



Public Guardian practice note

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Public authority deputyship responsibilities

Summary

Public authorities are reminded of their legal obligations and duty of care when appointed as a deputy by the Court of Protection to manage the financial affairs of people who lack mental capacity.

Delegation of duties outside the public authority is not permitted, and caution should be taken when contracting with or referring vulnerable clients to external deputyship providers.

Delegation of duties: the Mental Capacity Act and Code of Practice

Public authorities appointed by the Court of Protection to manage the finances and property of people who lack mental capacity are responsible for the income and assets of vulnerable people to the value of many millions of pounds.

They are obliged to act in accordance with the Mental Capacity Act 2005, its associated regulations, and the Mental Capacity Act Code of Practice.

Important factors to note

Public authorities considering changing from direct provision of a deputyship service are advised to carefully consider the options available locally to ensure that vulnerable clients are not exposed to risk of financial abuse.

If entering into contractual arrangements with an external provider, the public authority will wish to satisfy itself that the provider is fit to handle the finances of vulnerable people.

Checks may involve ensuring that appropriate criminal checks of individuals employed by providers have been carried out using the Disclosure and Barring Service.

The enhanced check will disclose the same information as a standard check but will also include local police information that is relevant

Where the named deputy is the director of adult services or another public authority officer, they may delegate duties to other public authority staff, but remain accountable for actions and decisions in relation to those clients.

Duties cannot be delegated to organisations outside the public authority.

and ought to be disclosed.

Public authorities may also have strong links with their local police through their safeguarding boards, which could provide an opportunity to discuss such cases prior to appointment.

Any public authority wishing to retire as deputy from their existing cases must apply to the Court of Protection, in which case the court will expect the public authority to demonstrate that an appropriate alternative deputy has been identified, if one is still required.

Failure to address these issues may result in safeguarding concerns and expose the public authority to reputational, and in some cases, financial risk.

For further advice:

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