

## **Adult Care Practitioner Process when Application for Deputyship is made by relatives, friends or solicitors on behalf of the customer by Adult Care**

### **Introduction**

If the Adult Care customer has been assessed under the Mental Capacity Act as having no capacity to manage their financial affairs, relatives, friends and solicitors must be approached to ascertain if anybody holds a Lasting or Enduring Power of Attorney, or whether there is an existing court order appointing a friend, relative or solicitor as Deputy for the customer.

- The certified copy of the original court document or Power of Attorney must be seen, a photocopy will not suffice. This must be photocopied for the customer's case file.
- If there is doubt as to whether or not a customer has either a Deputy appointed or a Registered Power of Attorney, a search of the registers held within the Office of Public Guardia must be made.
- Where there is property or land involved, Serco Adult Care Finance Team and Legal Services Lincolnshire will also need to be sent the certified copy of the original court document.

Where registration is awaited, this must not prevent the assessment starting and decisions being taken in the customer's best interest until their affairs are sorted out legally. It must, however, be recognised that the Attorney or the person proposing to be the Attorney will not necessarily be able to access and provide all necessary financial information at this stage, as they have no lawful authority to do so.

In the cases where registration through the courts is awaited, a Nil Contribution will need to be authorised by the General Manager to enable relevant forms to be completed and the care provider paid.

Where a Lasting or Enduring Power of Attorney does not exist and the customer has capital, assets, property or land worth £16,000 or more, an application must be made for Deputyship through the Court of Protection. This role can be undertaken by a person known to the customer, who is willing to undertake the duty on the customer's behalf. The customer's practitioner should ascertain if somebody is willing to apply for Deputyship. The role can be undertaken by a solicitor who may be acting for the customer.

The person applying for Deputyship should be informed that it would be beneficial to seek independent legal and financial advice, as Lincolnshire County Council and Serco cannot be held accountable for any action or decision taken by the person applying for Deputyship.

Where no-one is able to act on behalf of the customer, Serco Court of Protection Admin Team, on behalf of Lincolnshire County Council, can apply for Deputyship and/or Appointeeship. Where appropriate, the Principal Practitioner should contact the Lincolnshire County Council Appointeeship Team regarding this process and the paperwork required. Where a customer's only income is that of benefits and the customer has no property, an application to the Department of Working Pensions to be made an Appointee may suffice.

Where there is other income, property or other assets, an application to the Court of Protection for a Deputy to be appointed may prove necessary.

Early liaison with the Serco Court of Protection Admin Team will provide appropriate guidance to practitioners.

During the process of applying for Deputyship, the customer's assets are frozen and they cannot accrue a debt in relation to paying their own Top Up. The customer must therefore be placed into a residential or nursing home within the contractual rate paid by Lincolnshire County Council, or a Third Party must contract to pay the Top Up from their own finances.

## **1. Initial process if a relative, friend, or solicitor agrees to apply for Deputyship**

### **The Adult Care Practitioner must:**

- Establish who is to apply for Deputyship and their relationship to the customer, and record this in the customer's record.
- Feel satisfied that the person is working in the best interests of the customer. If in doubt, this must be discussed with the Principal Practitioner.
- Suggest that the person applying for Deputyship seeks further information regarding Deputyship from the Office of Public Guardian, and that they may also require professional legal and financial advice.
- Encourage the person applying for Deputyship to apply for Appointeeship in relation to benefits while their application for Deputyship is being processed.

