

**Policy**

# **Appointee & Deputyship policy**

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# Document control sheet

<b>Title of the guidance</b>	Client affairs policy
<b>Target audience</b>	Adult Social Care operational staff
<b>Purpose of the guidance</b>	To provide guidance and standards for staff administering client's financial affairs.
<b>Action required</b>	To use the guidance to support working practice
<b>This guidance supersedes</b>	N/A
<b>This guidance should be read alongside</b>	<a href="#">Client affairs – operational instructions</a>
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# 1. Introduction

Sometimes people need East Sussex County Council (ESCC) to manage their money on their behalf, as they are unable to engage family members or close friends to undertake the role. There may also be incidents where an individual is being, or is at risk of being, financially abused.

Local authorities may take on these activities in the role of Appointee or Deputy if the person meets the eligibility criteria in this policy.

## 2. Principles of the policy

We recognise that anything we do on behalf of an individual must be done in their best interests. This includes:

- handling people's finances appropriately, consistently and confidentially in accordance with legislation, regulations and ESCC's financial policy and procedures
- minimising the risk of abuse or criminal activity
- ensuring transparency in the recording of financial transactions.

## 3. Eligibility criteria

Before ESCC can assume responsibility for an individual's financial affairs, we must maximise the support of friends and family, associates and organisations, where appropriate.

If this support is unavailable and the person meets the eligibility criteria below, then we will consider managing their financial affairs in the most appropriate way.

To be eligible for our support, the following criteria need to be met:

- The individual is eligible for care and support needs provided by East Sussex County Council
- They have no appropriate family, friends and associates or access to organisations who will be able to help them with their finances
- The individual lacks the mental capacity to manage their financial affairs

- The person has less than £30,000. If they have more than this amount, we will consider managing their affairs on a case-by-case basis.
- The individual does not already have an Appointee or did not appoint a Lasting Power of Attorney (LPA) before becoming unable to manage their finances; or
- The existing Appointee, Power of Attorney or Deputy has been removed by the DWP/Office of the Public Guardian, or is relinquishing their role.

## 4. Relevant legislation and responsibilities

The roles of Appointee and Deputy are discretionary roles and there is no legal requirement on ESCC to provide either service. However, when these services are provided, the following Acts and statutory responsibilities apply:

- Mental Capacity Act 2005 and its Code of Practice
- [Office of the Public Guardian \(OPG\) public authority deputy standards](#)
- Court of Protection Rules 2007
- Social Security (Claims and Payments) Regulations 1987
- Care Act 2014
- Care and Support Statutory Guidance

### Mental Capacity Act 2005 and its Code of Practice

The Mental Capacity Act (MCA) empowers and protects people who lack capacity to make certain decisions for themselves because of illness, a learning disability, or mental health problems.

For Deputies it governs:

- what you should take into account when you make decisions on behalf of someone
- who you may need to consult when you are making decisions on behalf of someone

the protection that is in place for those people for whom decisions are being made

The MCA contains five statutory principles:

- A person must be assumed to have capacity unless it is established that he or she lacks capacity.
- A person is not to be treated as unable to make a decision unless **all practicable steps to help him or her** do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he or she makes an **unwise decision**.
- An act done, or decision made, on or on behalf of a person who lacks capacity must be done, or made, in his or her **best interests**.
- Before the act is done, or the decision is made, care must be taken to avoid restricting the person's rights and freedom of action.

ESCC has a statutory duty to adhere to the Mental Capacity Act 2005 and its Code of Practice. Refer to: [Mental Capacity Act 2005 and its Code of Practice](#)

All financial decisions made on behalf of the client must be made in their best interests and involve the client, where possible.

## **The Office of the Public Guardian (OPG)**

The Office of the Public Guardian is an agency that registers Lasting Powers of Attorney and supervises Deputies appointed by the Court of Protection. Its responsibilities extend across England and Wales; separate arrangements exist for Scotland and Northern Ireland.

## **The Court of Protection (CoP)**

The Court of Protection is a specialist court for all issues relating to people who lack the capacity to make their own decisions. The CoP is responsible for appointing Deputies to make decisions in the best interests of those who lack capacity.

## **The Treasury Solicitor (Bona Vacantia division)**

The Treasury Solicitor provides legal services to government departments and other publicly funded bodies in England and Wales.

## **5. Appointeeship and Deputyship**

### **Appointee and Deputyship Team (ADT)**

The Appointee and Deputyship Team (ADT) administer and manage a client's financial affairs. They help to determine if ESCC are able to take responsibility for a person's financial affairs and the most appropriate way of doing so.

