



Office of the  
Public Guardian

# Fixed costs and remuneration of professional and public authority court appointed deputies

## Summary

This guidance sets out the Public Guardian's position on a number of issues related to fixed costs that may be charged by professional and public authority deputies in line with Practice Direction 19B.

# Purpose and scope

This guidance sets out some general principles regarding fixed costs and remuneration, and how professional and public authority deputies should apply the schedule of fixed costs and remuneration set out in PD19B. It also provides guidance on a number of issues related to the specific interpretation of certain categories of fixed costs. It is not intended to be an exhaustive guide to all aspects of fixed costs but will focus on those areas where concerns or questions have been raised by professional and public authority deputies.

## General Principles

This section will explain the basic principles of how fixed costs may be charged by professional and public authority deputies including authority to charge fixed costs or to have costs assessed, definition of net assets, and the principles of billing including estimated costs.

### Fixed costs and Practice Direction 19B

Rule 19.13 of the Court of Protection Rules 2017 allows deputies to be remunerated out of P's estate for costs incurred in the course of performing their duties. The court may order that the deputy is allowed to take fixed costs and be remunerated in accordance with the schedule of fees set out in PD 19B. The current version of PD 19B was published on 1 April 2024: [Practice Direction 19B](#). Paragraph 4 of the 2024 version of PD 19B allows for the fixed cost and deputy remuneration categories set out in the Practice Direction to be applied to any case where the period covered by the fixed costs ends on or after 1 April 2024. Deputies who are permitted to charge fixed costs should continue to claim costs at the rates set down in the previous version of PD 19B where the period covered by any given category of costs or remuneration ended before 1 April 2024.

Where the period for which an annual management fee claimed is less than one year, for example, if the deputyship comes to an end following the death of P or the discharge of the deputyship order, the amount claimed must be the same proportion of the applicable fee as the period bears to one year.

When charging fixed costs for work undertaken on behalf of P, deputies must consider whether costs are reasonable and proportionate to the total size of P's estate. Deputies must always consider P's best interests and whether P's assets are being significantly or rapidly depleted. OPG expects deputies to be able to explain why any given fee has been charged if requested to do so and to be able to demonstrate that appropriate work related to the fee category in question has been completed. Deputies may be required to repay fees if appropriate work has not been completed.

### Reporting periods

In most cases OPG will request deputies to report on an annual basis. The reporting period will usually be 12 months from the date when the court order is made. For example, if the court order is dated 10 June, the reporting period is 10 June to 9 June of the following year. When completing the deputy report, P's net assets should be recorded as they stand on the last day of the reporting period.

## Authority to charge fixed costs or to have costs assessed

Paragraph 10 of the revised Practice Direction sets out fixed rates of remuneration where the court appoints ‘a solicitor, trust corporation regulated by the Solicitors Regulation Authority, chartered legal executive and other deputies who have specific authority by a court order to take solicitors’ rates to act as a deputy’. Non solicitor deputies may be permitted to charge solicitors’ rates if authorised by the Court of Protection. Otherwise, where a deputyship order for a non-solicitor professional deputy allows the deputy to charge fixed costs the public authority rate will apply. As set out at paragraph 12 of PD 19B, professional deputies appointed in property and financial affairs cases will not be entitled to have costs assessed where P’s net assets are less than £20,300 unless the court has made a specific order for detailed assessment.

Unless otherwise stated, any references to public authorities in the following guidance will also apply to non-solicitor professional deputies who are limited by the terms of their deputyship order to taking fixed costs.

