



## **Adult Social Care and Health**

# **Property and Affairs Deputyship and Appointeeship Policy & Procedure**

**Version 3**

Version: 3 FOI Status: Public	Property and Affairs Deputyship and Appointeeship Policy & Procedure – Adult Social Care	Originally Issued: November 2016 V3 Issued: November 2022 Review Due: November 2024 Author: Gaynor Bulheller
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## 1 – Legal Framework

- 1.1 The [Mental Capacity Act 2005](#) (MCA) empowers people to make decisions for themselves as far as is possible. It protects vulnerable individuals who may not be capable of making decisions for reasons including dementia, learning difficulties, mental health problems, and stroke or head injuries.
- 1.2 The MCA sets out who can make decisions, in which situations, and the principles they must follow when doing so. It also sets out ways that people can plan ahead for a time when they may lack capacity.
- 1.3 Everyone working with or caring for an adult who lacks capacity must comply with the Act.
- 1.4 The MCA is underpinned by five statutory principles that provide a benchmark for decision-makers and carers:
  1. every adult has the right to make their own decisions and must be presumed assumed to have capacity unless it is proven proved otherwise
  2. a person must be given all practicable help before they can be considered unable to make their own decisions
  3. individuals have the right to make decisions that others may consider unwise or eccentric people have the right not to be treated as lacking capacity because they may make decisions that others deem “unwise”
  4. anything done for or on behalf of a person who lacks capacity must be done in their best interests
  5. anything done for, or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedom of action
- 1.5 The Mental Capacity Act Code of Practice provides information and guidance for everyone affected by the MCA and explains how the MCA works in practice. It describes the responsibilities of those who work with and care for adults who lack capacity, including family members, professionals, and carers.
- 1.6 The deputy must be familiar with and have regard to the code. If at any time they are involved in civil or criminal court proceedings and it appears they have not complied with the code, this failure will be considered.
- 1.7 The code of practice can be downloaded from the government [website](#) .
- 1.8 The Court of Protection (COP) makes decisions and appoints deputies to make decisions in the best interests of those who lack capacity.

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1.9 Under the MCA the public guardian is responsible for:

- supervising court appointed deputies
- keeping registers of deputies, lasting powers of attorney (LPA) and enduring powers of attorney (EPA)
- investigating complaints about deputies and attorneys acting under a registered EPA or LPA.

## 2. Policy Aims and Objectives

- 2.1 Derbyshire County Council (DCC) will support those people who have been formally assessed as lacking capacity to manage their financial affairs and only in cases where there is no one else willing, able, or suitable to make an application to the COP.
- 2.2 The aim of the Property and Affairs Deputyship and Appointeeship Policy is to provide a reasonable, fair and consistent framework for all individuals.
- 2.3 Income generated will be used to help maintain this service to continue supporting vulnerable people.
- 2.4 This policy does not cover applications to the COP in regard to regarding applications for the appointment of a health and welfare deputy.

## 3. Principles of Policy

- 3.1 Any applications for DCC to be appointed as property and affairs deputy by the COP will have due regard to the relevant legislation and guidance.
- 3.2 The policy should be transparent and easy to understand.
- 3.3 DCC will only consider making representation to the COP to be appointed as deputy where there is no one else available or suitable to make such an application.
- 3.4 It will be the responsibility of the Deputyship team to arrange for the completion of an assessment of capacity (form COP 3) by the worker or by engaging the services of a relevant health professional. This assessment will then form the basis of part B of the “court of protection assessment of capacity” form to confirm the individual lacks capacity specifically in relation to the management of their finances part A of the COP 3 will be completed by the Deputyship team prior to submission to the COP.
- 3.5 DCC will offer support and advice to suitable people to make an application to the COP to be appointed as deputy where they are prepared to make such application but require guidance and assistance in the formal process.
- 3.6 Where DCC is aware of relatives, close friends, or professional acquaintances, they will be notified of any application by DCC to the COP thereby having opportunity to make representation to the COP via completion of the relevant COP form.

