

# Adult Social Care

## Client Affairs Team

### Policy

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# Client Affairs Team Policy

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## Introduction

- 1.1. The Mental Capacity Act 2005 (MCA) applies throughout England and Wales to protect people who lack mental capacity. Among other things, the MCA provides for people who lack capacity to be legally represented either by:
  - someone they chose and appointed through a lasting power of attorney (an attorney) while they still had capacity, or
  - if the person did not appoint an attorney, by a deputy appointed by the Court of Protection.
- 1.2. Most people choose someone like their spouse or partner, a family member, a friend, or a professional advisor (like the family solicitor or accountant) to be their attorney. These are also the representatives preferred by the Court of Protection if it is necessary for the Court to appoint a deputy.
- 1.3. If no suitable person is willing and able to act as deputy, the Court may appoint a deputy who is independent of the family, including an authorised officer of a local authority.
- 1.4. Within Gloucestershire County Council (the Council), the Executive Director: Adult Social Care, Wellbeing and Communities, is the officer authorized to act as a corporate financial and property affairs deputy for people who lack capacity.
- 1.5. The corporate deputy's duties and responsibilities are delegated to the Council's Client Affairs team. The team is subject to supervision by the Office of the Public Guardian, the body which supervises all deputies appointed by the Court of Protection.
- 1.6. The Client Affairs team may also, in the absence of a deputyship order, receive welfare benefit payments and manage living expenses as a Department for Work and Pensions appointee (DWP appointee) for someone who lacks capacity.

## **2. Purpose**

- 2.1. This policy outlines the controls which apply to the Client Affairs team to ensure that finances and property affairs are managed appropriately, confidentially and in accordance with the requirements of the Office of the Public Guardian.

## **3. Scope**

- 3.1. This policy applies to all members of the Council's Client Affairs team.

## **4. Definitions**

- 4.1 Specific terms used in this policy are defined in Appendix 1.

## **5. Legal context**

- 5.1. Relevant legislation and other controls include but are not limited to:

- The Mental Capacity Act 2005 (MCA) and the *MCA Code of Practice* which set out protections for people who lack capacity. Client Affairs staff will determine what is in the service user's best interests when acting on their behalf and will follow the MCA Code of Practice.
- the *Office of the Public Guardian (OPG) Deputy Standards for Public Authority Deputies*. Client Affairs staff will act in accordance with the requirements and expectations for public authority deputies.
- *Part 19 of the Court of Protection Rules 2007* as supplemented by *Practice Guidance B*. The Rules allow certain costs to be charged to the person who lacks capacity. Client Affairs team charges will not exceed the maximum rates set out in Practice Guidance B.

- *The Care Act 2014.* Staff will be mindful of Care Act duties to promote wellbeing; involve people as much as is possible in decisions which affect them; and to safeguard adults at risk of abuse or neglect.
- *UK General Data Protection Regulation (UKGDPR) and the Data Protection Act (2018).* Staff will follow requirements for personal and sensitive information to be stored and shared securely with access restricted to those who 'need to know'. People or their representatives are entitled to access their own information.

## **6. Associated Council policies**

6.1 Other Council policies relevant to deputyship include but are not limited to:

- the Council's Accounting Instructions, other financial policies and control procedures, and best value requirements
- the Council's information management policies
- the Mental Capacity Act 2005 Multi-Agency Policy, Procedure and Guidance
- the council's Multi agency safeguard policy and procedures

## **7. Referral – conditions of acceptance**

7.1. Referrals to the Client Affairs team may be made by social care or health professionals employed by the Council and Gloucestershire Health and Care NHS Foundation Trust. The Office of the Public Guardian may also approach the Client Affairs team to act as deputy in place of an existing deputy or attorney.

7.2. Referrals will only be accepted when the Client Affairs team is satisfied that:

- all financial and other required details have been supplied
- an assessment of mental capacity has confirmed that the person lacks capacity to make specific decisions about their property and financial affairs
- the referral is in the person's best interests as outlined in the Mental Capacity Act Code of Practice (See Appendix 3)
- there is no other suitable person who is willing and able to manage the person's property and financial affairs as deputy
- their property and financial affairs are considered sufficiently complex to require a deputy and they cannot be managed solely by a DWP Appointee

Where:

- (i) a person's income is solely DWP benefits and/or state pension
- (ii) they have savings/money in the bank of less than £5,000
- (iii) they do not have unoccupied property that needs to be sold
- (iv) they do not need to end a tenancy following permanent admission to residential care

A deputy is not usually required.

