



Office of the
Public Guardian

Professional deputy costs

Good practice guidance from the Office of the Public Guardian
and the Senior Courts Costs Office

Summary

This guidance has been created to help professional deputies when submitting estimates of costs and bills for assessment, and to explain what can be claimed for in general management (GM) bills

Introduction

This good practice guidance has been produced by the Office of the Public Guardian (OPG) and the Senior Courts Costs Office (SCCO).

It outlines how we will work together to ensure that deputies act in P's best interests and comply with the Court of Protection's (COP) directions.

Purpose and scope

This guidance explains the approach the SCCO takes when assessing bills submitted by professional deputies. It covers good practice, OPG's role, complaints, appeals and guidance on general management costs.

The guidance contains:

- reminders of what to consider when incurring GM costs against P's estate
- advice on submitting bills of costs for assessment
- OPG's reporting requirements

It should be read in conjunction with the relevant Civil Procedure Rules (CPR), COP Practice Direction PD19B, section 23 of the SCCO Guide (2023), the Mental Capacity Act 2005 Code of Practice (the Code) and OPG professional deputy standards. Please refer to links at the end of the document.

It does not replace any of these documents.

Background

OPG's aim is to promote best practice and transparency in the matter of professional deputy costs in order to fulfill our responsibility to safeguard P's interests. Information collected from professional deputies will allow us to form an opinion about the deputy's management of P's financial affairs and their proposals for future activity.

Good practice

As explained in paragraph 6 of PD19B, a professional deputy is entitled to GM costs which are:

- reasonable
- proportionate to the total value of P's estate, the amount of work done and that any work done should be done by the appropriate fee earner

It is equally important for a professional deputy to demonstrate they are considering P's best interests, especially but not exclusively, where his or her assets are being significantly or rapidly depleted.

When talking about a duty of care, Section 8.57 of the Code states that: 'If deputies are being paid for their services, they are expected to demonstrate a higher degree of care or skill when carrying out their duties.'

OPG expects a professional deputy to take a balanced approach when dealing with P's affairs and exercise professional judgement in all aspects of their role, in particular where P's funds are concerned.

This includes considering the amount of involvement they expect to have in P's affairs in the next deputyship year and how much the professional deputy fees are likely to cost P's estate.

In addition, the deputy has a responsibility to make a professional assessment if it is in P's best interests for them to continue in their role, resulting in a reduction of P's estate.

If P's affairs are sufficiently well organised and unlikely to undergo significant change, the professional deputy may consider if an application to the COP for appointment of a willing member of P's family or a friend would be appropriate.

Both OPG and the SCCO are clear that any professional deputy who does not follow the published guidance will be expected to explain the reason for their actions and in particular, demonstrate how their actions are in P's best interests.

The Public Guardian may make an application to the COP for the removal of any deputy where there is a concern that they are not acting in P's best interests.

Confidentiality

While acknowledging their general duty of confidentiality, OPG encourages deputies to be open and transparent about their charges with P's family when appropriate. This will promote a greater awareness of the costs incurred in the management of P's affairs.

Deputies should reach a balanced decision on whether disclosure of their fees to family members is in P's best interests.

When taking this decision deputies should take into consideration and make family members aware that this does not automatically mean that family members have a right to question any costs submitted to the SCCO. (CPR Rule 47.19(3) and PD 47 (18.2).

Submitting form OPG105 to OPG and the SCCO

The OPG105 will be due alongside the deputyship report (OPG102/OPG103) at the end of the reporting period. The completion and submission of OPG105 should not require any further information gathering activity by the deputy and is not anticipated to add any further cost burden to P. Completing the form should take no longer than 30 minutes.

The SCCO needs as much information as possible in order to make a full assessment of professional costs.

When submitting their bill for assessment, professional deputies should enclose a copy of the fees estimate previously submitted to OPG. Estimates are not binding on the detailed assessment.

If the costs claimed in the bill are 20% or more above the estimate it will also be necessary to provide reasons to the SCCO as to why there is a difference.

Should there be changes in P's circumstances during the year (and therefore costs to their estate), the deputy should alert OPG if the fees are likely to be 20% or more than the submitted estimate.

It is not necessary to file an update with the OPG if the increase of 20% or more is due solely to a change in the guideline hourly rates.

However, it will be for the SCCO to assess the professional deputy's costs at the end of the reporting year and for the deputy to explain any inconsistencies.