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#### **4. Applications to the Court of Protection**

- 4.1 In all cases an application to the COP for a full property and affairs deputyship order (the order) will be made.
- 4.2 When making an application for the order, DCC will request powers to manage all of the individual's income and assets, including any property they may own, this will extend to the clearance and sale of the property.
- 4.3 A final attempt will be made to ascertain if there is any suitable person who may, with DCC support if required, wish to make an application to the COP to be appointed deputy. Where it is believed that there may be relatives, but their whereabouts are not known, then attempts to trace them will be undertaken by using the services of a genealogist.
- 4.4 Where this is not possible and it is agreed that DCC will make an application to the COP to be appointed deputy, the following actions will be undertaken whilst the application is in process:
- an application will be made for appointeeship to the Department for Work and Pension for the relevant state benefits and allowances
  - refer to the Welfare Rights Service (WRS) to undertake an income maximisation check on the individual's assets and make benefit applications as appropriate
  - the opening of a specific bank account to be managed by the Deputyship team for the receipt of any state benefits/ allowances/other income on behalf of the individual
  - establishing the individual's initial needs and requirements and to make reasonable money available e.g., for the purchase of clothes items required to make the individual more comfortable in a care home
  - establish any assets and liabilities that the individual may have, this will usually include searching the individual's property and opening correspondence/post
  - contacting potential creditors and debtors to inform them of DCC's application to COP to be appointed financial deputy requesting the re-direction of correspondence to the deputyship team and the freezing/suspending of accounts and/or payments
  - contacting relatives, other appropriate individuals, and organisations, to inform them of the application to COP with details of who to contact at DCC
  - planning with all concerned parties how the individual will be supported and how the finances will need to be managed to support this
- 4.5 Once the order has been granted to DCC the following actions are undertaken:
- registration of the order with all relevant organisations/institutions
  - where possible negotiate reductions in debts and arrange to discharge debts/liabilities or negotiate payment terms where appropriate

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- arrange for other income streams, e.g. occupational pensions to be paid into the individual's deputyship bank account
- accumulate available capital assets for deposit in the individual's deputyship bank account.

- 4.6 Where an individual lacks capacity to manage their financial affairs, has income limited to state benefits and allowances, and has no or nominal capital assets, then an application to be made appointee will be made with the relevant agency.
- 4.7 A dedicated bank account will be opened for the benefits and allowances to be paid into.
- 4.8 If an individual under appointeeship subsequently accumulates financial assets that require an application for a deputyship order, the appropriate application will be made to the COP.

## 5 – Individuals with Property

5.1 Where the individual is the sole owner of a property(s) and it is clear that they will not be returning e.g., they are entering long term care or sheltered accommodation, DCC will always seek the order of the COP to sell the property(s), irrespective of the level of other capital assets. DCC reserve the right to postpone or delay the sale of a property as detailed at [9.9](#).

5.2 DCC will routinely undertake the following tasks:

- insure the property(s) under the terms of DCC insurance policy (buildings only, not contents)
- undertake a protection of property search carried out by at least two people and remove to safe storage any items considered to be of significant financial value - this will also include the re-homing of pets where the individual is no longer able to accommodate or care for them
- if the local authority (LA) arranges for pets to be looked after, the pets will need to be vaccinated - all associated costs such as vaccination, veterinary treatment and kennel fees will be passed onto the individual
- arrange for any items requested by the individual, along with other such items considered appropriate, to be taken to their new residence
- arrange for DCC Property Services or another to ensure the property is safe and secure by turning off the utilities and draining down the water/heating systems and any other appropriate requirements

5.3 Post granting of the order DCC will:

- arrange for quotes from three estate agents for the valuation of the property and drafting of sale particulars
- arrange for the property to be cleared (two quotes required) - this will also include garages, out-houses, greenhouses and storage areas, and the property made ready for sale – this may also include removal of carpet, curtains, furniture etc., if deemed necessary, along with appropriate cleaning of the property and tidying of the garden

