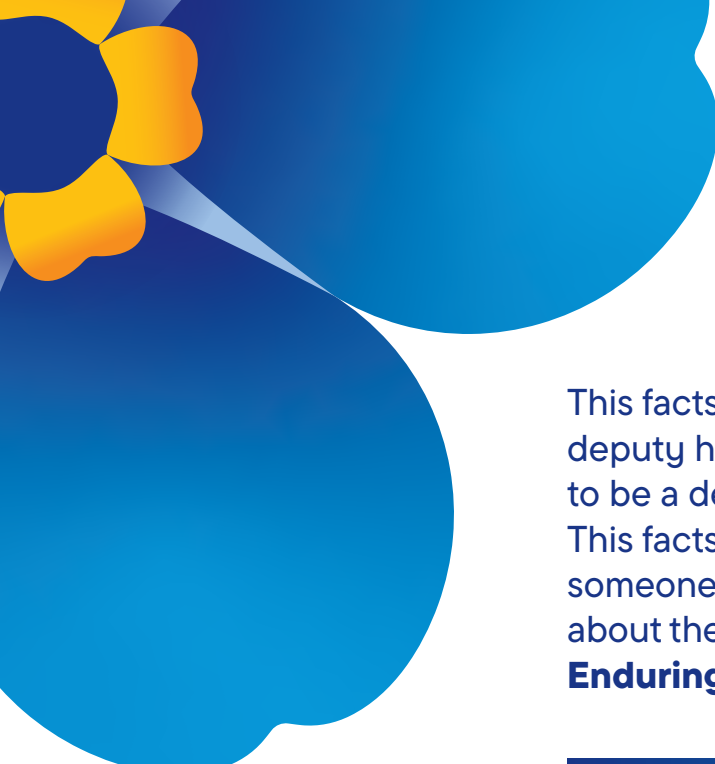


Deputyship



Together we are help & hope
for everyone living with dementia



This factsheet explains what deputyship is and what a deputy has to do. It also explains how you can apply to be a deputy and what to consider before doing so. This factsheet is for people who want to be a deputy for someone living in England and Wales. For information about the laws in Northern Ireland see factsheet NI472, **Enduring power of attorney and controllership.**

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1 Making decisions on behalf of a person with dementia

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As dementia progresses, a person may lose their ability – known as ‘mental capacity’ – to make some decisions for themselves. For example, they may no longer be able to make decisions about needing more care, where they live or what medical treatment they should have. They may also become unable to manage their finances, such as paying bills.

In these cases, someone else can make these decisions for the person, as long as they have the legal status to do so.

Some people with dementia will already have planned ahead for when they cannot make certain decisions. They may have put a Lasting power of attorney (LPA) or an Enduring power of attorney (EPA) in place. These are legal documents that allow a person with dementia to choose who they would like to make certain decisions for them in the future, if they cannot make these decisions for themselves.

LPAs replaced EPAs in England and Wales from 1 October 2007. However, it is possible to have a valid EPA made before that date.

The person with dementia may also have made:

- an advance decision to refuse a particular medical treatment
- an advance statement setting out their wishes and preferences for the future
- a will (or updated their existing will following their diagnosis).

For more information about how people with dementia can plan ahead see booklet 1501, **Managing your money**, and factsheets 472, **Lasting power of attorney** and 463, **Advance decisions and statements**.

An LPA can only be set up when the person with dementia has the mental capacity to do so. If this is not the case, and you want to make certain decisions on the person’s behalf (because they can no longer make those decisions for themselves), you need to apply to become their deputy.

It may be upsetting to think about the person you support losing the ability to make decisions. You may feel worried or guilty about making decisions on their behalf. These feelings are normal. Understanding more about deputyship will help you to decide if it is something you feel able to take on. For personalised advice and support call 0333 150 3456 and speak to one of our dementia advisers.

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2 What is deputyship?

Deputyship is a way that someone becomes legally allowed to make certain decisions on another person's behalf, if:

- the person no longer has the mental capacity to make those decisions for themselves and
- the person has not made an LPA or EPA, which is still valid.