## **8. Application for authority where no other person is willing or able to act**

- 8.1. An application will be made to the Department for Work and Pensions (DWP) for authority to receive and manage state benefits / state pension as a DWP Appointee.
- 8.2 An application will be made to the Court of Protection for a property and financial affairs deputyship order.
- 8.3. An interim order may be requested if urgent matters require management before a final order can be made, for example:
  - if a tenancy needs to be ended and a property cleared because the person has moved into permanent care
  - or if access to their funds needs to be restricted or their financial affairs investigated where there are safeguarding concerns
- 8.4. Instead of applying for a deputyship order, the Client Affairs team may request the Court of Protection to nominate a panel deputy to manage the person's affairs where:
  - property and assets are held overseas
  - property and financial affairs are complicated and / or
  - legal complexities (for example divorce proceedings) exist.

## **9. Authority to act**

- 9.1 The Client Affairs team will not begin to manage anyone's property and financial affairs until the person and all relevant interested parties have been formally notified of the proposed deputyship application and given opportunity to object. If no objection is received within 14 days of notification, application will be made

to the Court of Protection to become property and affairs deputy, and the DWP to become benefit appointee. The Client Affairs team will begin to manage the person's property and financial affairs once the DWP appointeeship has been confirmed, or the Court of Protection has granted an interim or final deputyship order.

9.2. Once authority is obtained, the Client Affairs team will:

- inform all relevant parties (for example financial institutions, care home) of its authority to act on the person's behalf, and
- act within the limits of the DWP appointeeship or the deputyship order granted by the Court of Protection.

## 10. Supporting involvement

10.1 Staff will support people to be involved in decision making so far as this is possible, for example by providing information in a form that the person can understand or making sure that they have any support they need to communicate with staff.

## 11. Management of financial and property affairs

11.1 The Client Affairs team will manage financial and property affairs in accordance with:

- the requirements of the Office of the Public Guardian and
- the Council's accounting instructions and other financial policies and control procedures, including best value requirements.

- 11.2. Where appropriate, specialist advice will be sought.
- 11.3. People who are able to receive and manage their own personal spending money will be supported to do so with as few restrictions as possible.
- 11.4. Third parties (for example care homes) who receive personal spending money on behalf of someone who lacks capacity will be required to account for how the money was spent.
- 11.5. Cash payments are discouraged and will be strictly controlled and monitored.
- 11.6. The Client Affairs team will not act as a guarantor.

## **12. Property**

- 12.1. The Client Affairs team will consult as appropriate in decisions about changes of accommodation and will manage related matters like insurance, utility and council tax arrangements, tenancies, and property sales.
- 12.2. The Client Affairs team will take reasonable steps to protect the person's property from damage or loss where:
  - the person has been admitted to hospital or a care home or is otherwise relocated, and
  - property protection arrangements have not already been made by the referring health or social care practitioner.
- 12.3. The Client Affairs team will arrange for a property to be cleared when:
  - it has been established that the person is unable to return home,

- the Court of Protection has issued an order appointing the local authority as property and affairs deputy
- it is in the person's best interests (i.e., necessary to end a tenancy or to sell a property).

12.4. The Client Affairs team will arrange to sell or dispose of the person's property when:

- it has been established that the person is unable to return home,
- property ownership has been confirmed and other owners / anyone with a beneficial interest in the property consent to the sale / disposal,
- the Court of Protection has issued an order authorising the sale / disposal, and
- it is in the person's best interests as defined by the Mental Capacity Act Code of Practice (see Appendix 3).

### **13. Responsibilities for a deceased person's estate**

13.1 Where the person who lacks capacity is named as the executor of a deceased person's Will or under the rules of intestacy is an entitled relative and there is no other person willing to administer the estate, the Client Affairs team will:

- seek the authority of the Court of Protection to apply for a grant of representation on the person's behalf, and
- if granted, instruct a solicitor to administer the deceased person's estate if a grant of representation is required.

## **14. When Client Affairs team responsibilities end**

14.1 The Client Affairs team will remain responsible for managing the person's property and financial affairs until:

- another person is appointed to manage the person's property and financial affairs,
- the person regains capacity, or
- the person dies, and responsibility for managing their property and financial affairs passes to the executor or administrator of their estate.