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- sell items of value at auction wherever possible, otherwise donated to charity or disposed of
- dispose of all electrical equipment, including fridges/freezers in accordance with relevant legislation, where they are not required and not in a saleable condition - all associated costs will be passed onto the individual
- market the property through an estate agent
- instruct a solicitor with regard to property sale – where it is known the individual has their own solicitor then initially, they will be instructed,
- where the individual has no known solicitor or they do not wish to act, the deputy will appoint a solicitor
- arrange to sell or dispose of any items not required by the resident – this may include personal items, electrical items, mobility scooters, cars etc. – in undertaking this action the deputy will have regard to specific items bequeathed under the individual’s will, and sentimental items of family and friends (See also section 9 – Discretion of the Property and Affairs Deputy)
- pending sale of property, if necessary, the deputy will arrange, usually through DCC Trusted Traders, for the maintenance of gardens (two quotes are required)

- 5.4 The deputy will make the decision on the final sale price, having taken advice from the relevant professional.
- 5.5 Where there is little or no interest in the property, and any offers are deemed unacceptable, the deputy will consider whether to offer the property for sale through a public auction - where appropriate a minimum reserve price will be set after consultation with the relevant professional.
- 5.6 DCC reserves the right to make the assumption that all possessions and items in the individual’s property, outbuildings and grounds are under the sole ownership of the individual.
- 5.7 Any person claiming ownership of any items held in the individual’s property, including any outhouses, sheds, garages etc, must make representation to DCC with the appropriate information and evidence of ownership.
- 5.8 Where the person claiming ownership of items can provide appropriate evidence of ownership, these items will be released on completion of a signed declaration.
- 5.9 Where the person claiming ownership of items cannot provide appropriate evidence of ownership, the items will not be released and the deputyship team will store, sell, or dispose of the items as it considers appropriate. Should DCC sell the items, the individual claiming ownership, but who is unable to provide evidence, will be notified of the sale and given the opportunity to purchase the items at the full market value.
- 5.10 Any costs associated with any of the activities detailed will be passed to the individual.

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5.11 The Deputyship team may arrange for settlement of any invoices pending the granting of the order and the subsequent unfreezing of assets.

5.12 Where individuals do not have the available resources to immediately reimburse DCC, these will be recovered from the property sale proceeds.

5.13 Where an individual owns a property(s), which is rented out, the deputy will have regard to the individual's other assets and liabilities, the terms of the tenancy agreement, and will also consider:

- continuing with or appointing an agent to manage the property
- selling the property with a sitting tenant
- giving notice to the tenant and selling the property
- seeking appropriate legal advice

5.14 Where the individual lives in rented accommodation and the tenancy requires termination, the following actions will be undertaken when the application to the COP is made - this is to minimise costs to the individual.

5.15 Council tenants:

- give notice of termination of tenancy to the district/borough council
- undertake a protection of property search carried out by at least two people and remove to safe storage any items considered to be of significant financial value - this will also include the re-homing of pets
- where the individual is no longer able to accommodate or care for them - if the local authority (LA) arranges for pets to be looked after, the pets will need to be vaccinated
- all associated costs such as vaccination, veterinary treatment and kennel fees
- arrange for any items requested by the individual to be taken to their new residence
- If appropriate the deputyship team will request the district/borough council to clear the property

5.16 Private landlord tenants:

- give notice of termination of tenancy to the landlord
- undertake a protection of property search carried out by at least two people and remove to safe storage any items considered to be of significant financial value – this will also include the re-homing of pets where the individual is no longer able to accommodate or care for them
- will be responsible for all associated costs such as vaccination, veterinary treatment, and kennel fees
- arrange for any items requested by the individual, along with other items considered to be appropriate, to be taken to their new residence



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- arrange for clearance of the property (two quotes required). This will also include garages, out-houses, greenhouses, and storage areas - this may also include removal of carpet, curtains, furniture etc along with appropriate cleaning of the property and tidying of garden
- items of value are to be sold at auction wherever possible, otherwise donated to charity or disposed of
- all items of electrical equipment, including fridges/freezers to be disposed of in accordance with relevant legislation, where they are not required and not in a saleable condition
- all associated costs will be passed onto the individual.

