

A guide to supervision of Deputies

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Part A: Introduction

About this booklet

This booklet provides information about the supervision that you receive from the Office of the Public Guardian (the ‘OPG’) when you are appointed to the role of Deputy for a person who lacks capacity to make certain decisions for themselves.

It sets out your role and that of the OPG in supervising you. It does not cover every situation you may be faced with, but you can contact the OPG if you are unsure about what to do. Contact details are at Part E of this booklet.

You may also find the booklet **COP43: A guide for Court of Protection Deputies** useful as additional guidance. You can download this from the Public Guardian website or call the OPG for a printed copy.

You can also request a copy of the CD-Rom containing OPG and Court of Protection (the ‘Court’) forms and guidance.

What is a Deputy?

Deputies are appointed by the Court to manage the property and affairs and/or personal welfare of someone who lacks capacity to make certain decisions for themselves.

What is a Deputy order?

A Deputy order is the document you are given by the Court, which sets out your powers as a Deputy.

If you have been appointed as a Deputy for property and affairs, your powers may include receiving income such as benefit payments, retirement pension, occupational pension or interest and dividends earned on investments.

The order may also authorise you to receive capital such as money from banks, building societies or other financial institutions held on behalf of the person lacking capacity, and to spend this money appropriately on their behalf.

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If you have been appointed as a Deputy for personal welfare, the order may authorise you to make decisions about the care or medical treatment that the person receives.

If you were appointed as a Receiver and were still acting as a Receiver on 30 September 2007, from 1 October 2007 you are treated as a property and affairs Deputy.

Office of the Public Guardian

The Public Guardian (supported by the Office of the Public Guardian) is responsible for:

- supervising Court-appointed Deputies;
- keeping registers of Deputies, Enduring Powers of Attorney (EPAs) and Lasting Powers of Attorney (LPAs); and
- investigating complaints about Deputies or Attorneys acting under registered EPAs or LPAs.

Mental Capacity Act

The Act provides a statutory framework to empower people to make decisions for themselves as far as is possible and to protect vulnerable people who may not be able to make all their own decisions.

The Act covers major decisions about personal welfare and property and affairs, as well as everyday decisions about health, care and daily spending.

When making decisions, Deputies must have regard to the Code of Practice (the 'Code'), which supports the Act and provides guidance for those working with and/or caring for adults who lack capacity, including family members, professionals and carers.

The Code also describes the responsibilities of Deputies when acting or making decisions with or on behalf of individuals who lack capacity.

You can download the Code from the Public Guardian website, which also provides more information about the Act and how it may affect you.

Part B: Supervision of Court-appointed Deputies

It is the responsibility of the Public Guardian to supervise Deputies. This means checking that you comply with the terms of the Court order, that decisions you make are in accordance with the Code of Practice, and that you are acting in the best interests of the person lacking capacity.

If the Public Guardian considers that you have not fulfilled your duties as a Deputy, the Court may look into this. If you have not fulfilled your duties, the Court may discharge you and appoint a new Deputy in your place.

How is my supervision level decided?

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When a Deputy is appointed, the OPG carries out an assessment to decide the appropriate level of supervision and support. You will be allocated either a Type I, IIA, II or III level of supervision.

Type I cases are supervised closely, Type IIA cases have intermediate supervision and Type II cases have a light touch. In Type III cases the OPG would have minimal contact with you following assessment of the supervision level.

The OPG decides on the level of supervision appropriate for you by looking at the factors that are relevant to your case. Criteria include:

- the complexity and value of the estate of the person who lacks capacity;
- the relationship and amount of contact between you and the person who lacks capacity;
- the type of decisions you are being asked to make;
- your experience or past record as a Receiver/Deputy; and
- support provided to the person who lacks capacity by family, friends and/or professionals.

Examples of when the OPG might decide that a Type I supervision level is appropriate include:

- where you have been appointed as a property and affairs Deputy and have been or are under investigation;
- where there is a high level of conflict amongst family members or third parties; or
- Where there are casework issues that have not been resolved and the case needs to be escalated from a lower level of supervision.

Examples of when the OPG might decide that a Type IIA supervision level include:

- where you are a new Deputy and need support in the initial stages of your appointment;
- where there are requirements in your order which need further monitoring by the OPG;
- where the client lives in an unsupervised setting with minimal support and little contact with others.

The OPG is likely to decide that a Type II supervision level is appropriate when, for example, the person whose affairs you manage has limited assets, there was no objection to your appointment, and you are closely related to the person, or you are a professional Deputy.

The OPG is likely to decide that a Type III supervision level is appropriate where you have been appointed as property and affairs Deputy, the assets you manage are less than £16,000 and there are no other factors that mean the OPG will need to maintain regular contact with you.

You will be notified in writing of the assessment decision and given a summary of the reasons. This will be done as soon as possible after you receive the Court order appointing you as Deputy.

What if I am not happy with my supervision level?

If you do not agree with the level of supervision you have been allocated, you can ask the OPG to review the decision.

You have 14 days to ask for full written reasons, and a further 14 days to ask for a review.

You should support your request for a review with a statement about why you are requesting it, together with any relevant documentation or evidence.

If you are still unhappy with the outcome you can ask for an independent review of the decision. If you do so, the Public Guardian will ask the Independent Adjudicator to consider the case and make a recommendation. The Public Guardian will then make the final decision.