Deputies are appointed by the Court of Protection. This means that you must apply to this court if you want to become a deputy. The court will decide if you are suitable based on your application and the information that you provide. For more information see 'How to apply to be a deputy' on page 12.

Types of deputyship

There are two different types of deputyship for different types of decisions – a property and affairs deputyship and a personal welfare deputyship.

Property and affairs deputyship

A property and affairs deputyship is the most common type. It is used to make decisions about a person's property and financial affairs, if they can no longer do this for themselves. This might include deciding on practical daily tasks, like paying the person's bills or applying for benefits on their behalf. It could also include more complex decisions, such as choosing where to invest the person's savings or how much to spend on their care.

If the person doesn't have any property or savings and their only income is from benefits, they do not need a deputy. This is because their benefits can be managed by someone appointed by the Department for Work and Pensions (DWP) – this person is known as an 'appointee'. For more information see the government website at www.gov.uk/become-appointee-for-someone-claiming-benefits

Personal welfare deputyship

A personal welfare deputyship can be used to make decisions about a person's care and medical treatment, if they can no longer do this themselves. These decisions might include whether the person moves into residential care or whether they should have a particular operation. Personal welfare deputies are only rarely appointed. Examples might include situations where:

- there is a history of disagreements within the family
- the person is at high risk of abuse
- a series of decisions needs to be made over time – for example, decisions about treatment for an underlying health condition.

When deciding whether to appoint a personal welfare deputy, the Court of Protection will look at the circumstances and consider what's in the person's best interests.

Most often, personal welfare deputyships are not needed. This is because care and treatment decisions can usually be made on a case-by-case basis by the professionals providing the care. These professionals can use their skills and knowledge of the person to make these decisions in the person's best interests.

When this happens, the professionals should involve those who are close to the person in any decision-making. They should also involve the person with dementia as much as possible and take account of their wishes and feelings.

If you disagree with the professionals about what is in the person's best interests, you can ask the court to make the decision or to appoint a personal welfare deputy to make the decision.

As someone's deputy, there are other tasks that you have to do. This is alongside the decision-making that you have been allowed to do. For example, if you become a deputy for property and affairs, you'll need to keep account of the person's finances and provide an annual report of the decisions that you've made on their behalf. For more information see 'What does a deputy have to do?' on page 7.

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Deputyship or LPA?

Both deputyship and LPAs allow someone to make certain decisions on behalf of a person who can no longer make those decisions. However, there are some key differences.

If the person you care for still has capacity to grant an LPA, an LPA is probably a better option than deputyship for the following reasons:

- **An LPA allows the person to choose for themselves who they want to make decisions**, whereas deputies are decided by the Court of Protection. This means the court could appoint a professional who doesn't know the person (for more information see 'Who can be a deputy?' on page 5).
- **An LPA can be more reassuring for the person with dementia** because it can give them a feeling of control at a time when they might be worried about the future.
- **LPAs are cheaper to set up** than deputyships.
- **A deputyship can take longer to set up than an LPA.** This can cause problems for families in the meantime, for example if the person has bills that need to be paid.
- **Personal welfare deputyships are rare**, whereas health and welfare LPAs are much more common and are easier to set up.

However, if the person with dementia has already lost the mental capacity to make an LPA, it will be too late for them to set one up. Deputyship may be the only option.

While an LPA has advantages not everyone wants to make one. Some people also like the extra supervision that goes with deputyship (see page 17).

A deputyship can still allow you to make the best decisions you can for the person. If it is too late for them to set up an LPA, try to focus on what you can do for them and think about applying for a deputyship if you can.

3 Who can be a deputy?

A deputy is usually a family member or friend of the person who can no longer make certain decisions. If this isn't possible, a professional, such as a solicitor or an accountant, can act as the person's deputy.

Family members and friends

In order to become a deputy, you must:

- be at least 18 years old
- agree to being a deputy
- be approved as suitable by the Court of Protection.

Being a deputy can be complicated and time-consuming. For a property and affairs deputyship, you need to be organised and keep good records. This may be particularly challenging if the person's finances are complex. See 'What does a deputy have to do?' on page 6 for more information on this.