If the local authority (LA) arranges for pets to be looked after; the pets will need to be vaccinated.

## 6 – Individuals with Other Capital Assets

- 6.1 Where individuals have capital held in various financial institutions the deputy will, where not specifically ordered by the COP to do otherwise, have discretion to amalgamate the funds and close accounts as necessary.
- 6.2 Where individuals have significant stocks and shares the deputy will seek appropriate advice with regard to retaining or selling some, or all of the stocks and shares, and the investment of the funds.
- 6.3 The deputy will have discretion to hold or sell as they think fit for those individuals with only limited shares.
- 6.4 The deputy will have discretion, or by order of the COP, have regard to the individuals circumstances to deposit an appropriate level of funds in the dedicated deputyship bank account, and the balance of funds will be invested as deemed appropriate.
- 6.5 The deputy will have discretion to continue to hold or sell all other investments as is deemed appropriate having regard for the individual's requirements and other assets - in this regard the deputy will seek appropriate advice.

## 7 – Individuals Remaining in the Community

- 7.1 Where individuals are being supported to remain in the community the deputy will work closely with social care and health professionals and appropriate family and friends of the individual, in order to ensure that they have adequate finances and support.
- 7.2 The deputy will arrange for money to be made available in an accessible way for day to day living expenses, and subsequent monies as and when required.
- 7.3 The deputy will make the necessary arrangements to ensure that utility bills, rent, mortgage, insurances, TV licenses etc. are paid promptly and accurately.

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7.4 If requests are made directly by the individual for one-off lump sum amounts the deputy may seek direction from the worker. If a significant amount is requested, then the deputy will seek authorisation from the Office of the Public Guardian (OPG).

## **8 – Individuals Entering Long Term Care Homes Placements**

- 8.1 The deputy will work closely with social care and health professionals and with family and friends of the individual to find a suitable care home, having regard for the cost and the individual's financial circumstances.
- 8.2 Where the individual's funds are inaccessible or they have insufficient available capital to meet the cost of their care home fees, the deputy will enter into a contract with the council for them to pay the care home the gross cost of the placement, until such time as capital becomes available.
- 8.3 Once the deputy has access to sufficient capital the contract with the council will be cancelled and any outstanding care home fees due to the council will be repaid - the deputy may then negotiate the cost of the placement directly with the care home.
- 8.4 Where it is reasonable and practicable to do so the deputy will arrange for the individual's personal possessions, which may include clothes, furniture, jewellery, etc. to be taken to the care home.
- 8.5 Where the individual has sufficient financial resources and it is reasonable and practicable, the deputy will arrange for the purchase of items for the individual's room and/or personal use.
- 8.6 Where items identified at 8.5 have a significant cost and the deputy considers it necessary, they will seek the advice of the COP to incur such expenditure.

## **9 – Discretion of the Property and Affairs Deputy**

- 9.1 Only where not specifically directed by the COP will the deputy make best interest discretionary decisions.
- 9.2 Where it is deemed necessary or it is unclear how to best serve the individual, the deputy will either access the Independent Mental Capacity Advocate (IMCA) Service requesting they support the individual, or guidance/clarification will be sought from the COP.
- 9.3 Where an individual has made a will with bequest of personal possessions (excluding cash sums and property(s)) the deputy will have regard to the following:
  - the likelihood of the individual wishing to re-acquire the item
  - the value of the item
  - the cost of storing the item
  - the likelihood of the individual changing their wishes

