National Mental Capacity Forum

Outcome of the Professional Deputyship Symposium

Improving Outcomes for Incapacitated People

Suggestions and Discussion Outcomes

Suggestion 1

Extend a deputy's authority to grant permission to obtain a deferred payment agreement, in accordance with the Care Act and Social Services & Well-being (Wales) Acts 2014 and relevant regulations that prescribe the eligibility criteria for those who qualify to have an agreement. Eligibility is highly restricted and determined by the local authority, who serve as the gatekeeper to entitlement. Implementing this measure would lessen the necessity for additional Court orders.

1. It was unclear why the Court routinely includes a restriction on obtaining a deferred payment agreement as it did not extend to authorising the property to be sold and could only be offered if the person was permanently in a care home. If the person returned home, the deferred payment would have to be reviewed as it was inappropriate. This needs to be discussed further with the Senior Judge of the Court.

Suggestion 2

Give authority for a deputy to be able to apply for and manage a direct payment or personal healthcare budget (personal budget) for the incapacitated person, where the public body has identified there is no one else willing or able to manage the budget. Although this is money that does not form part of the person's personal money, it is money available to pay towards their care. The deputy will be responsible for commissioning care in line with the incapacitated person's care plan. It is impractical, costly and complex for a deputy to commission care where some of the funding derives from a personal budget (which they have no authority or control over) and the remaining funding is from the person's

own resources. If there is no one able and willing to manage the personal budget, other than the deputy, the person will not be able to have the flexibility that a personal budget provides, reducing their autonomy.

2. There was no single solution to this problem. Possible solutions might include the appointment of a joint and several professional and lay deputy, such as a family member could make it easier to manage a direct payment, when a family member is also authorised by the local authority to manage the funds; or give welfare authority to the financial deputy to manage a direct payment within the financial deputy order.

Suggestion 3

Observations from common questions raised at Court of Protection Users Group meetings highlight a need for the following guidance which is on the gov.uk website to be updated:

(i) Applications for the appointment of a deputy for property and financial affairs (COP GN1) to reflect the changes to the process and forms which need to be completed; an explanation of why the court needs to resolve the issue of the person's deprivation of liberty in a care home or hospital when giving authority to sell the person's home.

(ii) Court of Protection: sale of jointly owned property (COP GN2), should be updated to include all types of trustee applications as set out in Practice Direction 9F and that there is no need to obtain an order for sale as clarified by case law. This could also extend to obtaining updated capacity evidence when a deputy has already been appointed.

3. The Court of Protection is best placed to identify where knowledge gaps exists amongst court users, and from that it may be possible to identify guidance that needs to be written, for whom and by whom.

4. It was felt that lay applicants would benefit from legal advice on making a deputyship application, as it is not clear from the gov.uk site that the application is a legal process.

5. It was suggested that representative organisations could collaborate with each other, and in particular with the Association of Public Authority Deputies to produce guidance on good practice, such as sharing deprivation of liberty information.

6. It would also be helpful to have more guidance on drafting COP9 applications and COP24 witness statement for specific purposes.

Suggestion 4

Give permission in the standard deputyship order for the deputy to sell the incapacitated person's home, where they are living in a care home and not challenging their deprivation of liberty. The concern about the person challenging their deprivation of liberty and their home being sold before the deprivation of liberty matter has been resolved by the Court, could be addressed by the deputy providing:

i. *additional evidence in the COP3 capacity evidence of the person's capacity to decide residency and care;*
ii. *evidence of the person's views (including behaviour which may indicate what those views might be) concerning whether they want their home to be sold and whether they wish to return home;*
iii. *an undertaking to the Court not to sell the person's home if they are objecting;*
iv. *an undertaking that they will make an application to the Court for directions if the person's representative (RPR) does not make an application to the Court to resolve the issue.*

This would reduce the number of additional applications being made to the Court whilst managing the risk that the person's home is sold without resolving the deprivation of liberty issue.