14.2 When a person dies, the Client Affairs team will:

- provide their executor / administrator with information about the person's property and financial affairs, or
- make a referral to the Treasury Solicitor / Bona Vacantia where there is no-one to administer their estate.

## **15. Fees charged by the Client Affairs team**

15.1 The Court of Protection permits Corporate Deputies to charge a range of fees. Fees charged by the Client Affairs team for managing people's affairs will not exceed the fixed rates of remuneration permitted by the Court of Protection. See Appendix 2 for Client Affairs fees.

15.2. With the agreement of the Court of Protection, the Client Affairs team may charge an additional fee for work over and above what would reasonably be expected to be covered within the annual management fee.

15.3 When the person dies, a winding up fee set by the Council will be charged.

15.4 The Lead Officer of the Client Affairs team has discretion to amend or waive Client Affairs team fees if considered unaffordable for the person.

## **16. Monitoring**

- 16.1 The Client Affairs team will review each person's circumstances annually.
- 16.2. The activities of the Client Affairs team will be subject to both internal and external monitoring, including but not limited to:
  - Client Affairs team monitoring and review systems
  - the Council's financial audit procedures
  - supervision and assessment by the Office of the Public Guardian.

## **17. Reports to the Office of the Public Guardian**

- 17.1. The Client Affairs team will provide an annual report to the Office of the Public Guardian (OPG) about each person subject to OPG reporting requirements.

## **18. Dissatisfaction / complaints**

- 18.1 Anyone who is dissatisfied with the Council services, a Council decision and / or feels that they have been treated unjustly has the right to make a complaint to the Council and subsequently to the Local Government and Social Care Ombudsman.
- 18.2 Concerns may also be directed at any time to the Office of the Public Guardian.

## **19. Implementation**

- 19.1. This policy will be implemented following approval and will be published on the Council's external website.

## **20. Review**

20.1 This policy will be reviewed by April 2025

## Appendix 1: Terms used in this policy

Term	Meaning
Mental Capacity	<p>Having mental capacity means having the ability to successfully make and communicate your own decisions. People are presumed to have capacity to do so, unless there is reason to doubt this due to an impairment in the functioning of the mind or brain – the impairment might arise from a mental health condition, learning disability, brain injury or illness.</p> <p>Where there is reason to doubt, a Mental Capacity Assessment (MCA) will be carried out relevant to the specific decision needing to be made at that time.</p> <p>In order to be deemed to have capacity to make the specific decision required, you need to be able to understand the relevant information given, retain it long enough in order to use or weigh the information to reach your decision, and then be able to communicate your decision clearly – whether that be verbally or non-verbally.</p> <p>Where the MCA concludes you lack capacity to make the required decision, a decision maker will make the required decision in your best interests.</p>
Court of Protection	<p>The Mental Capacity Act (MCA) created a specialist Court to make decisions about the property, finances, health and welfare of people who lack mental capacity to make decisions for themselves.</p> <p>The Court can appoint a deputy to make ongoing decisions on behalf of someone who lacks capacity. It is also able to grant Lasting Power of Attorney (LPA).</p> <p><a href="https://www.gov.uk/courts-tribunals/court-of-protection">https://www.gov.uk/courts-tribunals/court-of-protection</a></p>
Deputy	<p>A deputy is a person appointed by the Court of Protection to make decisions for people who lack mental capacity to make decisions for themselves.</p> <p>Deputies have to be over 18 and cannot be appointed without their consent.</p> <p><b><u>Panel deputy:</u></b> The Office of the Public Guardian has a panel of professional deputies (mainly specialist solicitors) who may be appointed to deal with property and affairs matters in some</p>

