



Office of the
Public Guardian



Professional deputy costs

Good practice guidance from the Office of the Public
Guardian and the Senior Courts Costs Office

Professional deputy costs

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SD9 professional deputy costs (07.16)

Introduction

This good practice guidance has been produced by the Office of the Public Guardian (OPG) and the Senior Courts Costs Office (SCCO).

It outlines how we will work together to ensure that deputies act in the client's best interests and comply with the Court of Protection's (COP) directions.

The guidance has been created to help professional deputies when submitting estimates of costs and bills for assessment, and to explain what can be claimed for in general management (GM) bills.

The guidance contains:

- reminders of what to consider when incurring GM costs against the client's estate
- advice on submitting bills of costs for assessment
- OPG's reporting requirements

It should be read in conjunction with the relevant Civil Procedure Rules (CPR), COP Practice Direction PD19B, section 23 of the SCCO Guide (October 2013), the Mental Capacity Act 2005 Code of Practice (the Code) and OPG professional deputy standards.

It does not replace any of these documents.

Background

The introduction of closer monitoring of the fees charged by professional deputies by OPG is one of the changes implemented under the new model of supervision.

Further details of the model are in the report provided to parliament in December 2014: www.gov.uk/government/publications/review-of-deputy-supervision-public-guardians-report-to-parliament

Paragraphs 87 to 95 of the report detailed OPG's plans for professional deputy charges, which included closer working with the SCCO and the introduction of annual plans, including annual fee estimates.

OPG's aim is to promote best practice and transparency in the matter of professional deputy costs and, as a result, supporting

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the deputy and fulfilling our responsibility to safeguard the client's interests. Information collected will allow us to form an opinion about the deputy's management of the client's financial affairs and their proposals for future activity.

Key changes introduced

OPG will ask professional deputies to submit a breakdown of the costs involved in their care as well as an estimate for the following year on a new professional fees insert (OPG105).

This will be requested alongside the deputy report (OPG102) from 1 March 2016.

Good practice

As explained in paragraph 6 of PD19B, a professional deputy is entitled to GM costs which are:

- reasonable
- proportionate to the total value of the client's estate, the amount of work done and that any work done should be done by the appropriate fee earner

It is equally important for a professional deputy to demonstrate they are acting accordingly and always considering the client's best interests, especially but not exclusively, where his or her assets are being significantly or rapidly depleted.

When talking about a duty of care, Section

8.57 of the Code states that: 'If deputies are being paid for their services, they are expected to demonstrate a higher degree of care or skill when carrying out their duties.'

OPG expects a professional deputy to take a balanced approach when dealing with the client's affairs and exercise professional judgement in all aspects of their role, in particular where the client's funds are concerned.

This includes considering the amount of involvement they expect to have in the client's affairs in the next deputyship year and how much the professional deputy fees are likely to cost the client's estate.

In addition, the deputy has a responsibility to make a professional assessment if it is in the client's best interests for them to continue in their role, resulting in a reduction of the client's estate.

If the client's affairs are sufficiently well organised and unlikely to undergo significant change, the professional deputy may consider if an application to the COP for appointment of a willing member of the client's family or a friend would be appropriate.

Both OPG and the SCCO are clear that any professional deputy who does not follow the published guidance will be expected to explain the reason for their actions and in particular, demonstrate how their actions are in the client's best interests.

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The Public Guardian may make an application to the COP for the removal of any deputy where there is a concern that they are not acting in their client's best interests.

Confidentiality

While acknowledging their general duty of confidentiality, OPG encourages deputies to be open and transparent about their charges with the client's family when appropriate. This will promote a greater awareness of the costs incurred in the management of the client's affairs.

Deputies should reach a balanced decision on whether disclosure of their fees to family members is in the client's best interests.

Submitting form OPG105 to OPG and the SCCO

The OPG105 will be due alongside the deputyship report (OPG102/OPG103) at the end of the reporting period. The completion and submission of OPG105 should not require any further information gathering activity by the deputy and is not anticipated to add any further cost burden to the client. Completing the form should take no longer than 30 minutes.

The SCCO needs as much information as possible in order to make a full assessment of professional costs.

When submitting their bill for assessment,

professional deputies should enclose a copy of the fees estimate previously submitted to OPG. Estimates are not binding on the detailed assessment.

If the costs claimed in the bill are 20% or more above the estimate it will also be necessary to provide reasons to the SCCO as to why there is a difference.

Should there be changes in the client's circumstances during the year (and therefore costs to their estate), the deputy should alert OPG if the fees are likely to be 20% or more than the submitted estimate.

However, it will be for the SCCO to assess the professional deputy's costs at the end of the reporting year and for the deputy to explain any inconsistencies.

OPG's role

On receipt of the first year's estimate or the deputy report and OPG105, the OPG case manager will review the estimated costs for the next year. If they raise any concerns, they will contact the deputy to discuss or clarify.

The case manager will look at a number of factors, including the estimate in relation to the size of the client's estate, previous costs in the case, and any known circumstances in the case that may impact on the fees to be charged (for example a change in the client's financial, living or care arrangements demanding greater or less input from the deputy).

Complaints and appeals

The SCCO has a clearly identified appeals process that is available to any person having a financial interest in the client's affairs.

Where OPG receives a complaint about professional deputy costs and a costs certificate has already been issued, the complainant will be referred to the SCCO guidance, Civil Procedure Rules (CPR) and the judicial process.