7. This suggestion was rejected after discussion, as there are concerns that people are not being subject to a deprivation of liberty authorisation when they ought to be. Improving education within the profession, and for lay deputies is part of the solution, including professional deputies being required to have a specific qualification, similar to the Law Society's Welfare Accreditation.

8. All applicants require an understanding of Article 5 and Article 8 of the European Convention on Human Rights. A deprivation of liberty authorisation does not necessarily mean that the sale of the person's property is inevitably in their best interests. Guidance from representative bodies would ensure all deputies were aware of the law relating to deprivation of liberty. There was a call for professional bodies to have a charitable wing to provide advice to lay deputies.

9. There is often insufficient evidence for the Court to make an order for sale. Although the person lacks capacity to manage their finances, they may have capacity to make a residency decision, in which case they can consent to where they live and deprivation of liberty does not arise. This however needs to be brought to the attention of the Court in the supporting evidence.

10. The local authority may not consider the applicant as someone to consult with when residency decisions are being made. The Association of Directors of Adult Social Services should be approached and informed of the issue as deputies and applicant deputies who are interested in the person's welfare are people to be consulted pursuant to section 4(7) MCA, as part of the best interests process. Copies of the person's care plan, the deprivation of liberty authorisation and supporting documentation contains relevant information for them to carry out their role.

11. The applicant could ask the Court by submitting Form COP9 and request an interim order that the named local authority is authorised and is required to provide to the proposed deputy the documents relating to the person's deprivation of liberty, and their care and support plan within 28 days.

12. It is not always possible for the deprivation of liberty authorisation paperwork to be completed before the deputyship application is submitted. Typically, the Court will make a separate order permitting a COP9 application be made at any time, when the authorisation and related documents are available.

13. Representative bodies could draft a template COP9 and supporting witness statement to seek sale of a property as a financial deputy, with a view that it would be publicly shared and available to all. The following should form part of a template COP9 and witness statement in COP24:

    - Exhibit the original deputyship order
    - Provide up to date schedule of income and outgoings, including a valuation of the property
    - What is the reason the property is needing to be sold, including any change in circumstance
    - What are the available options
    - What authorisation is in place (copies)
    - The person's wishes, feelings, values, beliefs?
    - How the person is assisted to be engaged / participate
    - Who was consulted?
    - Who was excluded and why?
    - The best interest balancing exercise analysis

14. When submitting the application to the Court, the person's full name, date of birth and the case number should be stated, as these are used to match COP9 forms with the court file.

Suggestion 5

Obtain initial advice if the deputy considered it is needed up to £2,000 plus VAT, in relation to challenges to the person's Education, Health and Care Plans (EHCP) where the person is under the age of 25 and still in education (this is the age that an EHCP might extend to). The average cost of making an application to the Court is approximately £1,500 plus the Court fee. This would reduce delay and enable the deputy to make an informed decision as to whether authority to challenge the decision has merit and if so to seek the Court's specific authority.

15. Consideration should be given by the Court as to whether there was a benefit in giving the professional deputy authority to spend up to £10,000 or 10% of the person's estate on advice, as the current limit was far too low. The deputy would pay the invoice of the legal firm carrying out the work directly, to avoid the risk of the funds being spent on other things by the child's family. Representative organisations could draft wording for use in an application requesting such authority.

Suggestion 6

An appeal against an Education and Health Care Plan to the First-tier Tribunal (Special Educational Needs and Disability) must be made within 2 months from the date of the Education Authority's decision letter (or 1 month from the mediation certificate, whichever is later). Where the deputy seeks authority from the Court to make an appeal, given the time limit, it would be helpful to have a specific way for the Court to identify the matter as urgent and a decision made swiftly. It would be helpful if there was specific guidance available on the gov.uk website on seeking such authority to provide

clarity for deputies and families on urgent type applications. Practice Direction 10B could be enhanced by providing examples of matters that fall to be considered by the Court as urgent.