OPG's role

On receipt of the first year's estimate or the deputy report and OPG105, the OPG case manager will review the estimated costs for the next year. If they raise any concerns, they will contact the deputy to discuss or clarify.

The case manager will look at a number of factors, including the estimate in relation to the size of P's estate, previous costs in the case, and any known circumstances in the case that may impact on the fees to be charged (for example a change in P's financial, living or care arrangements demanding greater or less input from the deputy).

Complaints and appeals

The SCCO has a clearly identified appeals process that is available to any person having a financial interest in P's affairs. See CPR 47.19(3) and PD 47 (18.2) and SCCO Guide 2023 Chapter 27.9.

Where OPG receives a complaint about professional deputy costs and a costs certificate has already been issued, the complainant will be referred to the SCCO guidance, Civil Procedure Rules (CPR) and the judicial process.

OPG may alert the SCCO to cases where concerns are identified about the level of professional costs but will not be party to the SCCO's decisions about costs or seek to overturn any costs certificates issued.

Summary guidance on general management costs

The following is an overview of the approach taken by the SCCO when assessing bills.

Hourly rates

Except in the most exceptional circumstances, the hourly rates charged within the GM bill should be as described in the SCCO Guide to the summary assessment of costs (CPR Vol.1). Rates should be claimed in accordance with the Guideline Hourly Rates for the period in which the work was undertaken and evidence provided of compliance with the indemnity principle as appropriate. Current and historic Guideline Hourly Rates for Solicitors are readily available online, for example at the Gov.uk website.

Delegation of duties

Professional deputies are expected to delegate work to the appropriate level of fee earner.

That means routine GM activities such as paying bills or checking bank statements should be carried out by an administrative assistant or a Grade D fee earner at best.

The deputy will need to justify any bill where a higher grade of fee earner is claimed. There are times when the use of a non-fee earner would be considered more appropriate, for example, if delivering goods or money to P.

When considering any time claimed for the act of delegation the SCCO will consider if the time claimed is reasonable, proportionate, progressive and that it serves to reduce costs. For regular, routine activities it is expected that systems will have been put in place to avoid the need for repetitive or excessive delegation.

Paying bills

Three-minute units will usually only be allowed in respect of paying bills either by electronic transfer, cheque or enclosure letter. No further time will usually be allowed for updating records with details of any payment or for any letter advising of payment.

Reconciliation of Bank statements

Reconciliation of Bank statements will only usually be allowed at Grade D.

Levels of contact

The SCCO's usual practice is to allow one home visit in each 12-month period, which is considered to be appropriate in cases which are stable.

It is accepted that more visits may be necessary to meet the particular needs of the case, but deputies should be prepared to justify this with reference to their duties under the Mental Capacity Act.

The SCCO allows the cost of one fee earner to visit in all except the most exceptional cases. Professional deputies should try to limit excessive contact with all parties, including P, their family members, case managers and case workers.

In all cases, professional deputies are expected to use their judgement in deciding the most cost-effective method of communication and take a balanced approach to meeting P's needs against incurring excessive costs.

Welfare work

Where a property and affairs deputy is appointed to manage P's finances, work in respect of welfare is not recoverable from P's estate without permission from the COP.

If the professional deputy for property and affairs is finding that a large proportion of their time is being taken up in health and welfare related matters, they should ensure they engage with appropriate professionals who can meet those needs (for example, alert agencies to safeguarding concerns).

They may also consider it is in P's best interests for an application to be made to the COP for the appointment of a health and welfare deputy.

Re ACC Judgment

For work that falls outside of the general authority of a deputy further authority for the assessment of costs may need to be applied for. Please refer to the Re ACC Judgement:

[ACC & Ors \(property and affairs deputy; recovering assets costs for legal proceedings\) - Find case law \(nationalarchives.gov.uk\)](http://nationalarchives.gov.uk)

'Financial beauty parades'

Generally, only one senior fee earner will be allowed to attend such meetings to discuss the best investment strategy for P in large damages awards.

Estimated costs

If no documentary evidence is provided in support of the bill, for example attendance notes and copies of the documents to which the attendance note refers, such costs are likely to be disallowed.

Overheads

Research, reading incoming routine correspondence, internal communication if it is considered to be routine and non-progressive, supervision and routine updating of records are taken to be included in the deputy's overheads, except in exceptional circumstances.

These examples are not comprehensive and there may be other items that are considered to be overheads in individual assessments.

