

**Telford and Wrekin Council**

# **Managing Individual Adults' Financial Affairs**

## **Policy and Guidance**

## INTRODUCTION

There are circumstances where individuals in Telford and Wrekin are unable to manage their property and financial affairs due to mental incapacity and it is necessary for someone else to manage their affairs for them. This could be necessary on a short term or long term basis, dependent on the nature of the incapacity. In most cases family members, friends, solicitors etc will carry out this task. However, where no suitable arrangements can be made by anyone else, Telford and Wrekin Council (TWC) may take on this responsibility.

This document sets out the policy of TWC on managing individual adults' property and affairs and provides guidance on how this policy should be implemented.

### **The legal framework for managing an individual's finances**

*Options available, from 1 October 2007, under the legal framework established by the Mental Capacity Act 2005:*

**Lasting Power of Attorney (LPA)** - replaces Enduring Power of Attorney (EPA) from 1 October 2007

**must** be set out in the legally required format

**must** contain a certificate completed by an independent person to confirm that the individual adult, as the 'donor', understands the power and importance of the LPA and that he/she is not under any pressure to make it.

**can** contain the names of anyone the individual adult, as the donor, wants to be notified of any application to register the LPA. If there is no one to be notified, the individual adult **must** say so and have a second certificate. The information provided here is only a simple outline and for more detailed information one should read the guidance booklet about LPAs issued by the Office of the Public Guardian (OPG).

[www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

***If an LPA is in existence then the Safeguarding Adult Finance Team (SAFT) would only become involved if there were concerns around the management of the existing LPA.***

### **Court appointed deputy (CAD) for property & affairs**

The appointment, by the Court of Protection, of a responsible person (known as a 'deputy') to manage the property and financial affairs of someone who is assessed by a medical practitioner to lack capacity to make decisions on these matters.

*It would be unusual for a deputy to be appointed where a valid Lasting Power of Attorney is in existence. However, in certain circumstances this is possible (e.g. if there are concerns about the existing LPA holder's actions).*

A Court appointed deputy for property & affairs is **only applicable** if the person lacking capacity has money and/or property other than state benefits. If the person

concerned has no significant assets/income, other than state benefits, then appointee-ship is used.

**Appointeeship** – An appointee is a person appointed by the Department for Work and Pensions (DWP) to handle someone else’s benefit claims, receive the benefits when that person is unable to do it themselves due to mental incapacity, and use the benefits for the welfare of the individual concerned.

## **POLICY**

TWC will wherever possible encourage and support individual adults to manage their own financial affairs.

1. Where TWC takes on the responsibility to manage an adult’s financial affairs, the Council will act responsibly and in the best interests of the person concerned, not in the interests of TWC to generate income, including purely for the reason of collecting care fees.
2. The SAF Team within the Safeguarding Adults Team will undertake court appointed deputy duties.
3. **TWC will only manage an adult’s financial affairs if there is no other suitable person to do this and/or where there is evidence of conflicting interests, suspicions or allegations of abuse.**
4. **Making a referral to the SAF Team should be a last resort after exhausting all other possible court appointed deputy or appointee candidates. Family, friends, solicitors and others who have close/professional relationships with the service user should be approached where appropriate, prior to referral to the SAF Team.**
5. The SAF Team's role is to work alongside operational staff to provide services to manage individual service users’ finances. The team's role involves managing finances and assets only and does not include accompanying service users to appointments or other personal support tasks.
6. Decisions about managing an individual adult’s financial affairs, when they lack mental capacity, will be made by the Team leader for the Adult Safeguarding Team who will consider:
7.
  - whether it is appropriate for TWC to manage an individual’s financial affairs;
  - whether applications will be made to the Court of Protection or to the DWP for appointeeship;
8. The Holder of the Office of Director of Adult and Community Services will be the applicant when applying to the Court of Protection to appoint the Directorate as a deputy for property and affairs.

SAF Team Manager' (under corporate appointeeship), will be the applicant to the Department for Work and Pensions to become an appointee.