How does supervision work in practice?

Your letter from the OPG will advise you as to what will be involved in your Type I, IIA, II or III supervision level. It will set out the supervision you will receive, which might involve any or all of the following.

- Ensuring you comply with any requirements in your court order, for example providing an annual report to the Public Guardian.
- A Court of Protection Visitor coming to visit you and/or the person lacking capacity to ensure that the Deputyship is working for both of you and that you are making decisions in their best interests.
- Regular contact with you and others with an interest in the welfare of the person who lacks capacity.

The level of supervision you receive will be regularly assessed to see whether it is still relevant to your circumstances. You will be moved to a higher or lower level of supervision if necessary.

If your supervision assessment changes the OPG will write and inform you. You should let the OPG know if your circumstances change and you think this may affect the type of supervision you need.

The OPG may ask you to provide specific information in order to satisfy the Public Guardian that you are discharging your duties as a Deputy and properly managing the person's affairs. For example, you may be requested to provide more information about a decision you made, or to provide supporting documents about a financial transaction.

The OPG may also contact social services or health authorities to request copies of the health and social care records of the person lacking capacity, or request copies of care records from registered care homes.

Should I keep a record of what I do as a Deputy?

You must keep a record of any decisions you make as a Deputy, for example about major investments or new living arrangements for the person who lacks capacity.

You should record how you reached your decision, what you took into account and who you consulted. This will allow you to demonstrate to the Public Guardian that you have acted in the best interests of the person whose affairs you manage.

If you are a property and affairs Deputy you should keep a record of all the money that passes through your hands during the year on behalf of the person who lacks capacity.

Part C: Reporting

What is ‘the report’?

The Deputy order will specify if you must complete a report for the Public Guardian, and how often this is required. This report helps the Public Guardian to supervise your Deputyship.

Your report should record all the decisions you have made on behalf of the person who lacks capacity, including financial decisions, if applicable.

A report from a property and affairs Deputy would include a record of money received and payments made during the year on behalf of the person.

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As far as possible, you should keep all supporting documents, for example receipts for money spent, bank statements and correspondence.

What period does the report cover and when do I submit it?

Deputy orders usually require you to complete a report for the period of one year from the anniversary of the date you were appointed. In some situations, as part of a management plan, the OPG may require an additional report to be submitted, for example, six monthly.

You will receive a form and a letter setting out the period that your report should be for, and the deadline for completing and returning it to the OPG.

If you think you will have difficulties providing your report by the due date you should let the OPG know. In exceptional circumstances the time limit may be extended.

What documentation should I submit with the report?

In the first instance you should not send any documentation with your report. This is because the OPG will review your report before letting you know what documentation, if any, you need to provide.

You should keep all bank statements, receipts, invoices, records and correspondence for all your dealings, as well as a copy of every report you send to us, in case these are requested.

What happens if I do not submit the report?

It is important that you send your completed report on time. If you fail to submit a report, the Public Guardian may decide to investigate the decisions that you have made as Deputy. This may include asking for more information or asking a Court of Protection Visitor to visit you and/or the person whose affairs you manage.

The OPG may also change the level of supervision, which may result in a higher fee.

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If necessary the Public Guardian may ask the Court to discharge you as Deputy and appoint a new Deputy (for example, a solicitor, accountant or Local Authority) in your place. The Court may also issue a summons requiring that you appear before it and explain why you have failed to provide a report.

If a new Deputy is appointed in your place, the Court may order the new Deputy to investigate and report on your dealings with the person who lacks capacity.

For a property and affairs Deputy, the Court may instruct the Public Guardian to use the insurance policy (the 'bond') that you are required to have, to compensate the person for any loss.

The insurer may take legal action against you in order to recover any sum it has paid out.

Part D: Fees

Fees are charged for OPG supervision. These fees are statutory, meaning they are set by Parliament. They are based on the cost of providing services to support the person lacking capacity as well as to the Deputy.

Supervision fees are normally paid from the funds of the person lacking capacity, or by you as the Deputy and refunded from the funds of the person lacking capacity.

If the person lacking capacity cannot afford to pay, they may be eligible for fee exemption or remission.

More information is available in the booklet **OPG506: Fees, exemptions and remissions**, which is available to download from the Public Guardian website, or the OPG can send you a printed copy.

Part E: Contact us

Who should I contact for help and support?

If you have been allocated to a Type I or Type IIA supervision level you will have a named caseworker who will manage your supervision plan and provide you with help and support. You can also contact the OPG generally for advice.

If you have been allocated to a Type II or III level you can contact the OPG for advice and support as needed.

Office of the Public Guardian contact details

PO Box 15118

Birmingham B16 6GX

Phone Number: 0845 330 2900

Fax Number: 020 7664 7705

Email: customerservices@publicguardian.gsi.gov.uk

Website: www.publicguardian.gov.uk

DX: 744240 Birmingham 79

Textphone: 020 7664 7755 (If you have speech or hearing difficulties and have access to a textphone, you can call us for assistance)

International Calls: +44 20 7664 7000

International Faxes: +44 20 7664 7705

Disclaimer

OPG and Court staff can provide advice about OPG and Court processes only and cannot provide legal advice or services. It is recommended that you seek independent legal advice where appropriate. Information in this publication is believed to be correct at the time of printing; however, no liability is accepted for any error it may contain.

