



Norfolk County Council

Norfolk County Council

Appointee and deputyship policy

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Introduction

There are circumstances where individuals in Norfolk are unable to manage their property and financial affairs due to mental incapacity and therefore it is necessary for someone else to manage their affairs for them. In most cases family members, friends or solicitors etc. will carry out this task. However, where there is no one suitable, willing or able to take on this role Norfolk County Council (NCC) may take on this responsibility. This work is undertaken by the Client Financial Affairs Team (CFAT) within Finance Exchequer Services (FES).

Court appointed deputy for property and affairs

The appointment by the Court of Protection of a responsible person (known as a deputy) to manage the property and financial affairs of someone who is assessed by a medical practitioner to lack the capacity to make decisions on these matters.

Appointeeship

An appointee is a person appointed by the Department for Work and Pensions (DWP) to handle someone else's state benefits. This includes making claims and receiving benefit payments when that person is unable to do this for themselves due to mental incapacity and to use the benefits for the persons interest, for example

- Paying their fees for a nursing or care home or carer, this includes the fees for social care services such as residence in a care home or support in their own home
- Providing funds for everyday living costs

Principles of the policy

Anything that we (NCC) do on behalf of an individual must be done in their best interests. This includes:

- Handling a person's finances appropriately, consistently, and confidentially in accordance with legislation, regulations and NCC's financial policies and procedures
- Minimising the risk of abuse
- Ensuring transparency in the recording of financial transactions

Eligibility criteria

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

If this support is not available and the person meets the eligibility criteria below then the Client Financial Affairs Team 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 Norfolk County Council.
- The individual lacks the mental capacity to manage their own financial affairs.
- The individual has no appropriate family, friends or professionals or access to organisations who would be able to help them with their finances.
- The individual does not already have an Appointee, Lasting Power of Attorney or Deputy or the existing Appointee, Power of Attorney or Deputy has been removed by the DWP/ Office of the Public Guardian.

Relevant legislation and responsibilities

The following Acts and statutory responsibilities are followed by NCC when managing Appointee and Deputyship cases:

- Mental Capacity Act 2005 and Code of Practice
- Office of the Public Guardian (OPG) Public Authority Standards
- Court of Protection Rules 2007
- Social Security (Claims and Payments) Regulations 1987
- Care Act 2014
- General Data Protection Regulations

Mental Capacity Act 2005 and Code of Practice

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

The MCA has 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 practical steps to help him or her to 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
- A decision made on or behalf of a person who lacks capacity must be made in his or her best interests
- Before the decision is made care must be taken to avoid restricting the person's rights and freedom

NCC ensure that all financial decisions made on behalf of the individual are made in their best interests and involve the individual wherever possible.

The Court of Protection (CoP)

The Court of Protection (COP) is an Office of the Supreme Court for all issues relating to individuals 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 regarding their property and financial affairs.

The Office of the Public Guardian (OPG)

The OPG is an agency that registers Lasting Power of Attorney (LPA) and supervises Deputies appointed by the Court of Protection. It keeps a register of LPA's and Deputies and investigates any complaints about LPA's or Deputies.

The Government Legal Department (Bona Vacantia Division)

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

Appointeeship and deputyship

Client Financial Affairs Team (CFAT)

The Client Financial Affairs Team (CFAT) manage and administer service users' financial affairs. The team determine if NCC can take responsibility for an individual's property and financial affairs and the most appropriate way of doing so.

An online bank account is used to manage virtual individual accounts for service users and independent audit checks are completed.

How can we act on a service users' behalf?

We can act in the role of **Appointee** by applying to the Department of Works and Pensions (DWP) or in the role of a **Deputy** by applying to the CoP.

If an individual has capital and or private income in addition to state benefits above £10,000 NCC may apply for Deputyship.

Appointeeship

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

CFAT use those state benefits to provide statutory personal allowances, payment of care charges and assistance with paying bills.

Appointeeship is not a debt management service for individuals.