In line with the position set out by Senior Judge Hilder in *The London Borough of Enfield v Matrix Deputies Ltd & Anor* [2018] EWCOP22 [Matrix Judgment](#), where the court order does not permit the deputy to have costs assessed but a bill of cost has nevertheless been submitted to the Senior Courts Cost Office, the deputy will not be entitled to take costs at a higher rate even if a cost certificate has been provided. In cases where a deputy does have costs assessed when this is not authorised by the order, OPG expects the deputy to make an application to the Court of Protection for retrospective authorisation to take costs at the higher rate and relief of liability attached to taking an unauthorised fee. The deputy should consider the following factors when making the application:

- the circumstances of the original deputyship appointment
- an explanation of what steps the deputy had taken in the discharge of their functions during the relevant period and why fixed costs are not considered to be appropriate
- an explanation of why assessment was sought without authorisation
- the size of P’s estate
- the amount of the assessed costs

If the deputy fails to make the application, the Public Guardian will consider making her own application to discharge the deputy.

## Retrospective fees

For any category of fixed costs which may be charged on the anniversary of the court order, but fees have not been charged to P for more than a year, OPG would require the deputy to apply to the court for authorisation to charge fees retrospectively.

## Fixed costs and P’s assets

### Definition of net assets

Where PD 19B makes reference to ‘net assets’ these are defined in accordance with the position set down by Senior Judge Hilder in the judgment *Penitrust Ltd v West Berkshire District Council & Anor* [2023] EWCOP 48 [Penitrust judgment](#):

“net assets” for the purposes of Practice Direction 19B as applicable to professional deputy costs...should be understood to have its ordinary meaning of “total assets minus total liabilities”. P’s occupation of property does not exclude it from the quantification of assets for the purpose of the Practice Direction.”

Net assets should therefore include P's property regardless of whether P is residing in the property or not. Net assets also include any capital which a person has a right to but is not yet in possession of such as a debt, inheritance following a death or a damages award where liability has been agreed.

## Costs that may be charged where P's net assets are below £20,300

Paragraph 10 of PD 19B states that a professional deputy appointed in a property and financial affairs case may take an annual management fee not exceeding 4.5% of P's assets on the anniversary of the court order where P's assets are below £20,300. Paragraph 18 states that public authority deputies may take an equivalent annual fee on the anniversary of the court order not exceeding 3.5% of P's estate where P's assets are below £20,300.

Where the court appoints a professional or public authority deputy in a health and welfare case the deputy may take an annual management fee not exceeding 2.5% of P's estate up to a maximum of £703.

In cases where a professional or public authority takes fixed costs that will reduce P's assets below the £20,300 threshold, OPG would expect the deputy to be able to state why costs are reasonable and proportionate in line with the extent of P's estate.

In cases where P's net assets were above the previous threshold of £16,000 but below £20,300 prior to 1 April 2024 and interim payments have been taken, OPG would not expect these to be refunded to P.

Where there is a pending settlement award which has not yet been finalised, but which is likely to take P's future assets considerably above the £20,300 threshold the deputy should ensure that they have authorisation from the Court of Protection to delay taking costs until settlement monies have been laid and then have costs assessed.

## Payments in advance of assessment

Paragraph 6 of PD 19B provides for professional deputies to render interim bills provided the cumulative total does not exceed 75% of either the work in progress or 75% of the estimated costs submitted to OPG whichever is the lower. There is no restriction on the frequency of rendering of interim costs provided the 75% upper limit is adhered to.

## Annual billing

Where professional deputies have authority to have costs assessed, OPG expects bills to be sent to the Senior Court Costs Office on an annual basis in line with paragraph 6 of Practice Direction 19B. Paragraph 6 also sets out a requirement for professional deputies to reimburse P if the full bill of costs is not approved by the Senior Courts Cost Office within 28 days of the final cost certificate being received.

OPG considers that it is not acceptable to delay billing beyond the date of the anniversary of the deputyship order in the expectation that P's net assets will increase above the £20,300 threshold.

## Estimated costs

Paragraph 7 of PD 19B sets out a requirement for professional deputies to provide an estimate of costs for work they anticipate being required in the coming period. If actual costs are likely to be more than 20% higher than the estimate set out in the OPG 105 form, a revised estimate must be provided to OPG.