9. Each adult will have an individual account held within a 'client monies' bank account, this account is separate from, and does not form part of, TWC's bank accounts.
10. TWC will make a charge for managing the finances of individual adults, when acting as a deputy for property and affairs, according to the fees set for local authorities and published by the Office of the Public Guardian. Fees are reviewed annually in accordance with the Office of the Public Guardian's recommendations and publications. A nominal charge may be made to cover administrative costs for appointeeship cases. The Service Delivery Manager for Adult Safeguarding can agree to reduce or waive the administration fees charged by TWC according to the circumstances of each individual case, for example payment of the fee would cause the service user and/or his/her dependents undue hardship.
11. In some cases the SAF Team will be required to expend monies on behalf of individuals prior to the court order being granted. Any such expenditure needs to be approved in advance by the Service Delivery Manager for Adult Safeguarding

## **GUIDANCE FOR REFERRAL OF CASES**

1. In circumstances where it appears that an individual person needs someone to manage their finances, staff should firstly ascertain whether the individual concerned has the mental capacity to manage their own finances.
2. Enquiries should be made of family, friends, family solicitor etc to find out if anyone else is willing, available and/or suitable to manage the person's financial affairs.
3. If no other suitable arrangements can be made for managing the individual's property & affairs, a referral should be made to the SAF Team as follows:  
A Social Worker, must complete and submit a referral form on LAS
4. The referral to the SAF Team must provide information on personal details, financial and property details, a COP3 (mental capacity assessment) and a brief explanation of why the individual needs someone to act on their behalf. It is essential that all required information is completed.
5. It is important that information is provided as to whether or not the person owns their own house, whether they have any other income apart from benefits e.g. private pensions, and any other assets and savings. This will assist the Safeguarding Team Leader to decide whether an application

should be made to be for a court appointed deputy for property and affairs, or whether appointeeship is appropriate.

6. If there are concerns about the safety of an individual's finances the Social worker must take action to safeguard the finances e.g contact bank/building society or DWP detailing the concerns in writing.
7. If there is suspicion of financial and/or other abuse adult safeguarding procedures should be followed.
8. Examples of financial or material abuse may include:

- ❖ theft
- ❖ fraud
- ❖ exploitation
- ❖ pressure in connection with wills, property or inheritance or financial matters
- ❖ misuse or misappropriation of property, possessions or benefits by someone who has been trusted to handle an individual's finances or who has assumed control of their finances by default

Signs that financial abuse may be occurring, include:

- ❖ sudden loss of assets
  - ❖ unusual or inappropriate financial transactions
  - ❖ visitors whose visits always coincide with the day when the person's benefits are cashed
  - ❖ insufficient food in the house
  - ❖ bills not being paid
  - ❖ person who is managing the finances overly concerned with money
  - ❖ a sense that the person is being tolerated in the house due to the income they bring in, but may not be included in the activities the rest of the family enjoys.
9. It is the social worker's responsibility to ensure that the person concerned is in receipt of all appropriate benefits and allowances until the Court of Protection order, or appointeeship, is in place. The Social Worker should contact the SAF Team via email to request assistance if needed.
  10. It may be necessary to carry out a search of the person's home, to place any valuables and cash found into safe-keeping and secure any property. This would normally be carried out by the Social Worker - the SAF Team would not normally search homes, this is to be carried out by the social worker. (Note – Tenancies cannot be terminated and/or property sold without a direction from the Court of Protection. For further advice contact the Safeguarding Team Manager).

## **GUIDANCE ON APPLICATIONS FOR THE DIRECTORATE TO ACT AS DEPUTY FOR PROPERTY AND AFFAIRS, OR APPOINTEE**

The following guidance must be taken into account when deciding whether the Directorate should apply to the Court of Protection to act as deputy for property and affairs, or to apply for appointee-ship.

1. Applications will be made to the Court of Protection when necessary, if the person lacking capacity:
  - owns any property (e.g. house or flat)
  - receives income other than benefits (e.g. private pension)
  - has assets, other than backdated benefits, of greater value than £3,500
  - has more than £3,500 in savings/capital.

