

PUBLIC GUARDIAN PRACTICE NOTE		
SUBJECT: Deputy Final Reports		No: 01/2012
Title:	Requesting a Final Report pursuant to Regulation 40 of the LPA, EPA and Public Guardian Regulations 2007	

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1. Summary

The Mental Capacity Act 2005 ("the Act") and the associated Lasting Power of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007 ("the Regulations") formally set out the functions of the Public Guardian as a statutory office-holder. Although the requirement for Court-appointed Deputies to report annually to the Public Guardian is now a well-established one, the circumstances in which a final report may be sought by the Public Guardian are considered to be less well-known.

In order to provide clarity around this issue, this Practice Note sets out the general policy of the Public Guardian with regard to the requesting of a final report from an outgoing Deputy or, where the Deputy is deceased, from the administrator(s) of the deceased Deputy's estate.

This Practice Note does **not** address any matters relating to the provision by Deputies of an annual report to the Public Guardian as part of the Public Guardian's general supervisory function.

2. The Public Guardian's Powers

The powers of the Public Guardian in respect of reports from Deputies derive from both the Act and from the Regulations.

Where the Court of Protection has ordered a Deputy to report to the Public Guardian, section 58(1)(f) of the Act gives the Public Guardian power to receive those reports as part of his general supervisory function pursuant to Section 58(1)(c) of the Act.

Section 58(1)(f) usually covers reports provided by Deputies to the Public Guardian on an annual basis but it does also cover cases where the Court directs the provision of a final report to the Public Guardian. Those cases are covered at section 9 below.

Regulation 40 provides the Public Guardian with specific additional powers in respect of requesting a final report:-

“40 Power to require final report on termination of appointment

(1) This regulation applies where

- (a) the person on whose behalf a deputy was appointed to act has died;*
- (b) the deputy has died;*
- (c) the court has made an order discharging the deputy; or*
- (d) the deputy otherwise ceases to be under a duty to discharge the functions to which his appointment relates.*

(2) The Public Guardian may require the deputy (or, in the case of the deputy's death, his personal representatives) to submit a final report on the discharge of his function

....

(4) The Public Guardian must consider the final report, together with any other information that he may have relating to the discharge by the deputy of his functions.”

What this Regulation means is that, in circumstances where the Court has not made an Order directing a final report, the Public Guardian has legal power to require an outgoing Deputy (or his personal representative(s) in the event of the Deputy's death) to provide a final report of his activities as Deputy. It gives the Public Guardian power to examine the final report in conjunction with any existing information held by the Office of the Public Guardian (“OPG”) regarding the way in which the Deputy had exercised his powers.

3. When will the Public Guardian seek a Final Report?

It is firstly important to emphasise that Regulation 40 does not place any mandatory obligation upon the Public Guardian to seek a final report. The matter will therefore be at the discretion of the Public Guardian on a case-by-case basis. The Public Guardian will consider each case on its merits and, where the incapacitated person (“P”) is still alive, will always consider the best interests of that person when deciding whether to request a final report.

There will be some cases where the Public Guardian will exercise his discretion not to seek a final report. This could be, for example, in cases where the time period between the filing of the last annual report and the discharge/death of the Deputy is a short one and, additionally, there are no existing concerns about the handling of the Deputyship.

In cases where P has died and where there is no security bond in place, it is unlikely that the Public Guardian will call for a final report because, if the report were to be unsatisfactory there would be no application that the Public Guardian could make to the Court as the Court would no longer have jurisdiction. In these cases it will be the policy of the Public Guardian to liaise with P's personal representatives to advise them of their right to call for an account from the former deputy if they wish.

In cases where P has died and a security bond is in place, the Public Guardian will assess the situation on a case-by-case basis. In some of these cases the OPG will consult with P's personal representatives as to whether it is more appropriate for the personal representatives to exercise their right to call for an account from the former deputy (and to apply to the Court if the report is unsatisfactory).

This is a very broad statement of policy and the Public Guardian reserves the right to adapt his course of action as circumstances dictate.

4. How long will I be given to provide the Final Report?

Regulation 40(3) states that:

“A final report must be submitted

(a) before the end of such reasonable period as may be specified;

and

(b) at such place as may be specified.”

The Public Guardian will comply with Regulation 40(6) which states that he will give notice in writing of the period of time allowed for the preparation of the report and the details of the address for the report to be submitted to.

It is not possible for this Practice Note to be completely prescriptive as cases will vary in terms of complexity and urgency. The Public Guardian's default position is that he will usually permit a period of at least 21 calendar days for the lodging of a final report.

However, in cases where urgency is identified, the Public Guardian reserves the right to reduce this time period accordingly.

The Public Guardian will consider written requests for an extension of time on a case-by-case basis.

5. What time period will the Final Report cover?

Where the Public Guardian exercises his discretion to request a final report, it will be his policy to request a report that covers the entirety of the period of time elapsed since the end date of the last report lodged with the OPG.

It will be the policy of the Public Guardian to request that the final report includes all of the former Deputy's activities up to and including the date on which the report is signed by the person preparing it.