16. It would be helpful to have a Practice Direction on urgent financial applications as Practice Direction 10B focus is on personal welfare applications. In particular Re ACC [2020] EWCOP 9 type applications and when they are to be considered as urgent. It could clarify whether it is necessary to provide capacity to litigate evidence or whether the original COP3 would be sufficient; and who needs to be served with the application. Consideration as to whether any of these type cases could be decided by an Authorised Court Officer, as deputy's experience is that authority is granted in nearly all cases, which suggested that it might not need the level of judicial oversight that it currently has.

Suggestion 7

Challenge an adverse decision for funding for continuing healthcare, spending up to £2,000 plus VAT as the decision has financial ramifications for the incapacitated person. The deputy is currently able to seek initial advice as to whether the review is viable but go no further without specific authority from the Court. A review must be sought within a short time period of time, (in Wales this must be sought within 28 days). In practice the deputy must seek a review without express authority and seek retrospective authority and in doing so is at risks that they will not be paid for taking this step. A challenge against an adverse decision is a review and not a litigious process, usually conducted on the papers. The High Court in R. (on the application of Gossip) v NHS Surrey Downs Clinical Commissioning Group [2019] EWHC 3411 (Admin) confirmed that the NHS commissioning body does not have to follow the recommendations by the Independent Review Panel. If the review is unsuccessful, the deputy could apply to the Court for authority to seek judicial review, if appropriate. The cost of making an application to the Court is approximately £1,500, plus the Court fee, so there is a financial benefit to the person if the order expressly permits seeking a review extending to the independent review panel stage. The deputy would be obliged to include this as a significant decision in the annual report to the OPG, so there would be oversight and accountability of the deputy's decision.

17. There was a feeling that this needed to be resolved by a test case, as seeking a review of continuing healthcare is not litigation.

Suggestion 8

The online property and affairs deputyship process could include an alternative to deputyship, where a single order may be more practical to manage limited funds, say under £5,000, where the incapacitated person has no other capital and whose only income is from DWP welfare benefits, where an appointee is able to manage their welfare benefits. This is because limited capital may be used up relatively quickly, necessitating an application for the deputy to be discharged. Otherwise, the deputy continues to be supervised by the OPG indefinitely. Where the Court has made an order under s16(2)(a) (a single order), the Public Guardian has power under Regulation 45 of the LPA, EPA and Public

Guardian Regulations 2017 to receive reports which the Court may require. The Court may also order a single security bond to be paid by the person who is able to manage the small sum. This is a proportionate approach for managing small funds that will likely be spent soon and require no other action. The alternative would be for a time limited deputyship order which would automatically expire, removing the need to make a further application to the Court. If the funds are not exhausted within this period, the deputy could apply to the Court for an extension.

18. It would be helpful if there was a clearer way in which to seek a single or time limited deputyship order and know what information is needed by the Court via the gov.uk website.

Suggestion 9

Issuing single orders for a deputy to sign any tenancy agreement or terminate any tenancy, subject to the deputy or public authority's solicitor giving an undertaking to the Court that a separate application is or will be made to the Court for authority for the deprivation of the person's liberty in the relevant community accommodation (to cater for changes in accommodation). The authority to sign or terminate a tenancy could be in general terms and not specific to a property. Practice Direction 2B- cases that should be dealt with by an Authorised Court Officer (ACOs) could extend to authority to sign a tenancy agreement or terminate a tenancy agreement where the incapacitated person does not own a property (i.e. the person is a tenant and not a landlord). Currently ACO's are only able to make such orders where the incapacitated person is a landlord. It would also be helpful if there was a specific guidance note on authority to sign or terminate a tenancy agreement, including what supporting evidence is needed, which is published on the gov.uk website.

19. Sometimes the person does not settle and moves frequently over a short timeframe. If a tenancy order is made, it would be helpful for the deputy to have authority to sign a tenancy agreement in general terms over a set time period, such as 6 months. There may be times when obtaining authority to sign a tenancy might fall within an urgent application.

20. It would be helpful to have guidance on completing COP9 for different types of applications, which set out the information the Court needs and template draft orders, as this would speed up the process.