OPG expects all deputies to provide a certain level of service and has systems in place to monitor this, such as Assurance Visits and ensuring compliance with deputy standards. Time associated with these obligations is considered by OPG and the SCCO to be part of a deputy's overheads and will not be allowed on assessment.

Routine correspondence out

A three-minute unit is usually allowed for very short straightforward letters, emails or duplicate letters, for example to a financial institution or P's family.

Litigation costs

Costs will be disallowed which could properly be claimed within the context of ongoing litigation, for example, interim payments on account of damages or providing information for the purpose of conducting litigation. See also ACC above.

Costs drafting fees

Apart from in exceptional circumstances, a Grade D rate fee earner will be allowed for drafting bills of costs.

The costs of preparing excessively long schedules that replicate the file notes are likely to be disallowed.

The short form bill must be used for costs claimed of under £3,000 (excluding VAT and disbursements).

Limited value estates

Where P's net assets are below £20,300, a professional deputy is expected to act according to the directions given in Sections 10 and 12 of PD19B.

Professional costs on P's death

On P's death, the deputyship is at an end. As such, the Court of Protection (COP) no longer has any jurisdiction, and the SCCO has no authority to assess a professional deputy's bill, for any costs incurred post-death.

However, the SCCO can continue with an assessment that has partially progressed before P's death without requiring further authority from the COP.

This is because the original deputyship order will authorise detailed assessment of the reasonable deputyship costs incurred during P's lifetime.

The deputy should refer to an executor to see if the costs can be agreed (Practice Direction 23(b) paragraph 10).

Where a professional deputy is also the executor for P's estate, there is a potential conflict of interest, and the bill should be submitted to the SCCO for assessment. In such circumstances, the SCCO will NOT need permission from the COP to carry out a final assessment, as explained above.

Submitting bills to SCCO

Bill Format

All Bills from professional deputies should be submitted to the SCCO via CE file.

Bills are accepted in the following formats:

- Traditional 'Paper bills' of Costs as set out in CPR Pt 47, PD47
- COP-E Bill – further guidance can be found on the Judiciary website

<https://www.judiciary.uk/guidance-and-resources/electronic-bills-in-court-of-protection-cases-pilot-in-the-senior-courts-costs-office/>

The short form bill must be used for costs claimed of under £3,000 (excluding VAT and disbursements).

Please refer to the SCCO Guide 2023 at Chapter 27.6 and Appendix AA.

Documents to be submitted to SCCO

In addition to the bill of costs and other documents required in PD19B and the SCCO Guide, at the beginning of the supporting papers deputies should provide copies of the completed OPG105 professional fees insert, that has been or will be submitted to OPG for the relevant period(s), the OPG 102, any orders giving authority for assessment for work that falls outside of the general authority of the deputy (for example as set out in ACC & Others [2020] EWCOP 9 (ACC)) and any evidence in support of the hourly rates claimed.

Frequency of submitting bills of costs to SCCO

It's good practice and in P's best interests for the professional deputy to submit their GM bill of costs to the SCCO annually, as close to the end of the annual management year as possible (see section 6 of PD19B).

Professional deputies may need to explain to OPG if this can't be done.

Bills covering less than one year may be submitted where there has been a transfer of deputyship, and the deputy wishes to realign the dates of the management period with the date of the new order. However, please note that where the transfer is internal (the deputyship remains in the same firm) bills must contain at least six months' worth of work, unless exceptional circumstances can be provided.

Further information

This guidance supplements the information in the OPG's 'How to be a deputy: Property and affairs decisions' (SD3):

www.gov.uk/government/publications/deputy-guidance-how-to-carry-out-your-duties

For full SCCO guidance in relation to the assessment of costs in COP cases, refer to Section 23 of the SCCO Guide (October 2023):

<https://www.judiciary.uk/guidance-and-resources/the-senior-courts-costs-office-guide-2023-is-published>

The SCCO page on the Court Service website:

www.gov.uk/courts-tribunals/senior-courts-costs-office

Information on OPG can be found at:

www.gov.uk/opg

The Mental Capacity Act 2005 Code of Practice:

www.gov.uk/government/publications/mental-capacity-act-code-of-practice

Civil Procedure Rules:

www.justice.gov.uk/courts/procedure-rules/civil

Guideline for Hourly Rates:

[Solicitors' guideline hourly rates - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Court of Protection Practice Directions:

www.judiciary.uk/guidance-and-resources/court-of-protection-practice-directions/

For further advice:

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