OPG and the Senior Costs Court Office have published a practice note, [Professional deputy costs](#), which sets out good practice in relation to costs that may be charged by a professional deputy. This includes a position on whether the deputy considers that it is in P's best interests for the deputy to remain appointed if costs incurred will significantly deplete P's estate:

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

The deputy should consider whether it would be more appropriate for a family member to take over the deputyship reducing the financial impact on P. Professional deputies should therefore consider whether it remains in P's best interest for them to continue to be appointed if ongoing costs are likely to be unsustainable given the size of P's estate. The Public Guardian may choose to make an application to the Court of Protection if she decides that estimated costs suggest that the appointment of the deputy is unsustainable given the size of P's estate and therefore contrary to P's best interests.

## Categories of fixed costs

This section will set out OPG's position on the following categories and types of fixed costs:

- annual management fees
- property management fees
- applications to the Court of Protection
- tax returns
- conveyancing costs
- disbursements in public authority deputyship case
- use of independent visitors
- bank charges in public authority deputyship cases
- Deputyship work outsourced by public authorities
- VAT charged by non-solicitor deputies
- travel costs
- costs following the death of P

# Annual management fees

Annual management fees are defined as “any incidental costs incurred in the management of P’s affairs”.

Annual management includes any costs incurred in the process of completing routine administrative work performed on behalf of P. It includes any incidental costs that are not specifically covered by other categories listed in the practice direction. PD 19B states that annual management fees are capped (an amount not exceeding X should be taken). Where minimal work has been completed on behalf of P during the reporting period, OPG may ask the deputy to provide a detailed explanation of why fees have been taken.

## 1. Professional deputies

Paragraph 10 of the 2024 version of PD 19B states that in property and financial affairs cases an amount not exceeding £2,116 (plus VAT) may be charged by professional deputies appointed in property and financial affairs cases for the first year and an amount not exceeding £1,672 (plus VAT) may be charged for the second and subsequent years. However, where P’s net assets are below £20,300 the deputy may take an annual management fee not exceeding 4.5% of P’s net assets on the anniversary of the court order; this will apply to the first and successive years. Deputies are not entitled to take the higher amounts for the first and subsequent years if P’s net assets are below £20,300. In health and welfare cases professional deputies are limited to taking an annual management fee not exceeding 2.5% of P’s net assets on the anniversary of the deputyship order with a maximum fee of £703.

## 2. Public authority deputies

Paragraph 18 sets out an equivalent provision for public authority deputies. Public authority deputies appointed in property and financial affairs cases are permitted to take an amount not exceeding £982 in the first year and an amount not exceeding £824 in the second and subsequent years provided P’s net assets are above £20,300. Where P’s net assets are below £20,300, the deputy may take an amount not exceeding 3.5% of P’s net assets. As per the position set out above on annual management fees charged by professional deputies, annual management fees cover any incidental costs incurred in the management of P’s affairs. However public authorities are still entitled to use P’s funds to pay for any disbursements or specialist services required that P would have normally been expected to pay for if P had capacity.

In health and welfare cases public authority deputies are limited to taking an annual management fee not exceeding 2.5% of P’s net assets on the anniversary of the deputyship order with a maximum fee of £703.

## Property management fees charged by public authorities

Paragraph 18 of PD 19B includes an additional category of annual property management fees that may be charged by public authority deputies. Property management fees cover any work involved in preparing P’s property for sale, instructing agents or conveyancers and the ongoing maintenance of property including management and letting of a rental property where P is a tenant. Examples of work that may be charged to P under property management fees include:

- inception and ongoing maintenance of tenancy agreements
- ensuring appropriate insurance is in place
- ensuring landlords are meeting their obligations under tenancy agreements
- ongoing physical maintenance and upkeep of the property including cleaning and gardening services
- management of contracts for cleaners, gardeners etc.
- liaising with landlords when repairs to the property are required

Work related to the payments of utility bills, applications for grants and benefits, and ongoing payment of rent should be included under annual management fees rather than property management fees.