Because of this, you should think carefully about being a deputy before taking on the role. It could be helpful to get some advice about it first – see 'How to apply to be a deputy' on page 10. If you decide to take on the role, you can get support from the Office of the Public Guardian (OPG) – see 'Supervision from the Office of the Public Guardian' on page 17.

It is possible for a person to have two or more deputies. You may find deputyship easier if you have another deputy to make decisions with. If there are two or more deputies, they can make decisions either:

- **together ('joint deputyship')** – this means that all the deputies have to agree on the decision
- **separately or together ('jointly and severally')** – this means that deputies can make decisions on their own or with other deputies.

If you are not sure which would be best, you can get advice from a solicitor or speak to the OPG (see 'Other useful organisations' on page 20 for contact details).

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Professionals

If a relative or friend can't take on the role, you could ask a professional to apply to become the person's deputy, or the court may choose someone. Solicitors for the Elderly can help you to find a lawyer near you – see 'Other useful organisations' on page 20 for contact details.

A deputy could also be a representative from the person's local authority. This might happen if they are involved with the person's care and there is no family member or friend who can, and wants to, take on the role.

Do note, however, that professional and local authority deputies will charge for their time. Their fees are normally paid from the finances of the person with dementia. The court will monitor this and will only approve the cost if it is reasonable.

4 What does a deputy have to do?

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If you are thinking of becoming a deputy and making decisions on behalf of a person with dementia, it is important to understand the duties of this role. You will have to:

- **act in the person's best interests** – this includes thinking about the person's past and present wishes and feelings
- **make decisions carefully and with as much knowledge as possible** – this may involve talking to the person, to people who know them or to professional experts
- **not take advantage of the person with dementia** – for example, using something they own for yourself or for your own profit
- **not give your duties to someone else, unless your deputyship says you can** – this means that only you can make the final decision on behalf of the person. However, you can talk to other people about it and get advice
- **act in good faith** – this means acting with honesty and integrity
- **respect the person's confidentiality** – this means not sharing details of the person's finances, property and health conditions, unless you need to in order to act in their best interests
- **follow the instructions of the Court of Protection.**

If you are a deputy for property and affairs, you also have a duty to:

- keep financial accounts
- keep the person's money and property separate from your own – for example, by using separate bank accounts.

The Office of the Public Guardian (OPG) can provide support, guidance and information once you are appointed as deputy (see 'Supervision from the Office of the Public Guardian' on page 17 for more details).

When you are making decisions on behalf of the person, you should still involve them as much as possible. If you can, explain to the person what is happening and listen to what they say.

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Supporting the person to make decisions

As a deputy, you should consider the person's mental capacity every time a decision needs to be made. This is important as the person's mental capacity can change. They may be able to make a certain decision at one time but not at another. Equally, if a person is unable to make a certain decision, they may still be able to make a different type of decision at this time. You should not assume that the person is unable to make all decisions at all times.

For every decision you need to make on behalf of the person, you should first do what you can to support them to make the decision for themselves. For example, you could try presenting the information that is needed to make the decision in a different way, like using pictures instead of words. For more information about acting in a person's best interests see factsheet 460, **Mental Capacity Act 2005**.

Managing money

If you are a deputy for property and affairs, you are likely to need to access the person's bank account as part of your role – for example, to pay their bills. The way you do this will be different depending on the bank the person uses. Normally, the bank will note on the person's existing account that you are their deputy. You should then be given a bank card and be allowed to sign cheques for the person. This will enable you to make payments out of the person's bank account on their behalf.

Deputy annual report

As a deputy, you will have to provide a deputyship report to the Court of Protection every year. This gives the court information about the decisions that you have made on behalf of the person with dementia.

For a personal welfare deputyship, this will include information about any medical treatment the person has had in that year and their care arrangements.

If you are a deputy for property and affairs, your report will need to provide information about the person's financial transactions in the year. This will include any gifts made, any property the person has bought or sold and the cost of their care arrangements. It should also provide financial accounts for the court to approve. You may be asked to provide evidence, such as bank statements.

The Office of the Public Guardian (OPG) will offer you guidance on how to do this and can provide copies of the forms that you will need to complete. The OPG can also provide details of their online reporting service, which you can use instead of completing paper forms. This can help with record-keeping throughout the year.