Duties of an appointee

When NCC becomes an Appointee, it will:

- Use any money received on behalf of the individual in their best interests
- Claim state benefits and sign DWP forms for the individual
- Collect and receive all benefits, state pensions and allowances
- Ensure the individual receives all state benefits they are entitled too
- Inform DWP about any changes to the individual's circumstances
- Make appropriate payments on behalf of the individual
- Ensure the individual receives their personal allowance
- Ensure any bills or payments are invoiced accurately and are due before making the payment from the services user's bank account including paying care charges with the funds available
- Assist individuals to produce a budget plan where appropriate

An appointee cannot:

- Receive any types of income, other than those listed above
- Invest or manage bank accounts for any capital level held

Cost of appointeeship

NCC do not charge an individual for the appointee service but do apply bank charges. Refer to Appendix 1 – NCC Appointeeship and Deputyship Charging Policy.

At the point capital level reaches £10,000 CFAT may apply for Deputyship for the person and fees will be applied.

Deputyship

Deputyship applies when an individual has:

- An occupational pension
- Other income not received from DWP e.g., annuities
- Stocks and shares
- Property
- Saving in a bank account

Following receipt of Appointeeship, NCC will make an application to the CoP to become Deputy. A Deputy takes full responsibility for managing all the individual's finances.

The Deputy powers are determined by CoP and set out in the court order. A Deputy must act in accordance with the court order and the Mental Capacity Act 2005 and Code of Practice. CFAT can only make decisions that the court has given the 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’ for the individual who lacks capacity. Being an agent means that the Deputy has legal duties to the individual they are representing.

As Deputy under Mental Capacity Act 2005 Code of Practice NCC will:

- Act in the best interests of the individual and follow the statutory principles of Mental Capacity Act 2005 and Code of Practice
- Not take advantage of the individual’s situation (fiduciary duty)
- Indemnify the individual 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 individual’s confidentiality
- Comply with the directions of the CoP
- Prepare accounts every year or whenever the Court requires them
- Keep the individual’s money and property separate from their own finances
- Keep any property secure, in a reasonable state of repair and adequately insured
- Inform the CoP of any changes to individual’s circumstances e.g. contact details or if the individual deceases
- Pay relevant OPG fees from the individuals funds

Cost of deputyship

There are fees to be paid to the CoP and the OPG. These cover the process of application, appointment, and regular supervision of the Deputy. All the Deputyship fees are payable from the individual’s funds, up and including the date of death.

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

Charge for CFAT service

NCC applies charges for the CFAT service in accordance with Practice Direction 19B and 9D issued by Her Majesty’s Courts & Tribunals Service.

NCC charges as detailed in Appendix 1 – NCC Appointeeship and Deputyship Charging Policy are in respect of:

- Set up costs
- Annual fees
- Annual reports
- Maintenance and property visits
- Visits to the service in their residential/nursing home or their own home
- Death administration duties to wind up an individual's estate

Contracts with Third Parties

Any contract between the individual and a third party is between the individual and third party with the individual liable for any payments. When the Deputy completes tasks on behalf of the individual the Deputy is not personally liable to third parties.

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

Agreements should be signed:

This agreement is between (individual's name) acting by (Deputy name) and (third party)

Contracts with Third Parties

As Deputy NCC agree to act in the best interests of the individual 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 CoP.

NCC will manage the individual's property and finances in a manner that in is 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 individual's quality of life.

Individual's wishes

Individual's wishes in respect of managing their financial affairs 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.

As Deputy NCC agree to act in the best interests of the individual 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 CoP.

Appendices

Appendix 1

| Charges | Appointee | Deputy up to £20.3k | Deputy over £20.3k |
|--|------------------|---------------------------------|---------------------------------|
| Annual bank charges applied | £12 | £12 | £12 |
| One-off set up (Prescribed Work to First Order) charges | Not Applicable | £944 | £944 |
| First year charges | Not Applicable | 3.5% of estate value | £982 |
| Subsequent year charges | Not Applicable | 3.5% of estate value | £824 |
| Charges for property management | Not Applicable | £380 fixed cost | £380 fixed cost |
| Charges for 2nd Deputyship Order for permission to sell property or apply for grant of probate | Not Applicable | £633 | £633 |
| Charge for production of annual accounts | Not Applicable | £274 fixed cost | £274 fixed cost |
| Charge for completion of simple tax return | Not Applicable | £89 fixed cost where applicable | £89 fixed cost where applicable |
| Charge for annual deputy visit | Not Applicable | £51 per hour travel cost | £51 per hour travel cost |
| Charge for death administration duties | £300 fixed cost | £300 fixed cost | £300 fixed cost |