

PDF | THE PROFESSIONAL DEPUTIES FORUM

CHANGING PROFESSIONAL DEPUTY PROTOCOL

This protocol is known as the Professional Deputies Forum Ltd Changing Professional Deputy Protocol ('the Changing Deputy Protocol').

Our Changing Deputy Protocol is a set of steps to follow when a professional deputy is approached by P or a family member to apply to take over a deputyship from another solicitor.

Using the protocol helps to:

1. Ensure that P's best interests remain the paramount concern over and above the commercial interests of any firm;
2. Reduce the numbers of avoidable applications, including contentious applications, to the Court of Protection and minimise cost to P;
3. Promote a standardised and transparent approach across the professional deputy market;
4. Promote constructive relationship between all parties whilst an application to change deputy is ongoing;
5. Facilitate the ability for counterparts at other practices to comply with their duties as deputy and as a solicitor;
6. Mitigate replacement deputies inheriting issues experienced by a previous deputy; and
7. To highlight instances of concern of P or family members engaging in the practice of Deputy Shopping, i.e. locating a deputy that will accede to request that are not in P's best interests.

The protocol is not a checklist and its steps are not exhaustive. Solicitors are bound by their professional obligations that will take precedence over this protocol.

In this protocol the solicitor approached to take over the deputy is referred to as 'the Proposed Deputy' and the existing deputy is referred to as 'the Current Deputy'.

We recommend that where the Proposed Deputy believes that it is in P's best interests to deviate from this Protocol the Proposed Deputy should set out their reasons for doing so in their COP24 witness statement.

Step 1 – initial enquiry

1. When the Proposed Deputy is approached by P or their family member regarding changing the appointed deputy, the Proposed Deputy will discuss the reasons for the possible relationship breakdown with the caller.
2. Where the Proposed Deputy believes the Current Deputy has acted properly the Proposed Deputy will inform the caller accordingly and recommend an open and constructive dialogue with the Current Deputy to attempt to improve relations.
3. The Proposed Deputy will be mindful that changing deputy can be a costly, lengthy and disruptive process for the administration of P's affairs that should be avoided where possible.

Step 2 – attempt to repair the relationship

4. The Proposed Deputy will make every effort to promote the repair of the relationship with the Current Deputy at all times. The Proposed Deputy will highlight to the caller that where an application to change the deputy is made the Current Deputy remains appointed and it is important that they continue to work together as constructively as possible.
5. The Proposed Deputy will offer support to improve the relationship with the Current Deputy. The Proposed Deputy encourage the caller/P/P's family to arrange a meeting with the Current Deputy to raise their concerns and attempt to repair the relationship where possible. If requested to assist, the Proposed Deputy will contact the Current Deputy to attempt to assist with improving relations.
6. The Proposed Deputy will at all times encourage direct communication with the Current Deputy and avoid becoming a 'gatekeeper' to P or P's family whilst the Current Deputy remains deputy.

Step 3 – constructive communications

7. Where the Proposed Deputy establishes that the relationship between P/P's family and the Current Deputy appears to have irretrievably broken down the Proposed Deputy will establish the reasons why it is in P's best interests for the deputyship to change.
8. The Proposed Deputy will encourage the caller to have an open and frank discussion about their concerns with the Current Deputy. Where the caller refuses to do so the Proposed Deputy will make a note to this effect and communicate this to Current Deputy.
9. The Proposed Deputy will write to the Current Deputy to request a meeting, whether by telephone or other means, to discuss the concerns that P or P's family have about the deputyship.
10. The Proposed Deputy and the Current Deputy will discuss the concerns in the matter and agree whether further steps can be taken to repair the relationship.
11. The Proposed Deputy and the Current Deputy will discuss and agree whether the matter in question raises concerns over Deputy Shopping.

Step 4 – preparing the application

12. The Current Deputy will notify OPG that an application is to be made to the Court of Protection for the appointment of the Proposed Deputy, detailing details of P, the Proposed Deputy and the reasons for the proposed change in deputyship.
13. Where the Current Deputy indicates that they will oppose the application, the Proposed Deputy will detail in the application how all possible steps were taken to attempt to repair the relationship.
14. Where the Current Deputy indicates that they will not oppose the application the Proposed Deputy and Current Deputy will agree who will make the application.
15. Where the Current Deputy indicates that they will not oppose the application, and the Proposed Deputy is to make the application:
 - 15.1. The Proposed Deputy will request written confirmation that the Current Deputy will not oppose the application. This written record will be annexed to the application.
 - 15.2. The Proposed Deputy will take care to provide sufficient and relevant information to the Court of Protection to enable the court to make a fully-informed best interests decision.
 - 15.3. The Current Deputy will consider a best interests decision, consulting with P or P's family as required, to provide the relevant information to the Proposed Deputy for the purposes of the application, e.g. financial information and copy COP3 or other capacity evidence as per *Loughlin v Singh & Ors* [2013] EWHC 1641 (QB).
 - 15.4. The Proposed Deputy will be mindful that the Current Deputy will have a right to respond to the application, and is likely to exercise that right should for example the application be presented in such a way that is unfair, unbalanced, calls into question the Current Deputy's professionalism or integrity or otherwise contains statements likely to be perceived as incendiary. The Proposed Deputy's application will be factual. The application may exhibit statements from P or P's family. Wherever possible the Proposed Deputy will inform the Current Deputy in advance of the reasons that will be cited in the application, in order to avoid surprises in the proceedings. The Proposed Deputy is encouraged, where possible, to share a draft copy of the application with the Current Deputy, prior to submission for a reasonable time period (7-14 days), to allow any commentary or queries to be raised that may enable amendment, if required. It would be optimal if the application contents can be agreed prior to submission.
 - 15.5. The Proposed Deputy will list the Current Deputy as a Respondent to the application.
 - 15.6. The Proposed Deputy will confirm in the application the numbers of deputyship appointments already experienced in P's matter and, if possible, the reasons for each change.

Step 5 – responding to the application

16. The Current Deputy will submit a COP5 indicating whether they “consent to the application” or otherwise.
17. In accordance with Rule 9.12(5), the Current Deputy will submit a COP24 witness statement in response to the application if they have any outstanding concerns about the deputyship, for example about outstanding issues that require decisions by the Court, or the number of previous deputyship appointments in the matter already, or conduct or behaviour of P’s family that are likely to impact the success of the new deputyship. This statement will include any information that the Current Deputy considers that the court should be made aware of in order to mitigate the Proposed Deputy inheriting issues experienced by the Current Deputy, i.e. to assist the Current Deputy as well as the court to enable the new deputyship to have the best chance of success. Whether appropriate the Current Deputy will seek an order from the court to address such issues directly in order to avoid problem-inheritance.