If none of the above applies, consideration will need to be given to the appropriateness of applying for appointeeship. An application for appointeeship will be made if the person concerned is in receipt of state benefits.

### **Action after application has been agreed**

2. If an application to the Court of Protection has been agreed, the following has to take place:
  - (a) The case will be allocated to a SAF officer.
  - (b) The following forms will be completed by the SAF team: COP1 (application form), COP1A – supporting information for property and affairs application and part A of form COP3. COP3 – Part B), must be completed by a Social Worker or relevant medical practitioner The medical practitioner must be either the person’s GP or consultant, depending on who knows the person best.
  - (c) The SAF Team will submit the above forms (in duplicate) to the Court of Protection.
  - (d) The Court of Protection will then issue the application by putting an original stamp on the application form and returning this to the SAF Team, along with any instructions for completion of any further relevant forms.
  - (e) **The person to whom the application relates needs notifying in person and within 21 days of the Court of Protection issuing the application.**

The SAF officer or a representative must provide the information in a way that is appropriate to the person’s circumstances and must explain:

    - who the applicant is;
    - that the application raises the question of whether they lack capacity and what that means;
    - what effect the outcome of the application would have;
    - details of any person who would be appointed to make decisions on their behalf; and
    - that they may seek advice and assistance in relation to the application.

The following forms need to be provided to the person to whom the application relates:

COP5: Acknowledgement of service/notification; and

COP14: Proceedings about the person in the Court of Protection.

- (f) Under the Court of Protection Rules the SAF Team needs to inform certain people about the application within 21 days of the Court 'issuing' the application. They must:

- 'serve' a copy of the application form and any forms or documents sent in support of the application on anyone they have named as a respondent in their application;
- 'notify' relatives and others named in the application as likely to have an interest in the application by using form COP15: Notice that an application form has been issued; and

When they serve or notify people about the application they must also send each person the form COP5: Acknowledgement of service/notification.

The most common way to serve or notify someone is to send the documents by first class post to their home address. However documents can also be served by fax, by document exchange or in person.

- (g) After the SAF Team has served or notified people about the application they must complete and return to the Court the forms COP20B & COP20A: Certificate of service/non-service and certificate of notification/non-notification for each person they have served or notified. This should be provided to the Court of Protection within 7 days of the date of service/notification.

- (h) After the service and notification period has concluded the Court may consider the application and next steps. This will be based on the type of application made and whether anyone objects to the application or proposed that a different order is made. The Court may decide to:

- make a decision based on the application without a Court hearing;
- give directions about the application and next steps to be taken; or
- fix a date for the application to be heard by the Court.

The Court can usually make a decision without the need for a hearing if no one objected to the application or proposed that a different order is made

- (i) If no hearing is needed the court will issue a final order, a copy of which is also received by every other party. The SAF Team then needs to inform the person to whom the final order relates with COP14 and within 21 days of the final order being made, explain the effects and that the person may seek advice and assistance.
- (j) The SAF officer will liaise, where necessary with the social worker to discuss how bills and daily living expenses are to be paid in the future i.e. from the date of the order of the Court of Protection.

NOTE: INTERIM DIRECTIONS, WHERE NECESSARY, CAN BE SOUGHT FROM THE COURT OF PROTECTION BEFORE AN ORDER IS IN PLACE. An Interim Direction allows the SAF Team to access an individual's monies prior to the application being granted, should there be urgency in accessing funds. It will be the SAF Team Manager's responsibility to ensure this is sought where appropriate.

3. If an application for appointeeship has been approved the following must take place:-
  - a) The SAF officer will complete form BF56 (obtainable from the Department for Work and Pensions). The applicant will be: 'Telford and Wrekin Council Corporate Appointee.
  - b) The SAF officer will send the completed forms to the Department for Work and Pensions for each specific benefit.
  - c) The DWP will confirm acceptance of application with form BF57
  - d) The SAF officer will liaise, where necessary with the Social Worker to discuss how bills and daily living expenses are to be paid in the future i.e. from the date of approval of appointeeship.