In cases where the last annual report was filed within the preceding 12 months it follows that the final report will be for a shorter period than usual. In other cases, where annual reports are pending, the final report period could be for a period considerably longer than 12 months.

In cases where no reports have ever been lodged, a final report will be requested that covers the entirety of the period of the deputyship, up to and including the date upon which the report is signed by the person preparing it.

6. What format will the Final Report take?

It will be the general policy of the Public Guardian to request a final report in the format of an OPG annual deputy report.

The Public Guardian may also require that:

- The report must contain or be accompanied by:
(a) specified information or information of a specified description; or
(b) specified documents or documents of a specified description.
- The report includes accounts which deal with specified matters and which are provided in a specified form.
- Information or documents provided be verified or authenticated in such manner as he may reasonably require.

7. What will happen if the Final Report is not provided?

It is not possible for this Practice Note to be completely prescriptive as circumstances will vary from case to case.

However, outgoing Deputies and administrators of deceased Deputy's estates should be aware of the wording of Regulation 40(5):

“(5) Where the Public Guardian is dissatisfied with any aspect of the final report he may apply to the court for an appropriate remedy (including enforcement of security given by the deputy).”

It therefore follows that if a final report is requested, but not provided, it is within the Public Guardian's powers to apply to the Court for further directions. It is not possible

for this Practice Note to be completely prescriptive as these applications will vary from case to case, but applications by the Public Guardian will include:

- Applications for the forfeiture of the Deputy security bond in its full amount - it is the view of the Public Guardian that a former Deputy cannot escape liability under the Deputy security bond by refusing or failing to provide a report and that it is for the former Deputy, or his personal representative(s), to prove to the Court that there has been no loss to the estate.
- Applications for an order directing the former deputy to account to any new Deputy within a specific timescale and with specific requirements.

These applications could also seek an Order granting any new Deputy specific powers to investigate the former Deputy and to take remedial action (if required) against the former Deputy or his estate, particularly where there is evidence or indication of loss over and above the amount of the security bond.

In these cases the Public Guardian may consult with any new Deputy as to whether the new Deputy is better-placed to take remedial action, which may include an application to the Court.

8. What will happen if the Public Guardian is not satisfied with the Final Report?

In cases where a final report is provided but the Public Guardian is not satisfied with the report, it will be his general policy to apply to the Court for “*an appropriate remedy*” as per Regulation 40(5). This will include applications to the Court of Protection as set out at section 7 above.

9. What is the Public Guardian’s role where the Court has ordered a final report?

Where the Court directs a discharged Deputy to lodge a final report with the OPG it is the role of Public Guardian to receive the report pursuant to S58(1)(f) of the Act and to determine whether or not he is satisfied with it.

The Court may set a timescale for the lodging of the report with the OPG. Discharged deputies should be aware that Regulation 38 provides for an application to the Public Guardian for an extension of time for the lodging of the final report:-

38. Application for additional time to submit a report

(1) *This regulation applies where the court requires a deputy to submit a report to the Public Guardian and specifies a time or interval for it to be submitted.*

(2) *A deputy may apply to the Public Guardian requesting more time for submitting a particular report.*

(3) *An application must—*

(a) state the reason for requesting more time; and

(b) contain or be accompanied by such information as the Public Guardian may reasonably require to determine the application.

(4) In response to an application, the Public Guardian may, if he considers it appropriate to do so, undertake that he will not take steps to secure performance of the deputy's duty to submit the report at the relevant time on the condition that the report is submitted on or before such later date as he may specify.

If the Public Guardian has set the timescale for the provision of the final report, it will be his policy to consider requests in writing for an extension of time on a case-by-case basis.

If the Court has not set a timescale for the lodging of the report the Public Guardian will write to the discharged deputy seeking the lodging of the final report in accordance with the terms of sections 4, 5 and 6 of this Practice Note.

If the report is not lodged with the OPG within the timeframe set by the Court of Protection or by the OPG, the Public Guardian will consider whether to apply to the Court for further directions. This could include applications to the Court of Protection as set out at section 7 above.

In some cases the Public Guardian may decide, based upon existing information held by the OPG, for example recent satisfactory accounts, not to pursue the discharged Deputy (or his estate) for the outstanding final report and it will be the policy of the Public Guardian in those cases not to take any further action. It would remain open to the discharged Deputy, or the administrators of his estate, to apply to the Court for an Order formally waiving the requirement of the discharged Deputy to lodge a final report.

In other cases where the final report is not received, and where the OPG is unable to form an opinion as to how the discharged deputy had managed his/her responsibilities, it will be the policy of the Public Guardian to apply to the Court for further directions. This could include applications to the Court of Protection as set out at section 7 above.

In cases where a final report is provided but the Public Guardian is not satisfied with the report, the Public Guardian will consider whether he should apply to the Court as set out at section 7 above. In these cases the Public Guardian may consult with any new Deputy as to whether the new Deputy is better-placed to take remedial action, which may include an application to the Court.



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