Suggestion 10

When a professional deputy is appointed from the panel deputy's list, there is often limited information given to the deputy to progress an investigation into the finances of the incapacitated person. This is very important when the person has been the victim of abuse. The deputy needs to act swiftly to ensure financial abuse does not continue, for example where an attorney has been removed by the Court, financial organisations will allow the attorney to continue to act as they are not on notice of the removal. The deputy may often only have the person's name, with no address or contact information.

It would be extremely helpful if set information could be routinely shared at the point of the Court order, so the deputy can immediately start safeguarding the person.

21. Information provided may vary depending on whether the new deputy has been appointed by the Court, or whether the OPG ask a panel deputy if they will accept a case. There needs to be consistency in the information provided.

22. The OPG should be identified as a competent authority under the Data (Use and Access) Act 2025, which made amendments to Article 6 of the UK General Data Protection Regulations. This would allow the OPG to share confidential information with financial organisations to safeguard vulnerable people at risk of harm as a recognised legitimate interest.

23. The OPG and panel deputies could sign an agreement to share the person's personal information before the appointment of the deputy. This would allow the panel deputy to undertake a conflict of interest search as without it they might accept an appointment and subsequently find they cannot then act. The basic information which needs to be shared for a conflict of interest search includes:

    - the person's full name and residential address
    - any other names the person may be known by
    - contact details

24. When the OPG first apply to the Court to remove an attorney or deputy, they could:

    a. seek authority that they can notify financial organisations in which the person has money or debts when the authority of the attorney is suspended and then revoked, or where the deputy has been removed. The OPG will know if the attorney has used the 'Use my LPA service' and can notify known financial organisations, but they may also have obtained financial information during its investigation.
    b. Seek authority to provide basic information to a panel deputy to enable a conflict of interest search to be undertaken.

25. If the panel deputy accepts the invitation to act, the OPG should let the panel deputy know the status of the application with the Court, as there have been times when the panel deputy has opened a file and another panel deputy has been appointed.

26. It would be helpful if the Court order for the new deputy could:

    i. Recite the suspension or removal of the former attorney or former deputy in the order appointing the new deputy, so financial organisations are clear as to who is currently acting and prevents those removed from continuing to access funds. Alternatively give permission for the order removing the former attorney or deputy to be provided by the OPG to the new deputy.
    ii. Give authority to the OPG to disclose the person's personal information which it considers relevant, including the court application forms, relating to the removal, to the new deputy on their appointment.

iii. Extend the time period for an interim deputy to investigate and report to 180 days which is more realistic, as 60 days is insufficient time for financial organisations to register the appointment and provide the information, and to obtain information from the former attorney or deputy.

27. Additional information which should be shared on the deputy's appointment includes:
    - Details of assets
    - Details of liabilities (the estate may not have a value once the debt is factored).
    - Copies of documents that the OPG have obtained during its investigation to allow the deputy to make an informed best interest decision to pursue money that may have been taken.
    - Date of the Court order when an attorney's powers were suspended by the Court.
    - Whether a removed attorney used the OPG's 'Use my LPA' service and the date the OPG gave the attorney the access code and when it was being activated.

28. Guidance would help newly appointed deputies where there is a concern about financial abuse or where the financial landscape is unclear. It could include:
    - Search UK Finance 'My Lost Account' for dormant accounts. This is done digitally and is free: https://www.mylostaccount.org.uk/
    - Register the person with a credit reference agency (the deputy is the agent of the person and so is authorised), which will produced a credit report file for the person and gives information about the debt landscape.
    - Where the person has sufficient capacity to manage some of their money, agree with the person that they set up an open banking account, so the deputy can monitor whether the person is still able to manage their money.
    - Be familiar with the Financial Conduct Authority consumer duty, which requires regulated financial firms to deliver good outcomes for its customers. This includes, acting to avoid causing foreseeable harm and supporting vulnerable customers.

29. Although this is not a problem with professional deputies, financial organisations have noted that there are occasions when they discover a 'fraud marker' against a lay deputy. These fraud markers raise concerns about the deputy having been involved in money laundering or terrorism, or the person's immigration status does not allow an account to be opened. Where this happens, the financial organisation cannot open an account, although the deputy has been appointed.