For more information about the OPG see 'Supervision from the Office of the Public Guardian' on page 17. If you have any queries, you can contact them for support (see 'Other useful organisations' on page 20 for contact details).

Are there limits to what a deputy can do?

A deputy's ability to make decisions on behalf of the person should be as limited as is reasonably possible. This means that, if you are a deputy, you should only have the decision-making ability that you need to have and no more than this.

If you are appointed as deputy, the deputyship order will explain the decisions that you can and can't make in your role.

There are also some specific limits on what a deputy can do. A deputy cannot:

- make a decision for the person if the person can make the decision themselves
- restrain the person, except in very particular circumstances to prevent them from harm
- make a decision that goes against a decision made under any existing LPA
- refuse life-sustaining treatment for a person who lacks capacity to consent to it
- make gifts, except in very limited circumstances (see 'Giving gifts' on page 10).

Every deputyship order is different and it may contain further limits on the deputy's abilities. For example, the court may place a limit on how much can be spent in a single transaction, or a cap on how much can be spent over a certain period of time.

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Property decisions

Some property and financial affairs deputyships allow the deputy to make decisions about the person's property, but some do not. You should think about this when you apply. If you think you will need to sell the person's house (for example, to pay for care fees), you should ask for that ability to be included in your deputyship when you apply.

If you already have a deputyship order, you should always check the wording of the order before making any decision about the person's property. If you are still unsure whether you're allowed to make the decision, check this with the Court of Protection.

There are certain additional rules if you jointly own the property with the person. You should get legal advice if this is the case.

Giving gifts

It may be possible for a deputy to make limited gifts on the person's behalf, but this will depend on the details of the deputyship order. Check the order first before giving any gifts.

Normally the order will allow gifts to be made to:

- family members or friends of the person on 'customary occasions', such as birthdays, weddings or civil partnerships, anniversaries or religious festivals
- charities that the person has given to previously.

Before giving any gifts, you should consider the person's finances and whether giving the gift would affect their ability to meet their needs both now and in the future. Gifts should always be well within what the person can comfortably afford.

It's important to note that under the law, a 'gift' can include a wide range of things that you may not think of as gifts. As well as presents and donations, gifts can include:

- selling the person's property at less than market value (the amount by which the sale price falls short of market value counts as a gift)
- living or allowing someone else to live rent-free or at a cheap rate in the property (the amount by which the rent price falls short of market value counts as a gift)
- allowing someone an interest-free loan from the person's money (the amount that hasn't been charged in interest counts as a gift)
- paying someone's school or university fees.

This means that the restrictions that apply to giving gifts will apply to these situations too. Unless the deputyship order specifically authorises you to do any of these things, you will need approval from the Court of Protection before you can do any of them on the person's behalf.

If you are unsure whether you can make a gift, you can ask the Office of the Public Guardian for guidance (for contact details see 'Other useful organisations' on page 20). If you want to make a gift that is not allowed by your deputyship order, or if you are concerned that its value may not be reasonable, the Court of Protection will need to approve it.

Remember to keep a record of any gifts you make. You will need to include these in the annual accounts you submit to the Court of Protection.

If you are able to make a gift on the person's behalf, involve them as much as possible in the decision. Think about the gifts the person has given in the past.

Claiming expenses

When acting as someone's deputy, you can claim for certain expenses, as long as they are reasonable. People often don't claim back expenses for a variety of reasons, but no one should be left out of pocket for acting as a deputy. If you are acting on behalf of a friend or relative, they probably wouldn't want you to pay these expenses yourself.

You can only claim for certain expenses when they are for the purposes of performing your role as a deputy. This could include postage costs, car parking tickets and travel expenses that you've had to pay in order to carry out your role as a deputy. You cannot charge for travel costs for a general visit.

It's worth knowing that you can't charge for the time that you spend carrying out your deputy role. Only professional deputies, such as solicitors or accountants, can do that.