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- 9.4 Having regard to the points at 9.3, the deputy will decide whether or not to release the bequeathed item(s) to the beneficiary.
- 9.5 Where the deputy determines it is appropriate to release items to the beneficiary, they will be required to sign a document prior to taking possession of the items.
- 9.6 Where the deputy determines that it is not appropriate to release the items these will be retained until such time as the estate is distributed. Any costs associated with retaining and storing items will be recovered from the individual's assets and/or estate.
- 9.7 Where the individual has not made a will, the deputy will have discretion on application to the COP to make a statutory will where they consider it appropriate. Discussions will be held with the individual, IMCA, family, and friends as appropriate.
- 9.8 The deputy will have the discretion to make appropriate gifts where in their opinion, it is believed the individual would have made such gifts. Examples may include, but are not limited to birthday gifts, Christmas gifts, charitable donations - in accordance with the OPG guidelines.
- 9.9 Where in the opinion of the deputy it is considered appropriate to do so, they will have the discretion to postpone the clearance and sale of the property(s). This discretion will be reviewed at regular intervals.
- 9.10 In the event of a property maintenance emergency, the deputy reserves the right to immediately instruct either the council's Property Services or another to undertake necessary works without the need to obtain three quotes.

## **10 – Individuals in Safeguarding**

- 10.1 Where individuals are subject to the council's safeguarding procedures the deputy will consider both the type of abuse and alleged abuser in deciding what contact and information should be shared with the alleged perpetrator.
- 10.2 When making the application to the COP the deputy will notify the court of the reasons the decision has been made.
- 10.3 If at any time there are concerns regarding any form of abuse against the individual, either now or historically, the deputy will instigate a safeguarding referral.

## **11 – Section 117 Aftercare Orders**

- 11.1 Individuals subject to a section 117 after care order will be managed in line with this policy. They will be charged in accordance with the scale of fees and charges set by the COP Appendix A.

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## 12 – Other Policy and Procedural Areas

- 12.1 The council will attempt to ensure the process and timeframes for the application and serving of papers set by the COP are adhered to.
- 12.2 Where the individual is ‘un-befriended’ or there are safeguarding issues, all key decisions will involve the IMCA Service. The council will work closely with the IMCA to establish the individual’s wishes and where practical and reasonable, endeavor to meet them.
- 12.3 Should there be a change in financial circumstance which is not detailed in the court order, and which does not authorise the deputy to act in relation to it, a further application will be made to COP to vary the order.
- 12.4 Where there is a dispute, or it is unclear of the action to be taken, the deputy will make a specific request to the COP for instruction on how to proceed.
- 12.5 The council will recover charges and fees based on those set by the COP, the current rates can be found on the government [website](#).
- 12.6 The deputy will calculate mileage costs based on the time taken to travel from the council’s headquarters to the venue location and the return time to council’s headquarters in all cases.
- 12.7 The council will recover all incidental costs associated with the application and management of the application when applying to become the deputy.
- 12.8 Where the deputy manages a direct payment on behalf of the individual, an additional weekly administration charge may be payable.

## 13 – Estate Administration

- 13.1 Where an individual has made a will appointing an executor, the deputy will provide all necessary information to the executor in relation to the administration of the estate.
- 13.2 The deputy will complete an estate report which will be sent to the next of kin and/or executor where these are known.
- 13.3 Where it is believed that there are entitled relatives, but their whereabouts are unknown the council will consider using a tracing agency to establish their details.
- 13.4 Where the council consider it appropriate, they will arrange for the appointment of a solicitor to administer the estate of the deceased. Any associated costs with the administration of the estate will be recoverable from the deceased’s estate.
- 13.5 Where it considers it appropriate to do so the council will administer the estate of the deceased. An applicable fee will be payable in accordance with [Appendix A](#).

