

FINANCIAL MATTERS FACTSHEET 6
Paying for care and support when someone lacks the mental capacity to manage their own finances

If a person no longer has the mental capacity to manage their own finances, then a legally appointed person can take over the management of their property and financial affairs. An application will need to be made to the Court of Protection via the Office of Public Guardian to appoint a deputy, depending on the individual's financial circumstances, i.e. if the person owns property or has significant savings. In some instances, this may not be required if a person does not have assets.

If the person has already made a Power of Attorney for property and financial affairs, then if the Power of Attorney is not registered with the Office of Public Guardian, then it will need to be. If a financial assessment is required from Sefton Council, we will request a copy of the registered Power of Attorney document and may need to view the original.

Applying to the Court of Protection

An application should be made to the Court of Protection if a person owns property, or has significant savings/income.

Once a person lacks the capacity to manage their own finances, their financial assets must not be accessed by another person (unless they are the appointed and registered Attorney) as the person no longer has the capacity to consent to this. This applies even if someone has been informally managing or helping a person with their finances whilst the person had capacity and includes using a debit card to withdraw cash or pay for items, setting up direct debits, telephone/internet banking and writing cheques.

Anyone over 18 years can be appointed as deputy if they can demonstrate their suitability to the Court of Protection, however before becoming a deputy they should consider the following:

- They will have to keep orderly financial records of income and expenditure as the Office of Public Guardian will require regular reports.
- They will need to be able to manage bank accounts and deal with financial institutions.
- They will need to be able to devote time to looking after the financial affairs of another person on a regular basis

There is a fee to pay to the Court of Protection which is payable upfront but can be reclaimed from the person's assets once a deputy is appointed. There are also

ongoing fees which are payable from the person's assets. Full details are on the Office of Public Guardian's website.

You do not have to use a solicitor to make an application to the Court of Protection, but you may decide to do so to avoid making any mistakes which could delay the application and incur further charges. The solicitor will advise you of their fees and charges.

If there is no one willing to apply to become deputy, then Sefton Council will approach an independent solicitor to make an application to become deputy. Family members may be contacted by the solicitor to provide any financial details.

Applying to become Department for Work and Pensions (DWP) appointee pending Court of Protection award

An application to become DWP appointee should also be made pending the application to the Court of Protection this will enable state benefits to be paid to the applicant but will not give access to other forms of income or assets. There is no charge to becoming a DWP appointee.

Once DWP appointeeship is awarded then the financial assessment team must be informed, as interim payments will be required towards care home fees and personal allowance.

If no one applies to become DWP appointee, then if the person lives in a care home Sefton Council will make the application and will take over responsibility for receipt of state benefits. There is a £5 per week charge for this service if capital is over £1000. When Sefton Council ceases to be appointee then a one-off charge of £150 will be levied for activities in relation to closing the client's account.

Sefton paying care home fees

If a person lives in a care home, then whilst waiting for a deputy to be appointed Sefton Council (via the financial assessment team) can pay the shortfall in care home fees, but will require an agreement to be signed. The agreement states that any money paid by Sefton Council will be repaid from the person's assets once deputyship has been awarded.

If the agreement is not signed, or an application for deputyship is not undertaken within reasonable timescales, then Sefton Council will take steps to appoint an alternative deputy.

Once deputyship has been awarded

The deputy must contact the financial assessment team as soon as deputyship has been awarded (Tel: 0151 934 3537). We will complete a retrospective financial assessment based on the person's assets at the time they entered residential care to

ensure they are charged the correct contribution. We will send the deputy an invoice to repay any debt accrued.

Useful links:

The website <https://www.gov.uk/courts-tribunals/court-of-protection> provides comprehensive and up to date information regarding the Court of Protection and how to make an application.

The website <https://www.gov.uk/become-appointee-for-someone-claiming-benefits> contains comprehensive and up to date information about how to make an application for DWP appointeeship.add f