Office of the Public Guardian

Policy

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OPG Deputy Standards: Standards for professional deputies

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

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 interests' decision making
- Interactions with P*
- Financial management
- Financial record-keeping
- Property management
- Decisions related specifically to personal 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, personal welfare, or both.

Deputies will be assessed against the standards by reviewing the responses on the deputy report and through assurance visits and case reviews. Deputies should ensure that they are fully compliant with OPG's expectations as set out in these standards and the associated guidance where appropriate. The guidance provides additional material to help deputies to meet their responsibilities and ensure that all decisions are made in P's best interests.

Deputies should familiarise themselves with any updates or revisions to these standards as required. On the professional deputy standards page, there is a button marked 'Get emails about this page'. Use this to sign up to be notified when this page is updated.

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

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 may 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 of significant breaches of the standards the Public Guardian may apply to the Court of Protection to order the deputy to complete a required course of action.

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.

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, personal welfare

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

The Mental Capacity Act 2005 and the Code of Practice are both available online.

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

Applicable to: Property and financial affairs, personal welfare

Deputies must understand the obligations conferred on them by the deputyship order. Deputies must not act outside the remit of their order or carry out activities which are specifically not permitted under the MCA.

1c. Submitting reports to OPG

Applicable to: Property and financial affairs, personal welfare

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

1d. Paying supervision fees

Applicable to: Property and financial affairs, personal welfare

OPG supervision fees must be paid on time.

1e. Ensuring appropriate security is in place

Applicable to: Property and financial affairs

Annual bond premiums must be paid. Deputies must make sure that the surety bond is sufficient and make an application to the Court of Protection to vary the level of the surety bond if required. Deputies must take out professional indemnity insurance at the appropriate level and in accordance with the requirements set out by their respective regulatory authorities.

1f. Adhering to fiduciary duties*

Applicable to: Property and financial affairs, personal welfare

Deputies must adhere to fiduciary duties and make sure that measures are in place to avoid perceived or actual conflicts of interest; where a conflict is unavoidable, 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, personal welfare

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, personal welfare

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 personal welfare cases deputies must consider whether the intervention of a deputy is still required.

Deputies must inform OPG if P has died and provide evidence of death if required to do so.

1i. Informing OPG promptly of any changes in the responses provided in the COP4 and any additional changes in contact details

Applicable to: Property and financial affairs, personal welfare

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

Deputies must inform OPG of any changes of address or contact details.

Standard 2: Best interests decision making

All deputies must comply with best interests decision making principles.

2a. Complying with section 4 of the MCA including consideration of views of relevant persons

Applicable to: Property and financial affairs, personal welfare

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 people are consulted as required.

2b. Including P in decision making

Applicable to: Property and financial affairs, personal welfare

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 in a 12 month period

Applicable to: Property and financial affairs, personal welfare

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

Deputies must make sure they have applied for all eligible benefits for P within three months of receiving the deputyship order. Deputies must make sure that benefits are reviewed at least once in a twelve month period. Deputies must state on the deputy report if any benefits are being paid to a third party, such as a family member, and how much is being paid.

4b. Separating funds

Applicable to: Property and financial affairs

Deputies must make sure that P's funds are kept separate from those of the deputy or any third party and account management is fully transparent.

4c. Meeting tax obligations and planning

Applicable to: Property and financial affairs

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

4d. Managing investments

Applicable to: Property and financial affairs

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

Deputies must make sure that any financial obligations are met, for example care fees and utility bills.

Pre-existing obligations should be reviewed and managed in line with agreed arrangements. Details of funds used to meet P's financial liabilities should be included in the deputy report.

4f. Providing personal allowance to P

Applicable to: Property and financial affairs

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

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. Deputy reports must include details of every account held by P and any assets held within England and Wales.

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

Applicable to: Property and financial affairs

Deputies must provide explanations for all significant financial decisions in the deputy 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 and maintaining P's property

Applicable to: Property and financial affairs

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

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 personal welfare

All deputies appointed in personal 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: Personal welfare

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: Personal welfare

Section 20 of the MCA states that only the court can make decisions regarding restricting access to P. Deputies intending to restrict access to P must first apply to the court and must provide an explanation in their deputy report.

7c. Consenting to treatment

Applicable to: Personal welfare

Deputies must provide an explanation to OPG for any decisions made regarding the provision, refusal, or discontinuation of healthcare for P. This includes an explanation of how these decisions are in P's best interests.

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, personal welfare

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, personal welfare

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, personal welfare

Deputies must make sure that OPG is made aware of any ongoing or new police investigations or civil proceedings that relate to the deputy; deputies must make sure that OPG is made aware of any ongoing investigations into the actions of the deputy by the appropriate regulatory body. Deputies must inform OPG if P's behaviour is likely to pose a risk to third parties including Court of Protection visitors.

Where disputes arise regarding P's care or health needs deputies should take appropriate actions to resolve the issue and record any actions taken on the deputy report. Deputies are reminded that OPG cannot mediate in disputes with care or health professionals.

Deputies who are only appointed to manage P's property and financial affairs should ensure that when dealing with disputes regarding care and health needs they do not exceed their authority as they are not authorised to make decisions that relate to P's personal welfare.

8d. Informing OPG of concerns about other deputies

Applicable to: Property and financial affairs, personal welfare

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 OPG of any issues that could affect how the deputyship is managed.



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