is secure and appropriate insurance is in place.

6b. Selling P's property

Applicable to: Property and financial affairs

Lay deputy, Public Authority deputy and professional deputy

Deputies must make sure that any decision to sell P's property is in P's best interests and in line with the authority conferred by the deputyship order.

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

Lay deputy, Public Authority deputy and professional deputy

Deputies must provide explanations to OPG for any decisions made regarding where P should live.

7b. Deciding who should have contact with P

Applicable to: Health and welfare

Lay deputy, Public Authority deputy and professional deputy

Deputies must make sure that they have considered the limits of their deputyship order regarding restricting access to P in line with section 20 of the MCA which states that only the court can make decisions regarding restricting access to P.

7c. Consenting to treatment

Applicable to: Health and welfare

Lay deputy, Public Authority deputy and professional deputy

Deputies must provide explanations to OPG for any decisions made regarding the provision, refusal, or discontinuation of healthcare for P.

Standard 8: Additional obligations

Deputies must consider additional obligations especially if they are charging for services provided to P

8a. Auditing internal files

Applicable to: Property and financial affairs, health and welfare

Lay deputy

This standard does not apply to lay deputies.

Public Authority deputy and professional deputy

Deputies must make sure that processes are in place for regular internal audits of case files. If any actions are needed as a result, these must be completed as soon as possible.

8b. Meeting professional obligations

Applicable to: Property and financial affairs, health and welfare

Lay deputy

This standard does not apply to lay deputies.

Public Authority deputy

Deputies must make sure that the requirements regarding the appropriate use of public resources are being met.

Professional deputy

Deputies must adhere to the professional good conduct and behaviours expected by OPG and any appropriate regulatory body. Full and transparent bills of costs must be submitted to the Senior Court Costs Office (SCCO) as appropriate.

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

Applicable to: Property and financial affairs, health and welfare

Lay deputy and Public Authority deputy

Deputies must make sure that OPG is made aware of any ongoing or new police investigations or civil proceedings that relate to either P or the deputy.

Professional deputy

Deputies must make sure that OPG is made aware of any ongoing or new police investigations or civil proceedings that relate to either P or the deputy; deputies must make sure that OPG is made aware of any ongoing investigations by the appropriate regulatory body.

8d. Informing OPG of concerns about other deputies

Applicable to: Property and financial affairs, health and welfare

Lay deputy, Public Authority deputy and professional deputy

Deputies must let OPG know if they have any concerns about another deputy, regardless of the type of deputy they are. They must also inform us of any issues that could affect how the deputyship is managed.