Property management fees may not be charged if no direct property management fees are incurred; for example, if P's property is being managed by a third party. In cases where several protected persons are sharing a supported living house fees should be distributed equitably. Deputies may be required to justify any fees taken if requested to do so by OPG.

## Applications to the Court of Protection

Paragraphs 8 and 16 of PD 19B allow professional and public authority deputies to take fixed costs when making applications to the Court of Protection under Practice Direction 9D provided applications are made on or after 1 April 2024. Paragraph 4 of Practice Direction 9D provides examples of the types of application that may be made: [Practice Direction 9D](#).

## Tax returns

Paragraph 10 of PD 19B allows for professional deputies to use P's funds to pay for the completion of a complex tax return as a specialist service that P would normally be expected to pay for if they retained capacity. If a professional deputy wishes to instruct their own firm to complete a tax return, they must obtain three quotations as per the position set out by Judge Hilder in the judgment *Re ACC and Others* [2020] EWCOP9 [Re ACC](#). If the deputy decides to accept their own firm's quotation and this is over £2000 plus VAT, the deputy must apply for authorisation from the Court of Protection before undertaking the work. This position will apply whether the deputy elects to fixed costs or to have costs assessed. OPG would expect the deputy to provide details on the annual report of any decisions to instruct someone within the deputy's own firm to complete a complex tax return.

PD 19B defines a basic tax return to cover cases where P's income is derived primarily from bank or NS&I interest and taxable benefits, discretionary trust or estate income. A complex tax return may be defined as one which also includes income from more complex investments including stocks, shares and bonds, rental property, business income and foreign property. Public authority deputies may charge up to £89 for a basic tax return as set out at paragraph 18 of Practice Direction 19B to include bank or NS&I interest and taxable benefits and may charge an amount not exceeding £89. They may charge P for the completion of more complex tax returns as a specialist service P would be expected to pay for if they retained capacity.

## Conveyancing costs

Paragraph 14 of PD 19B sets out an equivalent position to the one set out in the previous section on tax returns for conveyancing costs. If a professional deputy chooses to instruct a member of their own firm to complete conveyancing work, they must follow the procedure set out in the judgment *Re ACC and Others* and apply to the Court of Protection for authorisation if they decide to instruct a member of their own firm to complete the work and projected costs are over £2000 plus VAT. This position will apply whether the deputy elects to charge fixed costs or to have costs assessed. OPG would expect the deputy to provide details on the annual report of any decision to instruct someone within their own firm to complete conveyancing work.

## Disbursements in public authority deputyship cases

Paragraph 22 of PD 19B states that 'public authorities are allowed to use P's funds for specialist services P would normally have been expected to pay for if P had retained capacity such as but not limited to conveyancing, tax returns, obtaining expert valuations and obtaining investment advice'. The phrase 'but not limited to' makes clear that the list of examples is not considered to be exhaustive.

Paragraph 23 of PD 19B allows public authority deputies to use P's funds to pay for specialist services to ascertain details of P's assets and liabilities such as asset, debt and will searches, and to safeguard P's affairs, such as but not limited to the cost of registration with a credit reference agency, provided the public authority can demonstrate that any expenditure is in P's best interests. OPG would expect public authority deputies to include details of any monies spent on disbursements on the annual report.

Deputies should always consider the limit of their authority as set out in the deputyship order prior to completing work on behalf of P.

## Use of independent visitors

In accordance with the position set down by Judge Hilder in the *Public Guardian v Riddle* (No.2 judgment [Riddle No. 2](#)), if a deputy acting under the fixed fee regime wishes to reclaim from P the costs of an independent visitor in addition to the annual management fee, specific authority from the court is required. An independent visitor does not provide specialist services that P would normally have been expected to pay if they had retained capacity and so any charges incurred so not fall within the disbursements permitted under paragraph 22 of PD 19B.

The deputy can therefore either include the costs associated with the visit under general management fees or apply to the court for authorisation to commission an independent visitor. If they choose the second option, they will need to explain in the court application why the use of an independent visitor is cost-effective setting out the comparative travel costs associated with the deputy or a social worker completing the visit if the deputy is a public authority.