Online banking facilities are used to manage individual bank accounts for clients and a financial protection system module holds the client records.

### **How we act can upon a client's behalf?**

We can act in the role of Appointee by applying to the Department of Work and Pensions (DWP), or Deputy by applying to the Court of Protection.

Should an individual have capital and / or private income in addition to state benefits ESCC must apply for both Appointeeship and Deputyship.

### **Appointeeship**

Appointeeship allows the ADT to act on behalf of the client in respect of claiming and receiving benefits from the DWP.

We use those benefits to provide statutory personal allowances, payment of client contributions and assistance with paying bills.

Appointeeship is not a debt management service for clients.

### **Duties of an Appointee**

When ESCC becomes an Appointee, it will:

- use any money received on behalf of the person in their best interests
- claim benefits and sign DWP forms for the individual
- collect and receive benefits, state pensions and allowances
- ensure that the client receives the maximum amount of benefits they are entitled to
- make appropriate payments on behalf of the individual
- ensure the individual receives their personal allowance

- ensure any bills or payments are invoiced correctly and due before making payment from the client's account
- hold low levels of capital in the ADT accounts and assist clients to budget and spend this amount

An Appointee cannot:

- receive any types of income, other than those listed above
- deal with any debt, except to DWP or ESCC
- deal with debt companies / agencies
- invest or manage bank accounts for any capital level held, however low

Cost of Appointeeship

We do not levee a charge for clients whose capital is under £5,000. At the point capital level reaches £5,000 we will apply for Deputyship for the person and fees may be applied at lower values at this time.

## **Corporate Deputyship (property and affairs)**

Corporate Deputyship applies when a person has:

- an occupational pension
- other income not received from the DWP e.g. annuities
- stocks and shares
- property
- savings in a bank account

Following the receipt of Appointeeship, ESCC will make an application to the Court of Protection in order to become Corporate Deputy. A Deputy takes full responsibility for managing all an individual's finances.

The Deputy's powers are determined by the Court of Protection and set out in a court order. A Deputy must act in accordance with the court order and the Mental Capacity Act code of practice. They can only make decisions that the court has given them authority to make, as stated in the court order.

## **Duties of a Deputy**



The Mental Capacity Act states that a Deputy is to be treated as ‘the agent’ of the person who lacks capacity. Being an agent means that the Deputy has legal duties to the person they are representing.

As Deputy under the MCA Code of Practice, we will:

- apply certain standards of care and skill (duty of care)
- not take advantage of the person’s situation (fiduciary duty)
- indemnify the person against liability to third parties caused by the deputy’s negligence
- not delegate duties unless authorised to do so
- act in good faith
- respect the person’s confidentiality
- comply with the directions of the Court of Protection

Property and Affairs Deputies also have a duty to:

- keep accounts
- keep the person’s money and property separate from their own finances

### **Cost of Deputyship**

There are a range of fees to be paid to the Court of Protection and the Office of the Public Guardian. These cover the process of application, appointment and regular supervision of the Deputy. All the Deputyship fees are payable from the person’s funds, up to and including the date of death.

The ADT will ensure that annual costs are met and that they comply with the appropriate supervision level.

### **Charge for our service**

The Court of Protection publishes Practice directives which inform local authorities of the level of fees they are able to charge clients for the work we do.

East Sussex County Council applies charges as detailed in these practice directives to clients in respect of:

- Set up costs

- Annual fees
- Annual reports
- Maintenance and property support
- Travel costs for visiting the client and /or their home

### **Contracts with third parties**

When carrying out tasks on behalf of the client, the Deputy is not personally liable to third parties. Any contract is between the client and the third party, with the client liable for any payments.

If entering into any written contract, ESCC will state that the contract is between the client and the third party, with ESCC acting as Deputy.

Agreements should be signed:

*This agreement is between (client's name) acting by (Deputy name) and (third party)"*

### **Best interests decision making**

As Deputy we agree to act in the best interests of the person and within the terms of the court order. If we need to make a decision not covered by the court order, we will make an application to the Court of Protection.

We will manage the person's money and assets in manner that is in their best interest, including decisions regarding:

- budgeting
- investments
- decisions regarding property use
- maximising their income
- support regarding property maintenance

Consideration must be given to activities or items that will improve or enhance the client's quality of life.

### **Client wishes**

Client's wishes in respect of managing their finances and possessions will be included in decision making in all appropriate circumstances. Where this is not possible we will ascertain knowledge of their wishes through contact with their relevant support network.

We will inform the OPG of any changes of contact details or circumstances (for the Deputy or the person they are acting for).