



Office of the
Public Guardian

Public Guardian guidance

Court of Protection visitors and the release of their reports

Summary

This guidance explains who Court of Protection visitors are and their role in preparing reports. It also explains when reports can be released and who they can be released to.

Purpose and scope

This guidance gives information about Court of Protection visitors and visit reports and explains when reports can and can't be released. It also makes clear that publication of visit reports is generally not permitted by the Office of the Public Guardian (OPG).

OPG may amend this guidance at any time, particularly to stay in line with new Court of Protection ('the court') judgments.

What is a Court of Protection visitor?

The role of Court of Protection visitors is statutory (defined by law) under [section 61](#) of the Mental Capacity Act 2005, introduced on 1 October 2007 and referred to in this guidance as 'the Act'. There are two types of visitors: special visitors and general visitors.

Special visitors are medical practitioners who have special knowledge of mental capacity - the ability to make your own decisions at the time they need to be made. General visitors do not need to be medically qualified, but they do need to have experience of mental capacity.

OPG administers a panel of Court of Protection visitors who work throughout England and Wales. They mainly work as contractors, although OPG employs a small number directly.

What does a Court of Protection visitor do?

Court of Protection visitors can visit anyone they are directed to by the court. They can be directed by the Public Guardian to visit a deputy or anyone who has a deputy appointed by the court to make decisions for them, and anyone involved in a registered enduring or lasting power of attorney, e.g. the donor or an attorney. (A 'donor' makes a power of attorney; an 'attorney' makes decisions for the donor.) They may in some circumstances visit someone before the registration of a lasting or [enduring power of attorney](#).

The Public Guardian has the function of directing a Court of Protection visitor to visit and report back on matters as required. Visitors report independently to the Public Guardian, to help in the Public Guardian's role supervising deputies and investigating concerns about the actions of a deputy or attorney. More information can be found in [Section 58\(1\)\(d\)](#) of the Act.

Court of Protection visitors can look at and take copies of records they need about the person lacking mental capacity. This could include information such as health records, care records and any social services records from the local authority. They may also interview the person lacking

mental capacity in private.

The court may request a report, either from the Public Guardian or a Court of Protection visitor, to help it make a decision. More information can be found in [Section 49\(2\)](#) of the Act.

Releasing a report by the Court of Protection

Unless the court orders otherwise, visitors' reports prepared for the court are given to people directly involved in the case, under Rule 5.8. of [The Court of Protection Rules 2017](#) ('CoP Rules'). Those people include:

- the person making the application, or applicant
- the person the application is against or who it needs a response from – the respondent
- any other parties involved in the case, if stated by the court

Under Rule 5.9. of the CoP Rules, someone who is not a party to the case can apply to the court for a copy of a report, though the court may only provide an edited version. You can apply to the court for a copy using form [COP9](#) with no fee. You can also call the Court Enquiry Service on 0300 456 4600.

Reports produced for the court can only be released with its permission.

Before the Act was introduced, visits were conducted by Lord Chancellor's visitors. Their reports are records of the Court of Protection and can also only be released with the court's permission.

Releasing a report by the Public Guardian

Regulation 44(5) of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 ('the Regulations') allows the Public Guardian to release a copy of a visit report to anyone interviewed while preparing the report, inviting them to comment on it.

The report may be released to people or organisations included in a Public Guardian application to the court or supplied to the police or a local authority during an investigation. These could include an attorney, donor, deputy, or a person who is the subject of a deputyship order ('P') or any third party interviewed by the visitor, such as a relative or carer.

As part of the Public Guardian's duties to supervise or investigate, reports prepared for OPG may be released to a visitor who is visiting people in the same case.

You can ask for a copy of a visit report by emailing OPG's information assurance team

at OPGInformationAssurance@publicguardian.gov.uk or by writing to them at the address at the end of this guidance.

Releasing assurance visit reports

As part of the supervision of professional or public authority deputies, the Public Guardian may commission an assurance visit. This reviews the performance of a professional or public authority deputy against published standards and includes visit reports to a selection of the people who are subject to deputyship orders.

If a deputy has had an assurance visit, OPG's supervision team will write to them explaining the findings of the visit and telling them if there is anything they need to do as a result.

You can ask for a copy of an assurance visit report by emailing OPG's information assurance team.

Releasing reports to local authorities and others

[Section 58\(2\)](#) of the Act gives the Public Guardian the function of cooperating with anyone involved in the care of a person without mental capacity. The Public Guardian will decide whether to disclose all, or part of, a visit report to local authority social services, health bodies or care providers where either:

- the welfare of the person demands it
- it will help the supervision of, or investigation into, the actions of a deputy or attorney

Releasing reports to the police

Reports prepared for the Public Guardian may be released to the police if they are investigating whether a crime has taken place.

Releasing reports in Public Guardian court applications

Visit reports prepared for the Public Guardian may be used as evidence in applications to the court. In that case, the Public Guardian 'serves' (formally delivers) a copy of the report on the parties to the application (the people and any organisations involved in it) unless a judge orders otherwise.

If someone gives any information to a visitor in confidence and is concerned that revealing their name to other parties in a court application could cause physical or psychological harm, then they should tell the visitor.

If OPG considers someone's evidence to be important, it will contact them before it makes a court application to ask whether their name can be revealed in court. If they say no, OPG will consider asking the judge to protect their identity.

Releasing reports under the UK General Data Protection Regulation (UKGDPR)

Article 15 of the UK GDPR lets people see personal information held by public or private organisations. This may be information about:

- themselves (known as a subject access request)
- the person the individual is acting for under a registered enduring power of attorney, lasting power of attorney or Court of Protection deputyship

Find out how to make a [subject access request](#) to the Ministry of Justice. If a visit report is released following a request, then information that isn't about the subject of the request and the names of some third parties will be removed to comply with the Data Protection Act 2018.

When is a report not released?

The Public Guardian can choose not to release a report if it contains information that:

- might go against a third party's data protection rights
- was told to the visitor in confidence by a third party
- could be harmful to anyone named in the report

The Public Guardian can also release a report with parts removed, or redacted. For example, to protect the identity of someone making an allegation of abuse.

Publication of visit reports

Publishing visit reports, or extracts from visit reports, is generally not permitted by OPG. You should seek approval from OPG if you are considering publishing a report in any format.

For further advice:
Office of the Public Guardian
Telephone 0300 456 0300
www.gov.uk/opg