



Office of the  
Public Guardian

**Guidance**

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# **OPG Deputy Standards: Guidance for Professional Deputies**



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The OPG deputy standards list a number of actions you are expected to take as a deputy appointed by the Court of Protection to make decisions for a person who lacks capacity to make particular decisions for themselves (referred to as 'P' throughout this guidance).

This guidance has been written specifically for professional deputies; it provides additional information regarding adherence to the standards and what actions you need to take.

Standards may apply to property and financial affairs, health and welfare or both.

You are expected to adhere to all the standards that apply to your appointment type and provide evidence of this when required to do so.

You must retain copies of records, letters, receipts, invoices, appointments, and details of any significant decisions made on behalf of P.

As a deputy you must act with honesty and integrity and act in P's best interests.

In addition to the core standards, this guidance covers actions considered best practice.

## 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, health and welfare

OPG expects professional deputies to possess the necessary technical expertise to perform their role. You must know and understand the relevant sections of the MCA, Code of Practice and the LPA, EPA and Public Guardian Regulations 2007. You must be aware of emerging issues described in caselaw and take appropriate actions.

OPG has published practice notes on [specific issues](#) which are available on the GOV.UK website.

#### **Best practice in relation to technical knowledge and skills required by professional deputies and their staff**

You should make sure that all members of staff delegated with deputyship responsibilities know about the role of the Public Guardian and their statutory duty to supervise deputies.

You should make sure that staff have access to appropriate advice and expertise on state benefits, continuing health care, NHS-funded nursing care, and funding under section 117 of the Mental Health Act 1983.

You should make sure that staff know about public authority funding and charges for care, and how to access appropriate expertise and advice.

You should make sure that you have access to appropriate advice and expertise on inheritance planning and trusts and know how to apply for a statutory will if required.

You should make sure that you have the skills to manage family conflict or access to mediation where appropriate

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

**Applicable to:** Property and financial affairs, health and welfare

You must meet the obligations conferred by your deputyship order and not exceed your authority.

## 1c. Submitting reports to OPG

**Applicable to:** Property and financial affairs, health and welfare

You must [complete a deputy report](#) and submit it to OPG when requested to do so, usually on an annual basis.

Guidance on [completing and submitting reports](#) is available on GOV.UK.

You must make sure that all information provided on the deputy report is accurate and the report includes details of any significant decisions made on behalf of P.

## 1d. Paying supervision fees

**Applicable to:** Property and financial affairs, health and welfare

Information about the fees and how to [apply for help paying them](#) is available on the GOV.UK website.

## 1e. Ensuring appropriate security is in place

**Applicable to:** Property and financial affairs

You must pay annual premiums to the bond provider when requested to do so.

If there is a significant increase or decrease in the value of P's estate, you must consider whether the level of security is still appropriate. For example, if P receives a payment from a clinical negligence claim, you may need to apply to the court to increase the value of the bond.

All professional deputies must take out professional indemnity insurance (PII). Regulated professionals should adhere to the guidance on PII provided by their respective regulatory bodies.

When taking out PII you must consider the potential aggregated risk to P in line with the factors described by Judge Marshall in the case of [Baker v H \[2009\] EWHC B31 \(Fam\)](#).

## 1f. Adhering to fiduciary duties

**Applicable to:** Property and financial affairs, health and welfare

You must not take advantage of your position and your personal interests must not conflict with your duties as a deputy.

You must avoid any conflicts of interest; where perceived or actual conflicts of interest do occur, you must comply with the process described in the judgment [Re ACC and Others \[2020\] ECOP 9](#):

- You must try to get three quotations for the work from three different providers.
- If projected costs are greater than £2000 plus VAT, you must obtain authorisation from the Court of Protection before costs are incurred.
- Where projected costs are less than £2000 plus VAT, there is no requirement to seek authorisation from the court. Details should be included in your deputy report including an explanation as to why the decision made is in the best interests of P.
- In situations when getting three quotations would cost more than the proposed work, you should make sure costs are appropriate and proportionate. In such cases you must provide details of your decision in the annual report.
- If an urgent decision needs to be made on behalf of P and there is not enough time to apply to court, you may proceed at your own risk and make a retrospective application for authorisation.

