

# Adult Social Care

Making a Difference in the Right Way, Every Day


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## Appointee and Deputyship Policy

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<b>Version</b>	<b>Date</b>	<b>Author Name</b>	<b>Rationale</b>
1.0	01.07.2019	Roger Catley - ACS Governance Lead  Sue Austin - Senior Accountant (Adult Social Care Payments and Billing)	Initial policy creation
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## 1. INTRODUCTION

- 1.1 When a person lacks mental capacity to manage their financial affairs most people have someone such as their spouse or partner, a family member, a friend or a professional advisor who will officially manage their financial affairs.
- 1.2 When there is no suitable person to help manage their financial affairs and the person lives in Solihull and lacks mental capacity, Solihull Council will consider how best their financial affairs can be managed on their behalf. Solihull Council will also consider how best a person's financial affairs can be managed on their behalf if the person lives in Solihull is being, or is at risk of being, financially abused and lacks mental capacity.
- 1.3 For those people who do not have capacity to manage their financial affairs, Solihull Council will consider whether any of the following courses of action are appropriate:
  - a) Seek appointment as Appointee - The Council is then appointed by the Secretary of State for the Department for Work and Pensions (DWP) to act on behalf of a person who is unable to manage their benefits affairs and the appointment relates to their state benefits. The Council will:
    - Claim benefits and sign DWP forms for the person
    - Collect and receive benefits, state pensions and allowances
    - Ensure the person receives the maximum amount of benefits they are entitled to
    - Make appropriate payments on behalf of the person from those benefits
    - Ensure the individual receives their personal allowance from their benefits

As the Appointee the Council cannot:

- Receive or make payments from any other type of income, other than those listed above
- b) Seek appointment as a Court of Protection Deputy - The Council is then appointed by the Court of Protection to look after all of a person's financial affairs including
    - Savings in a bank account
    - Collecting all benefits, occupational pensions and other income
    - Make all appropriate payments on behalf of the person

The Council will only act as a Deputy where a person has assets below £100,000 and any occupied real estate assets, being land or buildings.

- c) Refer the matter to the Court of Protection to consider the appointment of a Panel Deputy appointed by the Court.

The Council will request the Court of Protection appoints a Panel Deputy when the person owns assets totaling over £100,000 and or has any unoccupied real estate assets, being land or buildings.

In the interim period whilst waiting for a Deputyship application to be granted, Solihull Council will apply to act as an Appointee as this will enable the person to have access to their personal allowance and the appointment can be transferred to the Deputy in due course.

- 1.4 The council officer authorised to act as a Deputy or Appointee for a person who lacks mental capacity is the Assistant Director for Adult Social Care. These duties have been delegated to the Appointee and Deputyship team within the Resources Directorate.

## **2. PURPOSE**

- 2.1 This policy outlines the controls which will be applied to ensure that a person's finances and property affairs are managed appropriately, confidentially and in accordance with the requirements of the Department for Work and Pensions, the Court of Protection and the Office of the Public Guardian.

## **3. LEGAL CONTEXT**

- 3.1 The Office of the Public Guardian (OPG) Deputy Standards for Public Authority Deputies. The Appointee and Deputyship team will act in accordance with the requirements and expectations for public authority deputies.
- 3.2 Part 19 of the Court of Protection Rules 2017. The Rules allow certain costs to be charged to the person who lacks capacity. The Appointee and Deputyship team charges will not exceed the maximum rates set out in guidance.
- 3.3 The Care Act 2014. Staff will be mindful of Care Act duties to promote the person's wellbeing; involve persons as much as is possible in decisions which affect them; and to safeguard adults at risk of abuse or neglect.
- 3.4 The General Data Protection Regulations. Staff will follow requirements for personal and sensitive information to be stored and shared securely with access restricted to those who 'need to know'. Persons or their representatives are entitled to access their own information.

## 4. REFERRAL - CONDITIONS OF ACCEPTANCE

4.1 All referrals must be made from a Social Work team to the Council's Appointee and Deputyship team.

4.2 Appointee

Applications 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. An Appointeeship will be applied for when a person :

- a) Lives in the community or;
- b) Lives in a residential / nursing
- c) Only receives benefits from the DWP and;
- d) Has no bank accounts other than a post office account.

4.3 Solihull Council as Deputy

Applications will be made to the Court of Protection for a Deputyship order appointing Solihull Council where the person:

- a) Lives in the community or;
- b) Lives in a residential / nursing setting and;
- c) Is in receipt of a private pension and / or;
- d) Has bank accounts other than a post office account and / or;
- e) Has assets valued below £100,000 and / or;
- f) Has any occupied real estate assets.

Should the real estate of a person where SMBC is appointed Deputy become vacant at some time due to a change in their circumstances then an application will be made for a Panel Deputy to be appointed. The cost of this application will be met by the Council.