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5 How to apply to be a deputy

It can be a privilege to be a deputy for someone you care for. However, becoming a deputy for a person with dementia is a big decision. It may help to discuss the idea with others before you apply. For example, you could:

- talk to friends or family members who have experience of deputyship
- find other carers who have experience of deputyship, for instance, on our online Dementia Support Forum – see forum.alzheimers.org.uk
- consult a solicitor or accountant (note that they will charge a fee for this consultation)
- talk to one of our trained dementia advisers by calling **0333 150 3456**
- ask the Office of the Public Guardian (OPG) for more information about the role before applying – see ‘Other useful organisations’ on page 20 for contact details.

Submitting an application

To apply to become a deputy, you will need to submit an application to the Court of Protection. The application process involves giving the court detailed information about the circumstances of the person with dementia. This could include the person’s living arrangements and family relationships, as well as details about their finances or care arrangements. This will depend on the type of deputyship you are applying for.

Application forms

As part of your application, you will need to complete the following forms (the reference code is shown in brackets):

- the main application form (COP1) – this covers basic information about the person, for example where they live and details of their family members, including at least three people who should be notified of your application
- Annex A: supporting information for property and affairs applications (COP1A) – this covers the person’s income, including any benefits they receive, savings, investments and property they own. It also covers their expenses (including care costs) and any debts they owe

- Annex B: supporting information for personal welfare applications (COP1B) – this covers details of the professionals and social workers involved in the person’s care. It also covers details of the care or treatment that you need to make decisions about
- assessment of capacity (COP3)
- deputy’s declaration (COP4).

The COP3 form is in two parts. You have to complete Part A and a ‘practitioner’ has to complete Part B. This is so they can give their opinion about the person’s mental capacity. There is a range of professionals who qualify as a ‘practitioner’ and these are explained on the form.

The COP4 declaration explains your circumstances and includes details of the responsibilities you will be taking on as a deputy. You need to explain your job (if you have one) and whether you have ever been convicted of a criminal offence. In property and affairs applications, you also need to give details of your own finances.

You must be able to show the court that you have the skills, knowledge and commitment to carry out your responsibilities. You must also assure them that there is nothing that might make your appointment inappropriate – for example, if you have severe financial or health problems yourself, or if you are bankrupt.

In some cases, you may also need to complete the following forms:

- permission of the court to apply for deputyship (COP2) – this is usual for personal welfare deputyships, but not for property and affairs deputyships. You will need to explain why you specifically need a deputyship and whether the person’s need could be met in another way
- a witness statement (COP24) – this may be needed if you have to explain something in particular to the court, for example if you are unable to submit an assessment of capacity form COP3. These situations are rare. The COP24 can be used to explain why you are unable to do so and why you think the person you are applying to be a deputy for lacks capacity to make certain decisions.

You can access all of these forms and get further guidance on the Court of Protection’s website (see ‘Other useful organisations’ on page 20). The court may be able to help you to complete your application forms. However, they cannot provide legal advice.

You can also find information about applying, as well as links to the forms, on the government website – go to www.gov.uk/become-deputy/apply-deputy.

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Another option is to ask a solicitor to make an application on your behalf. For a property and affairs deputyship, the cost of this can be paid using the person's money. The court will usually authorise the payment in the deputyship order. However, it may only allow you to use a fixed or limited amount of the person's money for legal fees.

For this reason, it is important that you discuss fees with the solicitor as early as possible. That way, you can work out whether the court will let you pay the full fees from the person's money. If not, you will have to pay the difference yourself. If you are applying for a personal welfare deputyship, you will have to pay the full amount yourself.

Application fee

You will need to pay an application fee to the court when you submit your application. In the case of a property and affairs deputyship, this money can come from the finances of the person with dementia. The court will allow this in the deputyship order. If you pay this with your own money but then the court decides that the money can come from the person with dementia, you can claim it back from the person once you have been made their deputy.

Some people can get exemptions or reductions on their application fee, depending on the financial situation of the person with dementia. In the case of a personal welfare deputyship, it is your own financial situation that counts.

For more information about the current application fee amounts, exemptions and reductions, contact the Court of Protection or look on their website (for details see 'Other useful organisations' on page 20).

After the application forms are submitted

Once the forms have been completed and submitted, the Court of Protection will assess how suitable you are to be a deputy, using the information that you have provided.