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## 14 – Performance Standards

14.1 All people who come into contact with the Deputyship team can expect:

- to be treated with dignity and respect and in a courteous manner
- that all staff will be trained and be competent in their particular role
- staff will only ask for information that is needed for the court of protection process

All information, both personal and financial, will be treated in the strictest of confidence and not divulged without that individual's consent, except in cases where information is required to be shared to prevent crime and disorder and/or to prevent significant harm to adults or children as required by safeguarding children and vulnerable adult policy and procedures. [See Safer Derbyshire website](#)

If it is necessary to meet the individual or their representative, in their own home:

- the officer of the council will be punctual or make contact to explain their delay and give the individual/representative the opportunity to re-arrange the meeting.
- all officers of the council will carry a photo identity badge along with details of how their identity can be verified.
- individuals should not allow access to their property by anyone who does not have a Derbyshire County Council photo identification badge
- individuals will be given details of who they can contact for advice, support, and progress during and after the deputyship process

14.2 From the date the council agree to make an application to the COP, the Deputyship team will endeavor to carry out the following actions within six weeks:

- the completion and submission of the COP application
- application for corporate appointeeship
- opening of a dedicated bank account
- insurance of property (if appropriate)
- protection of moveable property
- termination of tenancy, including the cost of property clearance
- request that the property is drained down and utilities disconnected as appropriate
- initial investigations regarding assets and liabilities and appropriate contact with creditors and debtors to advise them of the COP application
- contact known relatives to remove any goods/possessions they may require if no known relatives/friend contact tracing agent

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14.3 Once the order has been granted and all papers served (within the timeframe set by the COP) the following will be completed within 6 weeks wherever attainable:

- valuation of property and draft sale particulars
- quotes for and arrange clearance of property
- marketing of property for sale
- Instruction to solicitors with regard to the property sale (once the property has been sold)

14.4 The deputy reserves the right to extend these timeframes, as specified in 14.2 and 14.3 in cases that are complex or where there are particular challenges either pre and/or post order.

## Appendix A- Court and Council Fees

### **Court Fees**

#### **Category I**

Work up to and including the date upon which the court makes an order appointing a deputy for property and affairs:

- £745

#### **Category II**

Annual management fee where the court appoints a local authority deputy for property and affairs, payable on the anniversary of the court order:

- for the first year: £775
- for the second and subsequent years: £650
- where the net assets of individual are below £16,000, the local authority deputy for property and affairs may take an annual management fee not exceeding 3.5% of the individual's net assets on the anniversary of the court appointing the local authority as deputy

#### **Category III**

Annual property management fee to include work involved in preparing property for sale, instructing agents conveyancers, etc. or the ongoing maintenance of property including management and letting of a rental property:

- £300

#### **Category IV**

Preparation and lodgment of an annual report or account to the Public Guardian:

- £216
- The categories of remuneration, above will apply as follows:
- category I to all orders appointing a deputy for property and affairs made on or after April 2017
- category II to all annual management fees for anniversaries falling on or after April 2017
- category III on the anniversary of appointment as deputy where the anniversary falls on or after April 2017; or upon completion of the sale of a property, where the transaction was concluded on or after April 2017

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## **Category V**

Preparation of a basic HMRC income tax return (bank or NS&I interest and taxable benefits):

- £70

Preparation of a Complex Her Majesty's Revenue and Customs (HMRC) income tax return (bank or National Savings and Investment (NS&I) interest, taxable benefits, small investment portfolio):

- £140

Mileage Costs and Travel Time:

- £40 per hour (pro rata)

## **Derbyshire County Council Fees**

### **Estate Administration**

Preparation of estate report and other administrative work arising post death:

- £350

### **Recovery of all other incurred cost**

DCC will recover from the individual all other administrative, fees/charges, disbursements and incidental costs associated with the application, administration and management of the individual's assets under the property and affairs deputyship order.



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## Author History

### Authorisation and Approval History

Authored by Andrew Bartle	Finance Manager	November 2016
Approved by Mel Teasdale	HR Service Partner	November 2016
Authorised by Quality Assurance Group		November 2016

### Change History

Version 1	November 2016	Andy Bartle	Development of new guidance for staff
Version 1.1	April 2017	Andy Bartle	Update rates Appendix A V2
Version 2	October 2019	Gaynor Bulheller	Review and update
Version 3	November 2022	Gaynor Bulheller	Review and update