30. It was suggested than the security bond providers could include a higher-level check before agreeing to provide a bond to the appointed deputy. If there was a concern, it would be identified sooner and allow for an alternative deputy to apply to appointed instead.

Suggestion 11

Guidance written by the OPG should be shared with the Court of Protection and the Senior Court Costs Office and representative before it is published. For example, on 18 June 2025 the OPG published guidance on the Fixed Costs Practice Direction. It states at para 18, 'in cases where several protected

persons are sharing a supported living house fees should be distributed equitably'. There is no scope within the Court order to share costs with other people as the deputy appointment is personal to each person. The work undertaken is personal to each person. The risk is that the local authority deputy does not recover properly for the work they actually do for the person. As the practice direction provides that the costs are 'an amount not exceeding'- it means that if the deputy had not incurred costs up to that sum for that person, then then can only charge what they have incurred. This would ensure there is no overcharging which would be appear to be the mischief which the OPG's guidance seeks to address.

31. This was recognised by the OPG as an issue and they will consider this.

Suggestion 12

Although there is guidance issued by different organisations, there is no central place where it is held or method for relaying new guidance to practitioners and the public. For example, Court forms are on the gov.uk website and practice directions and rules are on the judiciary website. Practice changes rely on the Court providing this information to representative organisations to disseminate to their members, but this does not always occur. OPG guidance is difficult to find on the gov.uk website without first knowing what you are looking for. It would be extremely helpful if information on the gov.uk site relating to deputies was joined up as it would be very helpful.

32. The judiciary website links to the gov.uk website for court forms. The gov.uk website does not contain the Court forms, The OPG's guidance for deputies should be in the same area the application process for financial deputies or link fully to each other.

33. There was consensus that having guidance on different websites was not helping users, and it was felt that the Judiciary website should hold more guidance relating to Court applications, such as the sale of the person's home and deprivation of liberty. It should also be where the recent note from the Senior Judge on corrective applications is situated.

34. There is no obvious place to store Court of Protection User Group minutes, which provides valuable insight into current practice. Moving forward all the COP email addresses used for specific applications or correspondence will be included. However, this is sent to those who attend and not always shared thereafter. It would be helpful for there to be a central place for these to be shared.

35. UK finance, representative organisations and the OPG could collaboratively draft specific guidance on:
    - What to do when an attorney's powers have been suspended or the attorney or deputy have been removed.
    - How to deal with situations when the person can manage some money

36. Links to OPG various guidance could be contained in the bottom of the deputy's annual report, which would keep deputies mindful of when they needed to make a Court application and how they make decisions.

37. There are so many different types of applications made using COP9, it was suggested that the Court administration and users might benefit from having triage boxes to select on the front of the form similar to the COP1 form which users can identify the nature of the application.

Suggestion 13

Reducing the number of Court applications could lower the deputy's fees, benefit the Court administration, judges, and decrease the risk of the incapacitated person running out of funds and becoming dependent on state support. It also increases the likelihood that the deputy's fees might fall within the fixed costs level, thus avoiding the need for costs to be assessed by the SCCO. However, it is necessary for the fixed costs to more accurately reflect the work involved, as they are largely based on the pre-MCA process.

38. Practice Direction 19B- remuneration and fixed costs needs to be updated. It had been proposed by the Court of Protection Rules Review committee that fixed costs would be increased annually. But this has not happened for 2025. The rates need to be above inflation levels to be worthwhile to accept and not seek assessed costs, which will be higher. It would save the person money, as assessment adds to the costs.

39. Perhaps the Court Rules Review Committee would consider:
    a. interim bills for all Court applications up to 60%–75% of the total work in progress figure on receipt of the Court's final order;
    b. Consider whether interest is allowed to be paid and if so whether it is at Court rate, as there are cases where the person does not have any liquid funds to pay the costs. In some cases, the deputy may have to wait years to be paid.
    c. banded fixed fees based on the value of the person's estate;
    d. explore geographical variations in fixed fees to reflect regional differences in costs, as occurs with the solicitors guideline hourly rates; and
    e. consider reviewing the hardship threshold, potentially linking it to the value of assets at the start of the management year, rather than at the end.

