Office of the Public Guardian

Policy

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OPG Deputy Standards:
Standards for lay deputies

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These standards set out what is expected of you as a lay deputy. A lay deputy is usually a friend or family member of the person who lacks capacity to make decisions for themselves. You are not allowed to charge fees.

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.

These standards apply to property and financial affairs, personal welfare, or both types of deputyship.

Your responses on the deputy report are assessed against these standards, as well as information from any assurance visits and case reviews.

You must make sure to comply fully with these standards, using the associated guidance where appropriate. The guidance provides information to help deputies meet their responsibilities and ensure that all decisions are made in P’s best interests.

They may be updated from time to time, and you should make sure to read and understand the changes. On the lay deputy standards page, there is a button marked 'Get emails about this page'. You can use it to sign up to be notified when this page is updated.

When there is an issue, OPG will provide support to help you meet your responsibilities as a deputy. If you do not meet the standards, you may be asked to do certain things to fix this.

If you make a significant breach of the standards, OPG may apply to the Court of Protection to remove you as deputy.

If someone raises concerns about your actions as a deputy, OPG will investigate and, if necessary, make safeguarding referrals to the local authority. If there is any evidence of fraud or criminal negligence, we will contact the police.

Standard 1: Deputyship obligations

As a deputy, you must understand and meet your obligations. You must have the skills and experience to perform the role.

1a. Awareness of the Mental Capacity Act 2005; the Code of Practice; and guidance published by OPG

Applicable to: Property and financial affairs, personal welfare

You must have enough knowledge of the MCA and Code of Practice to carry out your duties.

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

You must understand the obligations you are under due to the deputyship order. Support is available from OPG if necessary. You must not act outside the remit of your deputyship order or do anything that is specifically prohibited under the MCA.

1c. Submitting reports to OPG

Applicable to: Property and financial affairs, personal welfare

You must submit your report each year or when requested by OPG.

1d. Paying supervision fees

Applicable to: Property and financial affairs, personal welfare

You must pay the OPG supervision fees on time.

1e. Ensuring appropriate security is in place

Applicable to: Property and financial affairs

You must pay the annual bond premiums.

If the level of the surety bond needs to change, OPG may ask you to make an application to the Court of Protection to do this.

1f. Adhering to fiduciary duties

Applicable to: Property and financial affairs, personal welfare

A fiduciary duty means a deputy must not take advantage of their position or allow their personal interests to conflict with their duties. You must adhere to this duty, using the guidance in the MCA Code of Practice and with relevant support from OPG as required.

When making decisions, you must be impartial (not favouring one option over another) and objective (not influenced by your own or others' beliefs). You must declare any personal interests that may result in a potential conflict of interest.

1g. Making appropriate court applications

Applicable to: Property and financial affairs, personal welfare

You, or any co-deputy on the deputyship, will need to make court applications when necessary. You may also be requested to do so by OPG.

1h. Considering whether a deputyship is still required

Applicable to: Property and financial affairs, personal welfare

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

If P does not have capacity, you must consider whether a deputyship order is still the option that places the fewest limits on P's freedom.

If P's income is derived entirely from state benefits, you must consider whether a deputyship is still required as P's financial affairs could be managed through an appointeeship.

You 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

You must inform OPG of any changes in your situation, if it affects the answers you gave in the COP4 deputy declaration form. This includes addresses and 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

You must comply fully with section 4 of the MCA, which deals with best interests decisions. To do this, follow the guidance 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

You must include P in making decisions wherever possible. Keep records of these conversations, including evidence of P's wishes and feelings.

When considering P's mental capacity to make decisions, use chapter 4 of the Code of Practice.

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 every twelve months

Applicable to: Property and financial affairs, personal welfare

You, or any co-deputy on the deputyship, must visit P at least once a year. You may need to visit more frequently in your role as a deputy, however, these are separate to any visits you make as a family member.

Standard 4: Financial management

You 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

Within three months of receiving the deputyship order, you must apply for all benefits P is eligible for.

You, or any co-deputy on the deputyship, must review P's benefits at least once every twelve months. You must state on the deputy report if any of P's benefits are being paid to another person, e.g. a family member, and how much is being paid.

4b. Separating funds

Applicable to: Property and financial affairs

You must make sure that P's funds are kept separate from your own or anyone else's, unless there is a longstanding arrangement. For example, if you and P are married or in a civil partnership.

4c. Meeting tax obligations and planning

Applicable to: Property and financial affairs

You must make sure that all taxes are paid on time and relevant documents filed. If you are unsure about any element of P's tax affairs, you should think about whether to consult a specialist.

4d. Managing investments

Applicable to: Property and financial affairs

You 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

You must make sure that P's 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 the 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

You must make sure P has enough 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

You must keep records of all significant financial decisions and keep all receipts and invoices.

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

You must provide explanations for all significant financial decisions in the deputy report.

Standard 6: Property management

You 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

You must make sure that P's property is secure and is insured appropriately.

6b. Selling P's property

Applicable to: Property and financial affairs

If you and any co-deputies decide to sell P's property, it must be in P's best interests. The decision must be in line with the authority conferred by the deputyship order.

Standard 7: Decisions related specifically to personal welfare

You must comply with the authority conferred by the deputyship order. You must also make sure that OPG is informed about any important decisions you make on behalf of P.

7a. Deciding where P should live

Applicable to: Personal welfare

If you make any decisions about where P should live, you must explain them to OPG.

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. If you think you need to do this, you must apply to the court for permisson first.

You must state your reasons for restricting access to P in the deputy report.

7c. Consenting to treatment

Applicable to: Personal welfare

If you make any decisions about providing, refusing or discontinuing healthcare for P, you must explain in your report how and why you made them. You must also explain how these decisions are in P's best interests.

Standard 8: Additional obligations

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

8a. Auditing internal files

This standard does not apply to lay deputies.

8b. Meeting professional obligations

This standard does not apply to lay deputies.

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

Applicable to: Property and financial affairs, personal welfare

If you are aware of any ongoing or new police investigations or civil proceedings that relate to yourself or to P, you must let OPG know.

If P's behaviour is likely to pose a risk to other people, including Court of Protection visitors, you must let OPG know.

8d. Informing OPG of concerns about other deputies

Applicable to: Property and financial affairs, personal welfare

If you have any concerns about another deputy, regardless of the type of deputy they are, you must let OPG know. You must also tell OPG about any issues that could affect how the deputyship is managed.

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