You must not delegate your discretionary decision making responsibilities to anyone else, although you can seek expert or professional advice in accordance with the Mental Capacity Act Code of Practice, chapter 8, paragraphs 8.61 and 8.62.

## 1g. Making appropriate court applications

**Applicable to:** Property and financial affairs, health and welfare

You may be required to make applications to the Court of Protection when necessary; for example, to vary the terms of the deputyship order.

You should know and understand Court of Protection practice and procedures.

If you need to act outside the authority conferred by your deputyship order, you must request authorisation to do so from the court. Authorisation should be sought in advance wherever possible.

In accordance with *Re ACC and Others*, you must obtain specific authority from the court in order to conduct litigation on behalf of P except where the proposed litigation relates to a property and financial affairs issue to be heard in the Court of Protection.

If you are appointed as a property and financial deputy you are permitted to seek legal advice for on behalf of P in non-contentious cases. Your authority to make a decision or complete an act in respect of P's property and financial affairs would only extend up to and including receipt of the Letter of Response but no further.

A property and financial affairs deputy has no authority to make decisions that impact exclusively on health and welfare matters, including seeking advice and taking preliminary steps to litigation.

## 1h. Considering whether a deputyship is still required

**Applicable to:** Property and financial affairs, health and welfare

You must apply to the Court of Protection if P regains capacity to manage their own affairs.

You should keep in mind section 16 of the MCA 2005 which states that "a decision of the court is to be preferred to the appointment of a deputy to make a decision".

You should also consider whether a deputyship is still required if P's circumstances change. For example, it may be appropriate for a case to be managed as a DWP appointeeship if P has minimal capital assets and their income comes entirely from state benefits.

Health and welfare deputyship orders should only be required where important and necessary actions cannot be carried out without the court's authority. Once those actions have been completed you must consider whether a deputyship order is still required and, if necessary, apply to the court to have the deputyship discharged.

Any decision to discharge a deputyship in favour of an appointeeship must consider any additional risks and safeguarding factors.

You must let your Supervision case manager know if you are intending to apply to discharge your deputyship.

You must inform OPG if P dies.

## 1i. Informing OPG promptly of any changes in the responses provided in the COP4

**Applicable to:** Property and financial affairs, health and welfare

When you applied to become a deputy, you provided important information on the COP4 form. You must let your Supervision case manager know if any of the information you provided changes. You must let us know if:

- you are convicted of a criminal offence
- you are declared bankrupt, are made the debtor under an Individual Voluntary Arrangement, or are subject to a Debt Relief Order
- a business you are involved with becomes subject to a recognised insolvency regime
- you become aware of any actual or perceived conflicts of interest which could impact your role as a deputy. You should particularly inform us of any that cannot be resolved using the processes defined in *Re ACC and Others*

- you are no longer able to act as a deputy due to ill health or other factors

You must inform your Supervision case manager of any changes in your contact details and the contact details for P.

You must make suitable provision for a replacement deputy if you decide to step down from your role.

You remain a court appointed deputy until you are discharged. If you leave your job, you must consider how your cases will continue to be managed.

## Standard 2: Best interest decision making

All deputies must comply with decision making principles that are in the best interests of P.

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

**Applicable to:** Property and financial affairs, health and welfare

You must make sure that all the decisions you make are in the best interests of P. When making decisions you must take into account P's past wishes and feelings, and the beliefs and values that would have influenced their approach to the issue if they had retained capacity.

You must consult other people for their views on P's best interests where it is appropriate and practicable to do so. This could include carers, family members and anyone previously named by P as someone to be consulted on the issue in question.

You must retain full records of conversations with P and relevant persons, including evidence of P's wishes and feelings. You must make sure that formal mental capacity assessments are completed when appropriate.

### 2b. Including P in decision making

**Applicable to:** Property and financial affairs, health and welfare

You must involve P in the decision making process as far as possible. You must consider P's capacity to make particular decisions at the relevant time.

## 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 a year

**Applicable to:** Property and financial affairs, health and welfare

You must visit P and make regular assessments of their needs; visits must be made at least once a year.

