

No Access to Funds Policy

Solihull Adult Care & Support



Solihull
METROPOLITAN
BOROUGH COUNCIL

Version Control Log

Version:	Date:	Author Name:	Rationale:
1.0	01.07.2019	Roger Catley – ACS Governance Lead	Initial policy creation

1	INTRODUCTION.....	4
2	PURPOSE.....	5
3	LEGAL CONTEXT	5
4	PROCESS	5
5	COURT OF PROTECTION APPLICATION.....	6
6	APPROVED DEPUTY APPLICATIONS.....	7
7	REJECTED DEPUTY APPLICATIONS.....	7

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 endeavour 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 if it should make an application to seek the appointment of a Deputy. The council will only consider doing so for those clients who live in Solihull and who lack capacity to manage their financial affairs. The council may seek its own appointment as the person's Deputy or may request the court appoints an independent solicitor, known as a 'Panel Deputy'.

2 Purpose

- 2.1 This policy outlines the expectations and process which apply to ensure that Court of Protection applications (Property & Financial Affairs) 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 when acting on their behalf and will follow the MCA Code of Practice.

The Office of the Public Guardian (OPG) Deputy Standards for Public Authority Deputies. The Council will act in accordance with the requirements and expectations for public authority deputies.

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 a social care practitioner identifies a person as lacking mental capacity and there are no legal arrangements in place to manage their financial affairs the social care practitioner will seek an 'identified applicant' who is willing to apply for a Court of Protection order to become deputy <https://www.gov.uk/become-deputy>.
- 4.2 The 'identified applicant' will be responsible for submitting the COP1 form (court of protection application form) to the Court.
- 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, see COP 44a <https://www.gov.uk/government/publications/apply-for-help-with-court-of-protection-fees-form-cop44a>.

- 4.4 A social care practitioner, where requested, 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 top-up payments due from the person.

5 Court of Protection Application

- 5.1 The Council would reasonably expect the 'identified applicant' to submit the Court of Protection Application (COP1 form) to the court within six weeks of the *Letter of Undertaking* being issued.
- 5.2 The court will provide the 'identified applicant' with a stamped copy of the application within a week of receiving it to confirm the application is being considered.
- 5.3 The Council expects to receive a copy of the stamped application and a Notice that an application Has Been Issued form (COP15) from the 'identified applicant' within eight weeks from the date of issue of the *Letter of Undertaking*.
- 5.4 If the Council has not received a copy of the stamped application and the COP15 eight weeks after the issue of the *Letter of Undertaking* the Income & Awards team will write to the 'identified applicant' to review the progress of the Court of Protection application. The Council would expect to receive confirmation that the application has been submitted to the court or evidence that positive action has been taken to progress the application, e.g. confirmation of solicitor appointments, within 14 days.
- 5.5 If the Council does not receive confirmation of the submitted application or evidence of positive within 14 days, the Income & Awards team will refer the case to the appropriate Community Social Work Team. A social care practitioner will contact the 'identified applicant' to discuss the application and establish the reasons for the delay and confirm if they wish to continue with the application.