OPG may alert the SCCO to cases where concerns are identified about the level of professional costs, but will not be party to the SCCO's decisions about costs, or seek to overturn any costs certificates issued.

Summary guidance on general management costs

The following is an overview of the approach taken by the SCCO when assessing bills

1. Hourly rates

Except in the most exceptional circumstances, the hourly rates charged within the GM bill should be as described in the SCCO Guide to the summary assessment of costs (CPR Vol.1).

2. Delegation of duties

Professional deputies are expected to delegate work to the appropriate level of fee earner.

That means routine GM activities such as paying bills or checking bank statements should be carried out by an administrative assistant or a Grade D fee earner at best.

The deputy will need to justify any bill where a higher grade of fee earner is claimed. There are times when the use of a non-fee earner would be considered more appropriate, for example, if delivering goods or money to the client.

3. Paying bills

Three-minute units will usually only be allowed in respect of paying bills either by

electronic transfer, cheque or enclosure letter. No further time will usually be allowed for updating records with details of any payment.

4. Levels of contract

The SCCO's usual practice is to allow one home visit in each 12-month period, which is considered to be appropriate in cases which are stable.

It is accepted that more visits may be necessary to meet the particular needs of the case, but deputies should be prepared to justify this with reference to their duties under the Mental Capacity Act.

The SCCO allows the cost of one fee earner to visit in all except the most exceptional cases. Professional deputies should try to limit excessive contact with all parties, including the client, their family members and case workers.

In all cases, professional deputies are expected to use their judgement in deciding the most cost effective method of communication, and take a balanced

approach to meeting the client's needs against incurring excessive costs. Please also see point 9 below.

5. Welfare work

Where a property and affairs deputy is appointed to manage the client's finances, work in respect of welfare is not recoverable from the client's estate without permission from the COP.

If the professional deputy for property and affairs is finding that a large proportion of their time is being taken up in health and welfare related matters, they should ensure they engage with appropriate professionals who can meet those needs (for example, alert agencies to safeguarding concerns).

They may also consider it is in the client's best interests for an application to be made to the COP for the appointment of a health and welfare deputy.

6. 'Financial beauty parades'

Generally only one senior fee earner will be allowed to attend such meetings to discuss the best investment strategy for the client in large damages awards.

7. Estimated costs

If no documentary evidence is provided in support of the bill, for example attendance notes, such costs are likely to be disallowed.

8. Overheads

Research, reading incoming routine correspondence, internal communication and supervision are taken to be included into the deputy's overheads, except in exceptional circumstances.

9. Routine correspondence out

A three-minute unit is usually allowed for very short straightforward letters, emails or duplicate letters, for example to a financial institution or the client's family.

10. Litigation costs

Costs will be disallowed which could properly be claimed within the context of ongoing litigation, for example, interim payments on account of damages or providing information for the purpose of conducting litigation.

11. Costs draftsman's fees

Apart from in exceptional circumstances, a Grade D rate fee earner will be allowed for drafting bills of costs.

The costs of preparing excessively long schedules that replicate the file notes are likely to be disallowed.

The short form bill must be used for costs claimed of under £3,000 (excluding VAT and disbursements).

12. Limited value estates

Where the client's net assets are below £16,000, a professional deputy is expected to act according to the directions given in Sections 9 and 11 of PD19B.

13. Professional costs on the client's death

On the client's death, the deputyship is at an end and the SCCO has no authority to assess a professional deputy's bill or continue with an assessment that has partially progressed without further authority from the COP. The deputy also needs to refer to an executor to see if the costs can be agreed (Practice Direction 23(b) paragraph 10).

Where a professional deputy is also the executor for the client's estate, there is a potential conflict of interest, and the bill should be submitted to the SCCO for assessment. In such circumstances, the SCCO will need permission from the COP to carry out a final assessment.

To avoid unnecessary costs, the SCCO will accept COP authority in the form of an email or letter. For full guidance, refer to Section 23.15 of the SCCO Guide or contact the SCCO directly.

14. Documents to be submitted to SCCO

In addition to the bill of costs and other documents required in PD19B and the SCCO Guide, deputies should provide copies of the completed OPG105 professional fees insert, that has been or will be submitted to OPG for the relevant period(s).

15. Frequency of submitting bills of costs to SCCO

It's good practice and in the client's best interests for the professional deputy to submit their GM bill of costs to the SCCO annually, as close to the end of the annual management year as possible (see section 6 of PD19B).

Professional deputies will need to explain if this can't be done.

Further information

This guidance supplements the information in the OPG's 'How to be a deputy: Property and affairs decisions' (SD3):

www.gov.uk/government/publications/deputy-guidance-how-to-carry-out-your-duties

For full SCCO guidance in relation to the assessment of costs in COP cases, refer to Section 23 of the SCCO Guide (October 2013):

www.gov.uk/government/publications/senior-courts-costs-office-guide

The SCCO page on the Court Service website:

www.gov.uk/courts-tribunals/senior-courts-costs-office

Information on OPG can be found at:

www.gov.uk/opg

The Mental Capacity Act 2005 Code of Practice:

www.gov.uk/government/publications/mental-capacity-act-code-of-practice

Civil Procedure Rules:

www.justice.gov.uk/courts/procedure-rules/civil

Guideline for Hourly Rates Survey:

www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/guideline-hourly-rates/ghrsurveyfaq

Court of Protection Practice Directions:

www.judiciary.gov.uk/publications/court-of-protection-practice-directions