You must demonstrate an awareness of P's circumstances and provide justification of 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.

### **Best practice in relation to engagement with P**

You should discuss and record P's feelings, wishes, beliefs and interests, both past and present, with P, their family, and care providers.

You should maintain regular contact with family members and carers, and make sure they are involved in making best interest decisions for P when appropriate.

You should regularly review P's needs, expenditure, and capacity to handle money.

You should use appropriate ways to communicate with P, for example, in their preferred language.

## **Standard 4: Financial Management**

All deputies must manage P's finances appropriately depending on the particular assets of P's estate.

You must make sure that deputyship costs are in proportion to P's assets. Where your deputyship order stipulates that cost are fixed you must follow [Practice Direction 19B](#).

### **The professional deputy report form (OPG105)**

When submitting your report using the [Professional deputy costs](#) form (OPG105) to OPG, you must provide details of costs including an estimate of expected costs for the next 12 months.

If you are authorised to have your costs assessed, you must also submit a copy of the form to the Senior Courts Cost Office (SCCO).

If costs exceed the estimated value by more than 20%, you must inform your Supervision case manager and the Senior Courts Cost Office (SCCO).

### **4a. Checking claims and payments are up to date**

**Applicable to:** Property and financial affairs

You must make sure you have applied for any benefits P is eligible for within three months of receiving your deputyship order. You should review P's benefits at least once a year. Full details of [current benefits](#) are available on the DWP website.

### **4b. Separating funds**

**Applicable to:** Property and financial affairs



When appointed as a deputy you must open a deputyship account in P's name.

Solicitors managing funds on behalf of P must adhere to the Solicitors Regulatory Authority (SRA) Accounts Rules. Rule 4.1 states that client's funds must be kept separate from money belonging to the authorised body.

Rule 3.3 provides certain restrictions for the use of client accounts:

'You must not use a client account to provide banking facilities to clients or third parties. Payments into, and transfers or withdrawals from a client account must be in respect of the delivery by you of regulated services.'

OPG has published a practice note on [solicitor client accounts](#) which outlines best practice for managing P's funds. The practice note refers to the management of funds held by deputies who are also regulated solicitors. However, the principles apply to all professional deputies.

## 4c. Meeting tax obligations and planning

**Applicable to:** Property and financial affairs

You must make sure that all tax obligations are met. You should consider whether specialist advice is required to help you do so.

## 4d. Managing investments

**Applicable to:** Property and financial affairs

You must manage P's investments to maximise returns while minimising risk. You may seek professional or expert advice if P's investments are complex. However, if financial advice is provided by a member of your own firm, you must consider potential conflicts of interest as described in section 1f 'Adhering to fiduciary duties'.

You must consider your fiduciary duty when managing investments and act in P's best interests. Where your own interests and the interests of P are linked, such as an investment in your business, you must apply to the court for authorisation.

### **Best practice in relation to management of investments**

You should regularly review P's investments to consider their suitability and whether they should be varied accordingly. It may be necessary for professional or expert advice to support this review.

You should consider P's circumstances such as their age and life expectancy, the size of their estate, any financial consequences of variation and their future financial needs.

When deciding the level of risk and investment term, you should consider P's circumstances such as their age and any physical or mental health conditions.

You should make investment arrangements in line with P's previous pattern and wishes if this continues to be in their best interests.

You should consider P's immediate and future needs when considering the length of investment, such as whether funds will be required to pay for care.

Short-term, low-risk investments are generally more appropriate if P has a lower anticipated life expectancy (less than 5 years) through old age or a life-limiting condition. A longer-term investment with a low to medium level of risk may be appropriate for a younger person without any life limiting health conditions if they have considerable funds.

All investments should be made in P's name unless you have authorisation to do otherwise. If, for any reason, it is not possible to register an investment in P's name, you should execute a declaration of trust or some other record acknowledging P's beneficial interest in the asset.

#### 4e. Managing financial liabilities

**Applicable to:** Property and financial affairs

You must make sure that P's debts are paid on time, for example care fees and utility bills.