You will also need to tell certain people that you are applying to become a deputy. This includes the people you have named in your application, as well as the person you are applying to be a deputy for. You can find the notification forms on the Court of Protection's website (for details see 'Other useful organisations' on page 20).

The application process can be quite long. After applying, you should allow several months for a decision.

6 Next steps after you become a deputy

Once the court has made a deputyship order, they will send you the physical order in the post. The physical order is a paper copy of the deputyship order that is sealed by the court. You will need this to show that you are a deputy to banks and other organisations.

The type of deputyship you have applied for will affect when you will receive the physical order.

If you become a deputy for personal welfare, the court will send you a sealed copy of the physical deputyship order straight after it is made.

If you become a deputy for property and affairs, you will have to arrange a 'security bond' with an insurer before the court will send you the physical order.

Security bonds (property and affairs deputyships only)

A security bond is a type of insurance policy, which is designed to financially protect the person with dementia in the unlikely event that you don't manage their finances properly – for example, if you commit fraud or accidentally make an incorrect payment.

Once the court has made a deputyship order for property and affairs, they will send you guidance on how to arrange a security bond. The size of the security bond will depend on:

- the value of what the person owns
- how much of what they own is under your control.

In some cases, the court will decide that a security bond isn't needed. This could happen if the value of what the person owns is very low.

You will have to pay a fee for the bond when you set it up. You will also have to pay a yearly fee while you are a deputy. This is like an insurance premium that is paid every year.

The amount you pay each year will depend on how much the bond is for. You can pay these fees from any money that you hold for the person. Or you can pay from your own money and be paid back when you have access to the person's bank account.

Once you have arranged the security bond, the court will send you the physical order in the post.

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Informing others about your deputyship

As a deputy, you will need to tell various organisations about your deputyship before they will agree to deal with you on behalf of the person with dementia. This includes providing evidence of the deputyship order. Many will also ask to see some proof of your identity (for example, your passport). Banks and building societies, in particular, will ask for this before giving you access to the person's bank account.

You may need to tell the following organisations about your deputyship:

- the Department for Work and Pensions (DWP) – for pensions or benefits
- the local authority – for housing benefits, needs assessments or assistance with care fees
- banks or building societies
- utility companies – for example, for gas, electricity and water bills
- insurance companies
- the person's accountant (if they have one)
- the payer of any private pensions
- HM Revenue & Customs (HMRC) – for example, if you need to submit a tax return for the person
- the solicitor who holds the person's will or property deeds
- the care home where the person lives (if they are living in one).

It is also a good idea to inform other people involved in the person's care, such as their carers, family members and friends.

7 Supervision from the Office of the Public Guardian

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The Office of the Public Guardian (OPG) is there to protect anyone who lacks the mental capacity to make decisions for themselves. As part of this, the OPG has a responsibility to check that a deputy is carrying out their role properly. This involves making sure that:

- you keep to the terms of the deputyship order
- you are acting in the person's best interests
- the decisions you make on behalf of the person follow the Mental Capacity Act 2005 (for more information see factsheet 460, **Mental Capacity Act 2005**).

The OPG can call or visit you to check that you are doing what you should. There are two different levels of supervision:

- **General** – all new deputies are placed under general supervision in their first year because they may need more support and guidance. Most deputies stay under general supervision following their first year.
- **Minimal** – if the assets of the person with dementia are below a set limit and there are no concerns about the deputy, they will be placed under minimal supervision after their first year.

For more information on supervision levels, including the financial threshold for minimal supervision, contact the OPG (see 'Other useful organisations' on page 20).

The OPG can ask the Court of Protection to cancel a deputy's appointment at any time, if they decide the deputy is no longer acting in the person's best interests. They may also involve the police if they are concerned that the deputy has committed financial abuse – for example, if the deputy steals from the person or commits fraud.

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Supervision fee

As a deputy you have to pay a supervision fee every year. This is in addition to the application fee that you pay when you apply for deputyship (see 'Application fee' on page 14).

The amount of supervision fee you have to pay will depend upon the level of supervision that you are under. The OPG will let you know when and how to pay this fee. Normally, you can pay it using the money of the person you are deputy for.