4.4 Panel Deputy

Applications will be made to the Court of Protection to appoint a Panel Deputy to manage the person's affairs where the person:

- a) Has assets valued at over £100,000 and / or;
- b) Owns any unoccupied real estate assets.

- 4.5 All referrals to the Appointee and Deputyship team will only be accepted when a referral form has been completed and the Appointee and Deputyship team is satisfied that:
- a) All financial and other required details have been supplied, and
  - b) An assessment of mental capacity has confirmed that the person lacks capacity to make specific decisions about their property and financial affairs and
  - c) The referral confirms there is no other suitable person who is willing and able to manage the person's property and financial affairs, including escalated or rejected Deputy applications as defined in the Council's No Access to Funds Policy.
- 4.6 **AUTHORITY TO ACT** - The Appointee and Deputyship team will not begin to manage a person's property and financial affairs until DWP Appointeeship has been confirmed, or the Court of Protection has granted a Deputyship order.
- 4.7 Once authority is obtained, the Appointee and Deputyship team will:
- a) Inform all relevant parties (for example financial institutions, care homes) of its authority to act on the person's behalf, and
  - b) Act within the limits of the DWP Appointeeship or the Deputyship order granted by the Court of Protection.

## **5. MANAGEMENT OF THE FINANCIAL AFFAIRS OF A PERSON**

- 5.1 The Appointee and Deputyship team will manage the financial affairs of a person in accordance with the requirements of the Office of the Public Guardian and the Council's financial regulations.
- 5.2 Monies held on behalf of each person will be retained within Solihull Council's main bank account with each person having their own separate sub account. Annual interest will be paid to each person's account at the same interest rate as the Council receives on its total investments.
- 5.3 Persons who are able to receive and manage their own personal allowance will be supported to do so with as few restrictions as possible. Where appropriate a pre-paid card will be issued.
- 5.4 Third parties (for example care homes) who receive personal allowances on behalf of a person will be supported to do so with as few restrictions as possible.
- 5.5 Cash payments are discouraged and will be controlled and monitored by the Appointee and Deputyship team.

- 5.6 An annual budget plan will be completed by a social worker for each person on the anniversary of the original budget plan. This will include regular income and expenditure together with any one-off payments required during the year. If a person requires any additional one-off payments above £50 these will be requested by the person's social worker and approved by the appropriate team manager using the additional payments form. Payments up to £50 can be approved by the Appointee and Deputyship's team manager up to an annual total of £200 for each person without referral / approval from the social work team manager.
- 5.7 The Appointee and Deputyship team will not act a guarantor.

## **6. PROPERTY**

- 6.1 Whilst a Deputy is being appointed by the Court of Protection Solihull Council will ensure any real estate owned by the client as part of the Council's insurance scheme and will visit the house / land or buildings every month to comply with the insurer's terms and conditions.
- 6.2 The cost of any insurance will be charged to the client's account.

## **7. RESPONSIBILITIES FOR A DECEASED PERSON'S ESTATE**

- 7.1 Where the person who is no longer able to manage their financial affairs is named as the executor and beneficiary in the Will of a deceased person or under the rules of intestacy is an entitled relative and there is no other person willing to administer that other estate, the Appointee and Deputyship team will:
- a) Seek the authority of the Court of Protection to apply for a grant of representation on the person's behalf, and
  - b) If granted, instruct a solicitor to administer the deceased person's estate.

## **8. WHEN APPOINTEE AND DEPUTYSHIP TEAM RESPONSIBILITIES END**

- 8.1 The Appointee and Deputyship team will remain responsible for managing the person's property and financial affairs until:
- a) Another person is appointed to manage the person's property and financial affairs.
  - b) The person regains capacity.
  - c) The person dies, when responsibility for managing their financial affairs passes to the executor or administrator of their estate.



8.2 When a person dies, the Appointee and Deputyship team will:

- a) Provide their executor / administrator with information about the person's financial affairs, or
- b) Should no family members be located by the Appointee and Deputyship team a referral to the Treasury Solicitor / Bona Vacantia will be made.

## **9. FEES CHARGED BY THE APPOINTEE AND DEPUTYSHIP**

9.1 The Court of Protection permits Deputies to charge a range of fees. Fees charged by the Council to act as Deputy will not exceed the fixed rates of remuneration permitted by the Court of Protection. These fee rates are published annually by the Council.

## **10. MONITORING**

10.1 The Appointee and Deputyship team will review each person's circumstances annually.

10.2 The Appointee and Deputyship team will be subject to both internal and external monitoring, including but not limited to:

- a) The Council's financial audit procedures.
- b) Supervision by the Office of the Public Guardian.

## **11. REPORT TO THE OFFICE OF THE PUBLIC GUARDIAN**

11.1 The Appointee and Deputyship team will provide an annual report to the Office of the Public Guardian (OPG) about each person subject to OPG reporting requirements.

