

# Adult Social Care

Making a Difference in the Right Way, Every Day

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## No Access to Funds Policy

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Version	Date	Author Name	Rationale
1.0	25.09.19	Roger Catley - ACS Governance Lead	Initial policy creation
1.1	28.01.22	Jason Ward - ASC Governance Lead	Policy reviewed - no changes
1.2	01.02.24	Jason Ward – ASC Governance Lead	Policy updated to reflect Court of Protection procedures.
1.3	02.09.24	Jason Ward – ASC Governance Lead	Policy reviewed
Next Review Date			September 2026



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## 1. INTRODUCTION

- 1.1. Often when someone loses mental capacity, they have already nominated someone to manage their financial affairs like their spouse or partner, a family member, a friend or a professional advisor.
- 1.2. This policy is intended to address those situations where arrangements have not been put in place for someone to manage the financial affairs of a person who lacks mental capacity this is known as a 'No Access to Funds' case.
- 1.3. The council will first consider whether there is a real need for anyone to be formally appointed as Deputy. A person's financial situation may be managed for example by someone becoming their Department of Works and Pension (DWP) Appointee. If a DWP Appointee will not be sufficient then the Council will seek to identify a suitable relative or friend or other person close to the client who would be willing to manage the person's financial affairs and apply for a Court of Protection order to become their Deputy. This person will be referred to as the 'identified applicant.'
- 1.4. The council will endeavor to signpost any relative or friend to sources of information and legal advice to help them make the application to the court and to understand the role they would be taking on, for example:
  - Court of Protection forms and guidance - <https://www.gov.uk/government/collections/court-of-protection-forms>
  - Deputies: make decisions for someone who lacks capacity - <https://www.gov.uk/become-deputy>
  - Find a solicitor - <http://solicitors.lawsociety.org.uk/>
- 1.5. If the council's enquiries reveal there is no relative or friend able to take on the role and the person's finances are sufficiently complex to require someone able to manage them then the council will consider making a referral to a Commissioned provider who can apply and act as a Deputy on their behalf.
- 1.6. The council will only consider doing so for those clients who live in Solihull and who lack capacity to manage their financial affairs.

## 2. PURPOSE

- 2.1. This policy outlines the expectations and process which apply to ensure that applications to the Court of Protection for Deputyship (Property & Financial Affairs) or the Department for Work & Pensions for Appointeeship are progressed in a timely manner

### 3. LEGAL CONTEXT

- 3.1. Relevant legislation and other controls include but are not limited to:

The Mental Capacity Act 2005 (MCA) and the MCA Code of Practice which set out protections for people who lack capacity. The Council will determine what is in the client's best interests and will follow the MCA Code of Practice.

The Office of the Public Guardian (OPG) Deputy Standards for Public Authority Deputies.

The Department for Work and Pensions (DWP) will grant and monitor the situation of an Appointeeship to make sure it is suitable for all parties.

The Care Act 2014. The Council will be mindful of Care Act duties to promote the client's wellbeing; involve clients as much as is possible in decisions which affect them; and to safeguard adults at risk of abuse or neglect.

### 4. PROCESS

- 4.1. Where the Council identifies a person as lacking mental capacity and there are no legal arrangements in place to manage their financial affairs the Council will seek an 'identified applicant' who is willing to apply for an Appointeeship from the Department for Work and Pensions (DWP) or a Court of Protection order to become deputy <https://www.gov.uk/become-deputy>.
- 4.2. The 'identified applicant' will be responsible for submitting all the necessary application forms and evidence to the DWP or Court to apply for a Deputyship order.
- 4.3. The 'identified applicant' will be responsible for the payment of any fees incurred for the Court of Protection application. However, within the application, the 'identified applicant' can request that this fee be refunded from the monies of the person who lacks capacity. In some cases the court will provide help with payment of fees <https://www.gov.uk/government/publications/apply-for-help-with-court-of-protection-fees-form-cop44a>.
- 4.4. Where requested, the Council will provide support to the 'identified applicant' to complete the COP3 form (assessment of capacity) for the Court of Protection application.
- 4.5. The 'identified applicant' should name the Council in the list of people to be served with/notified in the Court of Protection application form.

- 4.6. The Council will issue statements for information purposes every four weeks to the 'identified applicant' detailing the cumulative total of the outstanding contributions towards the costs of care and first party top-up payments due from the person.
- 4.7. In the case of an Appointeeship, the Council will assist the 'identified applicant' to engage with the Department for Work & Pensions to apply for the right to deal with the person's benefits who cannot manage their own affairs because they're mentally incapable or severely disabled.

## **5. COURT OF PROTECTION APPLICATION**

- 5.1. The Council would expect the 'identified applicant' to submit the Court of Protection Application to the court within four weeks of informing the Council of their intention to apply for deputyship.
- 5.2. The Council will issue a Letter of Undertaking to the intended applicant to confirm their responsibilities for paying outstanding backdated charges for the person's adult social care once deputyship is secured.
- 5.3. The Council will signpost the intended applicant to sources of help that will assist their application to the Court of Protection.
- 5.4. The Council expects to receive a copy of the automatic acknowledgement letter issued by HM Courts & Tribunal Service to confirm their receipt of the application.
- 5.5. The intended applicant is expected to keep the Council informed about the status of their application and provide a copy of the court order once Deputyship has been granted.
- 5.6. If the Council has not received information to confirm the appointment of a deputy within 3 months of issuing a letter of undertaking, the intended applicant will be required to provide evidence that all necessary information has been submitted to the court and positive action has been taken.
- 5.7. Should the Council not receive the information set out in section 5.5 within 14 days of any request, the intended applicant will be contacted by the Council to discuss their application and establish the reasons for the delay and confirm if they wish to continue with the application.
- 5.8. Where the 'identified applicant' does not want to continue with their application to the court, the Council will obtain a written confirmation of their withdrawal. In so doing, this will confirm they no longer wish to proceed with the Court of Protection application and agree to the Council making an application for the appointment of a Panel Deputy.

- 5.9. Where the identified applicant fails to submit the application to the Court of Protection within the timescales set out above, or fails to engage in the process, the Council will issue a 'No Response' letter to advise of the Council's intention to make an application for the appointment of a panel deputy or refer to a commissioned provider to become their appointed deputy.
- 5.10. Objections to the Council applying for a Court of Protection order must be received in writing setting out the reasons for the objection and the actions, including timescales, the 'identified applicant' will take to progress the application. All objections will be considered by the Council's Head of Adult Social Care.

## **6. APPROVED DEPUTY APPLICATIONS**

- 6.1. The 'identified applicant' shall confirm to the Council their appointment as Deputy within 14 days of receiving the court order and provide the Council with a copy of the order confirming their appointment.
- 6.2. When a Deputy has been appointed the Council will issue an invoice for the person's accrued contributions and any first party top-up payments to date and issue four-weekly invoices thereafter to the appointed deputy.

## **7. REJECTED DEPUTY APPLICATIONS**

- 7.1. Should the Court reject the application made by the 'identified applicant' to be appointed Deputy, the 'identified applicant' must advise the Council within 14 days of receiving notice from the court.
- 7.2. The Council will review the case to either identify an alternative suitable applicant or make a decision for the Council to proceed with a Court of Protection application.