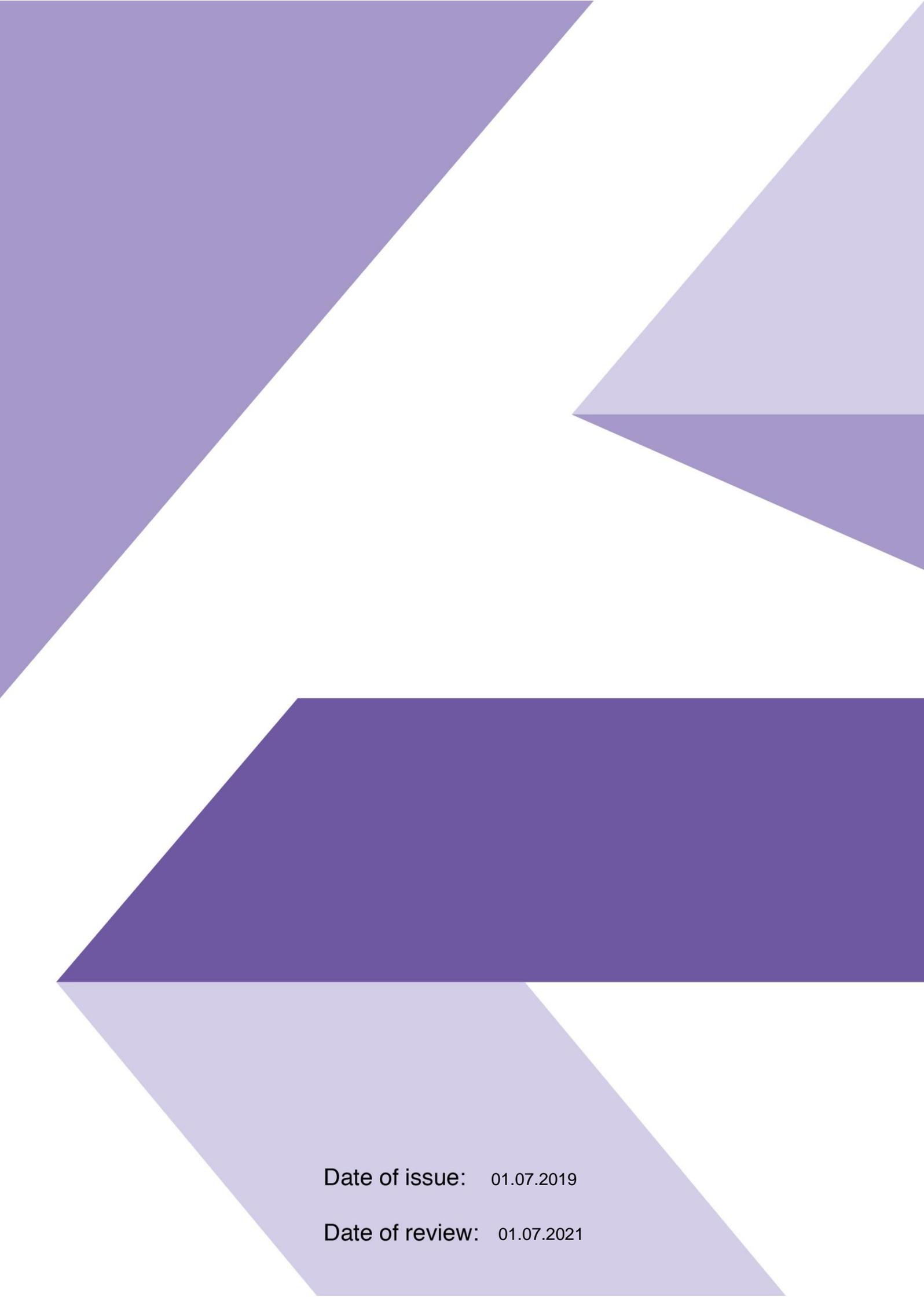
- 5.6 Where the 'identified applicant' wants to continue with the application the social care practitioner will advise that if confirmation of the application to the court is not received within 14 days the Council will make an application to the Court of Protection for the appointment of a deputy.
- 5.7 Where the 'identified applicant' does not want to continue with the application the social care practitioner will obtain a signature from the 'identified applicant' on a waiver form. The signature confirms that they no longer wish to proceed with the Court of Protection application and confirms their agreement to the Council making the application for the appointment of a Deputy.
- 5.8 Where the 'identified applicant' fails to submit the application to the court within the timescales set out above or fails to engage, the social care practitioner will issue a No Response Letter to advise of the Council's intention to make an application for the appointment of a Deputy. The Council will provide 14 days for the 'identified applicant' to raise any objection.
- 5.9 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 Adult Care & Support Head of Service.

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.
- 6.2 When a Deputy has been appointed the Council will issue an invoice for the person's accrued contributions and 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 'identified applicant's' Court of Protection application the 'identified applicant' must advise the Council within 14 days of receiving notice from the court.
- 7.2 The Community Social Work team 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.



Date of issue: 01.07.2019

Date of review: 01.07.2021