#### 4f. Providing personal allowance to P

**Applicable to:** Property and financial affairs

You must make sure that P has enough personal allowance to pay for items such as toiletries and chiropody if they are in residential care. If P is living in their own home or in sheltered accommodation you must consider P's best interest and capacity to handle money and provide enough spending money to meet their needs.

##### **Best practice in relation to the management of P's finances**

When first appointed as deputy you should identify and secure all assets and investments held by P.

You should get a copy of P's will, if possible. Make sure that any specific items listed as bequests are kept safe. You should get individual items valued where appropriate.

You must notify banks and financial institutions where P holds an account, that you have been appointed as deputy for P. You should also notify any additional providers of income such as private pension companies.

You should seek to recover any money or assets owed to P, by the way of debts and loans, for example, rent from lettings or utility accounts in credit.

##### **Best practice in relation to the financing of care provision**

When appointed as deputy, you should contact any care providers, inform them of your appointment, and provide contact details.

You should make sure that P's care provision is good value for money, and appropriate to the level of funds available.

Where family members are receiving payment for care provided for P you should adhere to OPG's guidance on [family care payments](#).

## Standard 5: Financial record keeping

All deputies must keep records of financial decision making and spending. When you complete the deputy report you will be expected to include records of any financial decisions made on behalf of P.

### 5a. Keeping financial records up to date

**Applicable to:** Property and financial affairs

You must keep receipts and invoices for all financial transactions carried out on behalf of P. You must keep records of all significant financial decisions.

When you complete the deputy report you will be expected to include statements related to financial decisions made on behalf of P.

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

**Applicable to:** Property and financial affairs

You must make sure that all significant financial decisions are made in the best interests of P and the decision making process is free from any conflicts of interest.

You must make sure that any decisions regarding gifting are in line with the authority conferred by your deputyship order. OPG has published [guidance on gifting](#) which is available on GOV.UK.

## 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 P's property

**Applicable to:** Property and financial affairs

You must make sure that P's property is secure and maintained appropriately. You must make sure that appropriate building and contents insurance are in place and familiarise yourself with the terms of the policy.

### 6b. Selling P's property

**Applicable to:** Property and financial affairs

You must make sure that any decision to sell P's property is in their best interest. You must consult appropriate persons, if possible, including P and P's family before making this decision. You must make sure that the property is sold at market value and obtain a minimum of three valuations if possible.

You can only sell P's property if your deputyship order gives you authority to do so.

**Best practice in relation to P's property (if they don't live there) when you receive your deputyship order**

You should find out who owns the property, through [HM Land Registry](#).

Where there is no other living owner able to do so, you should gain access to the property and check it is secure.

If P has been moved into residential care, you should consider whether it is appropriate to bring items of sentimental value for P to their new home.

You should consider completing an inventory of P's belongings.

If you decide to sell items belonging to P you should keep records of all items sold.

You should make sure that post is redirected and that any necessary utilities continue to be provided.

If P is in public authority funded care, you should consider setting up a deferred payment arrangement where this is appropriate and in the best interests of P.

If any family members are living in the property, you should review any pre-existing arrangements and consider whether it may be appropriate for regular payments to be made to P.

If P's property is let, you should consider whether notice should be given to terminate the tenancy. You should make sure that correct legal tenancy agreements are in place and maintained (you will need to make sure that you have authority from the court to terminate a tenancy agreement and may need to consider seeking specialist property law advice). You should consider taking out landlord's insurance.

You should take reasonable steps to make sure that tenants maintain the property in good order and take appropriate action if they are in breach of the tenancy agreement. You should make sure that gas check certificates are obtained for gas fires, boilers, and appliances.

You should make sure that electrical checks are carried out and electrical certificates are available.

Detailed guidance on letting [properties](#) is available on the GOV.UK website.

There will be a tax obligation if rental income is generated from P's property. Guidance on [paying tax as a landlord](#) is available from HMRC.

**Best practice in relation to P's property (if they live there) when you receive your deputyship order**

You should consider whether the property meets P's needs. You should consider commissioning a care plan or occupational therapy report and make sure that any necessary adaptations are made.

You should review any tenancy or mortgage arrangements and obtain the deeds of ownership if necessary.