	circumstances, for example if they are complicated or in dispute.
DWP Appointee	<p>The Department for Work and Pensions (DWP) can appoint the Council to receive benefit payments and pay living costs if the person cannot do this for themselves and has no family or friends who can help.</p> <p>If the Court appoints a property and affairs deputy for someone who already has a DWP appointee, the deputy usually takes over the appointee's role.</p>
Mental Capacity Act (MCA)	<p>A law intended to protect people who are unable to make decisions about their own health (treatment), welfare (care and support), property or finances, because of a mental health condition, learning disability, brain injury or illness.</p>
Office of the Public Guardian (OPG)	<p>The OPG protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as about their health and finance.</p> <p>Among other things, the OPG:</p> <ul style="list-style-type: none"> <li>keeps a public register of deputies and people who have been given a power of attorney</li> <li>supervises deputies appointed by the Court of protection and makes sure that they carry out their work as required by the Mental Capacity Act</li> <li>investigates and takes action if there are concerns about an attorney or deputy</li> </ul>
Power of Attorney	<p>A power of attorney allows someone with capacity to appoint someone else to act or make decisions on their behalf if they cannot do so for themselves.</p> <p><b><u>Lasting Power of Attorney (LPA):</u></b></p> <p>There are 2 types of LPA:</p> <ul style="list-style-type: none"> <li>Health and Welfare</li> <li>Property and Financial affairs</li> </ul> <p><a href="https://www.gov.uk/make-register-end-lasting-power-attorney">Make, register or end a lasting power of attorney: Overview - GOV.UK (www.gov.uk)</a></p> <p><b><u>Enduring Power of Attorney (EPA):</u></b></p> <p>Only EPAs made and signed before 1st October 2007 can still be used.</p>

	<a href="https://www.gov.uk/government/publications/enduring-power-of-attorney-acting-as-an-attorney/overview"><u>Enduring power of attorney: acting as an attorney: Overview</u></a> <a href="https://www.gov.uk/government/publications/enduring-power-of-attorney-acting-as-an-attorney/overview"><u>- GOV.UK (www.gov.uk)</u></a>
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## Appendix 2: Client Affairs fees – from April 2024

Description	Fee
Work up to & including appointment of deputy	£944
Court application to appoint a new trustee	£633
Subsequent court applications	£633
Annual management fee for first year	£982
Annual management fee for second and subsequent years	£824
Annual Management fee where assets are less than £20,300	3.5% of net assets
Annual property management fee	£380
Completion of an OPG annual report	£274
Completion of basic tax return	£89
Travel rates	£51 per hour
Case closure on death	£300
Additional case closure fee	£195

**Practice Direction:**– fixed costs; supplement to Part 19 of the Court of Protection Rules 2007

## Appendix 3: The Mental Capacity Act Code of Practice

The full Mental Capacity Act Code of Practice can be found here:

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Below is an extract from the Gloucestershire Multi Agency Mental Capacity Act Policy to explain how Gloucestershire assess for best interest decisions under the Mental Capacity Act (MCA).

### ***Best Interests***

*When it is established that an individual lacks capacity to make a particular decision, the MCA requires 'best interests' as the criterion for any action taken or decision made on that person's behalf. It should not be the personal views of the decision maker. Instead, it considers both the balanced approach of the pros and cons of the options available for the person and decides what course of action is, on balance, the best course of action for them.*

### ***7.1 Who is the decision-maker?***

*The person who decides what is in a person's best interests is referred to in the MCA.*

*as the 'decision-maker'. The decision maker is the person who is proposing to take action in relation to the decision.*

*Under the MCA, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions themselves in relation to certain things:*

- For most routine decisions, this will usually be the person caring for, or supporting the person on a day to day basis*

- *For medical interventions, it would be the Doctor or whoever is responsible for carrying out the particular treatment or procedure*
- *For social services care plans, the best interest's decision maker will be the relevant social care professional*

*An LPA or deputy will be decision maker within the scope of their authority*

## **7.2 How does the decision-maker decide what is in a person's best interests?**

*There is no definition of 'best interests' in the MCA. Instead, s.4 of the MCA sets out a 'checklist' of factors that the decision maker must apply when determining what is in a person's best interests (See Appendix 5 The Best Interests Checklist). Staff*

*must follow this checklist when making a best interests decision:*

- *Encourage Participation - Make every effort to permit and encourage the person to participate in the decision to be made:*
  - *Identify all relevant circumstances - Identify all the relevant issues and circumstances relating to the decision in question:*
    - *Find out the person's wishes, feelings, beliefs and values, past and present:*
    - *Avoid discrimination - the decision must not be made merely on the basis of the person's age or appearance, race, religion, sexuality or sex. Show equal consideration and non discrimination,*
  - *Assess whether the person might regain capacity and if so, whether the decision can be delayed,*
  - *If the decision concerns life-sustaining treatment, staff must not be motivated in any way by a desire to bring about the person's death,*
  - *Consult others: including family and other professionals,*
  - *Avoid restricting the person's rights - the decision maker must assess whether*

*there is a less restrictive option,*

- *Take all of this information into account when deciding on the best interest decision.*

*If there is serious disagreement between the decision maker and the person/family members, seek legal support with a view to consideration of a referral to the Court of Protection.*