### **SAF TEAM ROLE IN MANAGING INDIVIDUAL ADULTS' FINANCIAL AFFAIRS**

1. The SAF team will provide the following:
  - Completing and processing of paperwork as necessary for applications to enable the Directorate to act as deputy for property and affairs, and for appointeeship (with the assistance of the allocated Social Worker
  - Once an Order or Appointeeship is in place - completion and follow up of benefit and allowance applications
  - Creation and maintenance of individual accounts within the client monies bank account for people for whom the Directorate acts as a property and affairs deputy or appointee
  - Setting up of all necessary direct debits/standing orders for all necessary payments of individuals' household bills
  - Ensuring all other bills are paid as and when they become due
  - Administering the service user's funds to enable payment of weekly/periodical personal allowance or other necessary weekly/periodical funds where appropriate.
  - Paying for items of expenditure; routine amounts agreed by the SAF Officers up to £100, and up to £500 agreed by the SAF Team Leader. Amounts greater than £500 to be agreed by the SAF Service Manager
  - Three quotes for goods/services to be obtained and admitted to SAF officers who will present to the Team Leader for authorization.
  - Arranging for the sale of property (including houses) under the instruction of the Court and under the direction of the SAF Service Delivery Manager
  - Completing annual accounts for property and affairs deputies for the Office of the Public Guardian
  - Completing tax returns for individuals as and when required

- Where a person dies; closing and completing all accounts and liaising with the executor or administrator of the deceased's estate, including calculating and charging the appropriate account wind-up fee
- Arrange for disposal of goods and effects by seeking 3 valuations and deciding upon appropriate selection/option. Where value is less than £500 the valuations and options taken must be agreed by the SAF officer & SAF Team manager.  
Where value is greater than £500 the valuations and options taken must be agreed by the SAF Service Delivery Manager
- Consider requests for purchasing, and arrange payment for, goods for an individual. Where value is less than £500 a recommendation should be made by the allocated SAF officer and approved by the SAF Team Manager.  
Where value is greater than £500 a report and recommendation should be presented by the SAF Service Delivery Manager. .
- Ensure appropriate and timely recording of all individuals' income and expenditure

## **DUTIES OF A COURT APPOINTED DEPUTY (CAD) – PROPERTY AND AFFAIRS:**

A deputy has a duty to (this list is not exhaustive):

- act in the best interests of the client at all times and follow statutory principles of MCA
- have regard to the Code of Practice
- Only make decisions they have been given the authority to make depending on the specifics of each case.
- look after the client's property
- open a SAF account and keep individual's monies and property separate from the local authority's finances
- claim all benefits that are due to the client
- prepare accounts every year or whenever the Court requires them
- make sure the client's money is being used to give him or her the best possible quality of life
- make sure all income is collected and all bills are paid on time
- keep all important documents and other valuable items in a safe place
- keep any property secure, in a reasonable state of repair, and adequately insured
- deal with the client's income tax and other tax matters
- tell the OPG about any changes in the client's financial situation
- tell the Driver and Vehicle Licensing Agency (DVLA) if the client holds or applies for a driving license
- tells the OPG if there is a likelihood of the client getting married, divorced or involved in other legal proceedings
- co-operate with any Lord Chancellor's Visitor
- tell the OPG if there is a possibility of the client recovering
- keep to all orders and directions the Court makes

- Pay the relevant Office of Public Guardianship fees from the client's funds when necessary.

## **DUTIES OF AN APPOINTEE FOR BENEFITS**

An appointee has responsibility for:

- ensuring correct benefits and allowances are claimed for the person
- ensuring the necessary claim forms for all benefits have been completed
- ensuring all benefits and allowances are used for the welfare of the person
- informing the Department for Work and Pensions about any changes in circumstances
- Repaying any overpayments of benefits.

## **CONTACTS**

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**Disclaimer**

SAFT Team members can provide advice about OPG/Court processes and DWP processes only and cannot provide legal advice or services.

It is recommended that independent legal advice is sought where appropriate.

Information in this publication is believed to be correct at the time of printing; however we do not accept liability for any error it may contain.