There are some exemptions and reductions, as in the case of the application fee. For more information and current rates, contact the OPG (see 'Other useful organisations' on page 20).

Support from the OPG

The OPG will also check that you are getting the right level of support from them. As well as protecting the person with dementia, the OPG is there to support people in their role as a deputy. There are various ways that the OPG can do this – both by phone calls and through home visits. This support is included in the annual supervision fee.

To be sure that you are carrying out your role properly, it can be helpful to ask the OPG any questions you have. Often a quick phone call can resolve any issues and it can be a good way of getting support if you are having problems.

8 Emergency and urgent applications

It is possible to apply to the Court of Protection on a one-off basis to get an emergency court order. You can make an emergency application if there is an immediate risk to the person – for example, if they need medical treatment right away and are unable to consent to it. You can do this whether you're applying for deputyship or not.

To make your emergency application, call the court on 020 7421 8824 and ask to speak to an urgent business officer. They will discuss the case with you and make arrangements to receive your application and present it to a judge. If you need to make an application when the court is closed, the out-of-hours number is 020 7947 6000.

If a specific decision needs to be made urgently, but the person is not at immediate risk, you can also apply for an urgent 'interim' order. This could be the case if, for example, you need to get money from the person's bank account to pay outstanding care home fees. You can only apply for an urgent court order if you're already applying to become a deputy but your application has not yet been approved.

To apply for an urgent interim order, you will need to complete an application form (COP9). This must include an explanation of why the decision is urgent and cannot wait until you're made a deputy. You will also need to send copies of any evidence to support what you are saying – for example, an invoice from the care home. You can access the form and get further guidance on the Court of Protection's website (see 'Other useful organisations' on page 20).

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Other useful organisations

Court of Protection

0300 456 4600

courtofprotectionenquiries@justice.gov.uk

www.gov.uk/courts-tribunals/court-of-protection

The Court of Protection makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare.

GOV.UK

www.gov.uk

www.gov.uk/become-deputy

GOV.UK is the government website. It has information about government agencies and departments. This includes information on deputyship and how to apply.

Office of the Public Guardian (OPG)

0300 456 0300

customerservices@publicguardian.gov.uk

www.gov.uk/opg

The OPG supervises deputies. It is able to provide deputies with guidance and support.

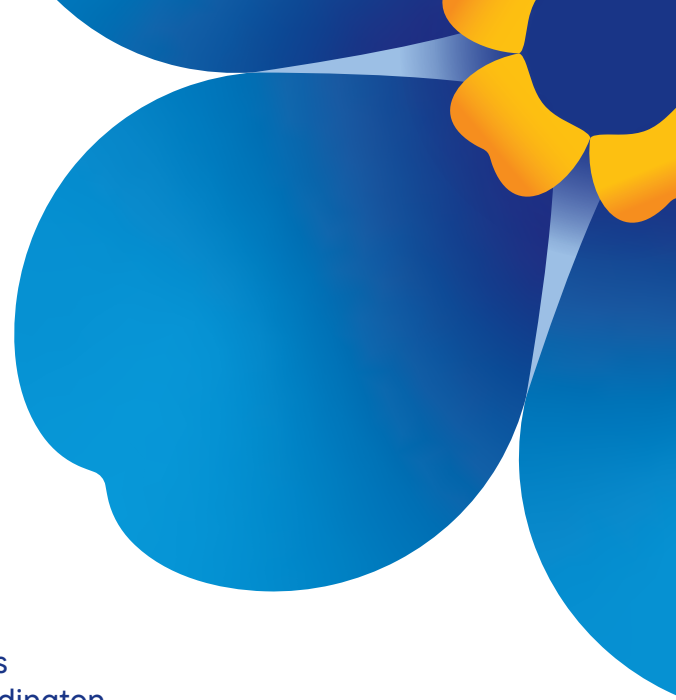
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Solicitors for the Elderly is a national organisation of lawyers, such as solicitors, barristers and legal executives. They provide specialist legal advice for older and vulnerable people, their families and carers.



Factsheet 530

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For advice and support on this, or any other aspect of dementia, call us on **0333 150 3456** or visit **alzheimers.org.uk**

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Patient Information Forum



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for everyone living with dementia

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