Suggestion 14

The limit for the shorter bill format is £3,000, requiring a more detailed bill that costs the deputy (recoverable from the incapacitated person's resources). Increasing the limit to say £8,000 could reduce SCCO's workload and improve efficiency.

40. The £3,000 short form threshold has remained unchanged for many years and is not prescribed in legislation. Increasing the threshold to £5,000 would be reasonable,

reflecting inflation and practical experience. This has already been raised with the SCCO to improve the heavy workload it is under.

Suggestion 15

The rate applied for different fee earners currently lacks consistency and should reflect the skills required for specific tasks, particularly when drafting documents such as statutory wills and declarations of trusts, which are considered higher risk areas of work by professional indemnity insurers.

41. Fixed Recoverable Costs (FRC) should be introduced in Court of Protection cases to capture low value cases and avoid the assessment process and provide greater fixed fee options. It was suggested that cases under £7,000 could be covered by FRC. It would remove 25% of cases requiring assessment and reduce the SCCO's turnaround times. The Professional Deputy Forum have already submitted a proposal to the SCCO to progress this idea.

42. A more consistent approach across SCCO assessors is desirable to prevent going back and forth with reconsiderations. The SCCO might benefit from an improved understanding of the nature and scope of deputies' work. Professional deputy Guidance could be written which outlines:
    - appropriate levels of responsibility for particular tasks.
    - the rationale for senior input in certain areas of work
    - identify when blended rate for certain work types are appropriate where delegation of task is not feasible

43. It was suggested that when the SCCO provide the provisional assessment, it could contain a Final Costs Certificate, which if not accepted, it is voided automatically as it could reduce the administrative process.

Suggestion 16

Give authority for the deputy to purchase a property for the person where they are funding the entire purchase from their own resources up to a specified purchase price, and up to a specified sum for adaptations. This would ensure that if a property purchase sale fell though that the deputy would have the flexibility to find another one without a further order from the Court.

44. Sometimes these cases become urgent as the property purchase will be progressed within the seller's time frame. It would be helpful to know when these would be considered urgent by the Court and when submitting a COP 9, it can be identified as such.

45. There is a problem if the application seeks an order to purchase a specific property, for the person's principle private residence as the sale may fall through. It would be preferable for orders to have some flexibility built in. For example, "If the deputy is authorised to purchase in the name of P such property as is deemed suitable for P for a price, including the cost of necessary adaptations, not exceeding £xxxx. Upon completion of the purchase the deputy shall enter a restriction at HMLR that no disposition of the registered estate during the lifetime of P shall be completed by registration without the further authority of the court"

46. Consideration might be given by the Court Rules Review Committee as to whether Purchases for the person's private residence could be dealt with by Authorised Court Officers, up to a set amount. This might speed up the process and ensure that Judges only deal with higher value purchases, or those cases where investment properties or a holiday home are sought or be acquired.

47. Professional deputies would benefit from having guidance and checklists, with precedent orders (for consistency), so the Court has all the information it needs at the outset.

Suggestion 17

Cite that a declaration of trust is required where the incapacitated person is under 18 years of age. This will clarify matters with the Land Registry and avoid unnecessary orders which only have the propose of explaining the position to the Land Registry.

48. The Land Registry will refuse to allow the transfer of the legal title to a property when a child becomes 18 years old. This is because form SS restriction states that no disposition during the person's lifetime is allowed without the authority of the Court of Protection.
49. This could be resolved if the original Court order provided:
    a. the title to the property be transferred by the property trustees to the incapacitated person when they reached 18 years of age;
    b. cite that a declaration of trust is required where the incapacitated person is under 18 years of age; and
    c. authorise the identified and appropriate restriction/restrictions