If there is a tenancy agreement in place, you should consider taking out tenants liability insurance.

You should make sure that gas check certificates are obtained for gas fires, boilers, and appliances.

You should make sure that electrical checks are carried out and electrical certificates are available. If P is responsible for paying utility bills, agree any contributions to be made from other household members.

## Standard 7: Decisions related specifically to health and welfare

All deputies appointed in health and 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:** Health and welfare

You must include details in your deputy report of any decisions you have made that relate to where P should live.

#### **Best practice in relation to deciding where P should live**

If P is paying for their own accommodation, you can choose any accommodation for P provided it meets their needs and you apply the principles of the MCA. If P is not paying for their own accommodation you should work alongside the funding provider and try to come to a mutual agreement in the best interests of P.

### 7b. Deciding who should have contact with P

**Applicable to:** Health and welfare

You will not have the power to prohibit a named person from having contact with P when you apply to be appointed as a deputy. Any restrictions you want to put on contact with P will need to be carefully considered as they might require a court order.

You must include details in your deputy report of any decision to restrict contact or access of P. You will need make an application to the Court of Protection to prohibit a named person from having access to P if you believe this to be in P's best interests.

### 7c. Consenting to treatment

**Applicable to:** Health and welfare

You must include details in your annual report of any decisions you have made to allow or refuse health care for P. You should also consider what decisions are likely to be required in the coming year. If there is ongoing treatment, you must make clear reference to this in the deputy report.

**Best practice in relation to the provision of health care**

When first appointed as deputy, you must notify clinicians, care providers and other health professionals of the deputyship order.

You should carry out a review of P's health and welfare needs at least once a year to make sure their needs have not changed and are still being met.

## Standard 8: Additional obligations

Deputies must consider the following additional obligations:

### 8a. Auditing internal files

**Applicable to:** Property and financial affairs, health and welfare

You must make sure that case files are subject to regular internal audit adhering to the guidelines of your regulatory body where appropriate.

### 8b. Meeting professional obligations

**Applicable to:** Property and financial affairs, health and welfare

You must comply with the code of conduct published by your respective regulatory body where appropriate and with the behaviours expected by OPG.

Solicitors must make sure that tasks are completed by the appropriate fee earner, according to the complexity of work. Where the deputyship order allows for costs to be assessed, comprehensive bills of cost must be provided to SCCO when the annual report is submitted.

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

**Applicable to:** Property and financial affairs, health and welfare

You must inform your Supervision case manager if either you or P are subject to a police investigation or civil proceedings.

Regulated deputies must inform OPG if they are subject to an investigation by the regulatory body

### 8d. Informing OPG of concerns about other deputies

**Applicable to:** Property and financial affairs, health and welfare

You must inform your Supervision case manager of any concerns you have regarding the actions of another deputy including any in your own firm.

**Best practice in relation to professional deputies relating to effective internal office processes and organisation.**

You should establish clear governance between the named deputy and staff delegated to carry out the day-to-day functions of the role.

You should maintain a record of all staff with delegated authority to carry out tasks by the deputy, including a list of signatories.

You should demonstrate sufficient senior internal supervision of the overall deputyship process.

Where a level of decision making is delegated, you should make sure that the criteria for decision making requiring the authorisation of the deputy is clearly defined and understood.

You should make sure that all necessary financial, security, management, organisational and quality control systems are in place with regards to accounting systems; cash handling, banking, and access to bank accounts; separation of P's funds, IT, and information assurance.

You should maintain clear policies on data protection, business continuity, banking, and money handling.

You should make sure that processes are in place to protect confidentiality on all matters relating to P.

You should complete regular reviews of the ratio of staff to deputyship cases.

You should make sure that opportunities exist for staff to hold case discussions with peers or senior managers.

You should make sure that there is adequate cover during holidays and staff absences.

You should make sure that translators and interpreters are available as needed.

You should make sure that all parties understand the complaints handling procedure and options are available for the timely resolution of disputes.

You should make sure that your contact details are provided to all relevant parties.

You should make sure that all staff are aware of procedures for handling safeguarding issues and making referrals to the relevant authority.