## Bank charges in public authority deputyship cases

OPG consider that it would be reasonable and proportionate for public authority deputies to pass bank charges to P. Consideration should be given to cost effectiveness when selecting a provider of financial services although it is recognised that authorised officers may not be in a position to dictate which financial institution is used by their respective public authority.

Public authority deputies should also be permitted to pass any additional banking charges to P. This may include costs for pre-paid bank cards or for the provision of bank statements when these are required as when OPG ask deputies to provide remedial evidence as a result of issues identified following the review of the annual report.

Any flat fees charged by a provider of financial services should be charged to each P equally. Any banking charges incurred for faster payments or direct debit transactions should be calculated and charged to the individual P benefitting from these transactions. Any banking charges passed on to P must be accounted for in the annual report distinguishing between those that arise from flat service fees and charges for direct debits and faster payment transactions.

Public authority deputies should consider whether the use of pooled accounts is the most cost-effective way of operating deputyship accounts as opposed to operating individual client accounts. Any pooled accounts that are used must have the facility for the deputy to be able to separate and report upon the funds of each individual P when required to do so.

Interest should be treated separately from any banking charges that are incurred. Banking charges should not be deducted from accrued interest. Interest should be apportioned and applied individually to each P based on their balance. Interest should be accounted for in the annual report.

## Deputyship work outsourced by public authorities

Paragraph 21 of PD 19B states that 'where public authorities outsource deputyship work, it is expected that the rates charged will be no more than that which would have been charged to the client if the public authority had performed the work as deputy themselves'.

Where public authorities have decided to outsource core deputyship functions such as using external providers to visit P, they are not permitted to pass any additional costs to P.

## VAT charged by non-solicitor deputies

*Non-solicitor deputies who are authorised to charge fixed costs* will be authorised to pass VAT costs to P in any case where the period covered by fixed costs ends on or after 1 April 2024. Non-solicitor deputies may seek retrospective authorisation to pass VAT costs to P where the order is silent on this point in cases where the order was issued after 4 September 2020 in accordance with the position set out by Senior Judge Hilder in the Public Guardian v Riddle (No.1) judgment [Riddle No 1](#).

## Travel costs

Paragraph 41 of PD 19B states that public authority and other not for profit deputies are allowed to charge a fixed rate of £51 per hour for travel costs.

Deputies should only claim costs for travel they undertake to carry out their duties. OPG considers claims for costs unrelated to the deputyship (for example, journeys to carry out care reviews or any other statutory functions) unreasonable.

OPG expects most claims to relate to visits to P or their property, but deputies can also claim if they have to travel for other reasons related to the deputyship (for example, to attend a meeting or to accompany the client to an appointment with a bank).

When the deputy claims travel costs for more than one visit to the client a year, they need to explain why in their deputy report.

Deputies are not permitted to claim for travel costs they incur before the date of the order appointing them as deputy.

The hourly travel rate may only be claimed for more than one member of staff where this is strictly necessary. For example, a risk assessment may have shown that staff need to 'double up' for health and safety reasons.

Deputies need to justify claims for more than one member of staff in their deputy report.

Deputies should calculate travel time from their work base to the meeting location and for the return journey. If the travel time is shorter (for example, because of travelling from home) they should claim the lower amount. If travel time is longer because of travelling from home, then deputies should deduct normal home-to-office travel time from the claim.

To avoid claims for small units, OPG suggests deputies round time up or down to the nearest 15 minutes they spent travelling.

Where all journeys are for the same P, deputies should total all the time spent travelling and charge P at the hourly rate.

Where deputies travel to the same location for more than one P (for example, to visit them in a care home), they should share out the travel time equally between those Ps.

## Costs following the death of P

In cases where the deputyship is terminated due to P's death the deputy should agree any final costs with P's personal representative or the administrator of P's estate. It is not permitted to take final costs after the death of P before the estate has been settled.

### For further advice:

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