## **2. Process for following up a Deputyship application being made by a friend, relative, or solicitor**

### **The Adult Care Practitioner should:**

- Request that the person applying for Deputyship completes the financial assessment form with as much detail as possible. It is recognised that full information may not be available at this early stage.
- Establish if the person applying for Deputyship intends to apply for a Deferred Payment on behalf of the customer. This discussion should also include an explanation about costs.
- If the customer owns property or land, request the person applying for Deputyship completes the Legal Charge on Property form. The person cannot legally sign any formal charge form at this stage as they do not have the legal authority to do so.
- Establish who will undertake the Protection of Property in accordance with Lincolnshire County Council's statutory duty, if this has not already been completed.
- Inform the person applying for Deputyship that, as part of the application, a COP3 Medical Certificate must be completed by a General Practitioner (GP) or Consultant Psychiatrist to evidence that the customer does not have capacity to manage their own financial or legal affairs.
  - The process cannot proceed without clear medical evidence that the customer does not have capacity. Where there is doubt or conflicting views about capacity, the proposed Deputy may wish to seek legal advice on this point and present the documentation to the Court of Protection in support of the application. In an appropriate case, the Court of Protection does have the power to determine issues about capacity.
- Where appropriate, a copy of the Deferred Payment Leaflet should also be given and the scheme explained, including set up costs and the importance of seeking independent legal and financial advice before entering in to the scheme. This information must be recorded in the customer's record.
- Where there is no access to finance, request a Nil Assessment. A personal contribution may be possible if somebody already holds Appointeeship for the customer.
- Request that the person applying for Deputyship ensures the property owned by the customer has buildings insurance.
- The Serco Adult Care Finance Team will, on the appropriate date, contact the Lincolnshire County Council Adult Care Finance Team to inform them that there has been no response from the person applying for Deputyship, the outcome of the application is unknown, or Deputyship has not been awarded.

A member of staff from the Lincolnshire County Council Adult Care Finance Team will:

- Complete and sign Form OPG 100 Application for a Search of the Public Guardianship Registers Records and send it, with the appropriate letter, to the Office of Public Guardian to check if a Deputyship application has actually been made. The search is free to local authorities; to avoid charges, correspondence must be clearly marked as coming from Lincolnshire County Council.
- On receipt of the OPG 101 Certificate of Search from the Public Guardian Registers, the Adult Care Finance member of staff will send the form to the Serco Financial Admin Team for appropriate action.

**The Serco Adult Care Finance Team will:**

- If the Officer of Public Guardian has indicated that an application for Deputyship is being processed, send a letter to the person applying for Deputyship requesting that they inform the team when Deputyship is awarded and informing them that, in the interim, quarterly invoices detailing the accumulating debt will continue to be sent.
  - If the Office of Public Guardian has indicated that an application for Deputyship has not been received, send letter to the person believed to have been applying for Deputyship to enquire about their application. The letter will advise the person that, as there has been no application, the case will now be referred to the Serco Adult Court of Protection Admin Team.
  - In the event that the person is no longer seeking appointment, the letter will also inform them that they will receive no further invoices or details of the customer's financial status.
  - The Serco Court of Protection Admin Team will then, on behalf of Lincolnshire County Council, apply to the Court of Protection for either a Panel Solicitor to be appointed or for Lincolnshire County Council to be appointed in the absence of a suitable alternative.
- 3. If at any stage the person applying for Deputyship withdraws from the process, the Serco Court of Protection Admin Team should try to establish the name of an alternative appropriate person.**
- Once another person appropriate to apply for Deputyship has been found, the above process will need to be repeated.
  - If the original person applying for Deputyship withdraws at any stage during the process, an alternative way forward will need to be discussed with the Principal Practitioner, and processed.

### **3.1. When Deputyship has been awarded**

#### **The Serco Adult Care Finance Admin Team should:**

- Request a certified copy of the court order and photocopy for the file.
- Send the financial assessment form to the Deputy for completion and signature. This is to ensure a contribution to the cost of the care can be calculated at the earliest opportunity once Deputyship is awarded, and the Nil Assessment is not in place any longer than necessary.
- Serco Adult Care Financial Team will use the completed financial assessment form to calculate the on-going financial contribution for the customer and re-calculate the debt that has been accruing since the Nil Assessment was put in place.
- If there is property or land to be sold and Deferred Payments are requested, send form Legal Charge on Property form and the Deferred Payments Application Form to the Deputy for completion and signature. The process for Deferred Payments should be followed.
- If there is no property or land, or the property is not to be sold, Serco Adult Care Finance Team will process the financial assessment form to establish the financial contribution of the customer which may be full cost, and will invoice the Deputy for any outstanding accrued debts.
- If the property is not to be sold the Deputy can apply for Deferred Payments as above, and the Legal Charge on Property form must be completed and signed by the Deputy.
- Details of the above should be noted in the customer's file of the customer and copies of the paperwork sent to the appropriate area team for inclusion on the service user's file.
- Serco Adult Care Finance Team will write to the Deputy with details of the debt that has accrued. If the Legal Charge and Deferred Payment forms are not returned, legal advice should be sought as to the appropriate way forward.

#### **4. Process If Deputyship has not been awarded or applied for:**

If Deputyship has not been awarded or applied for, the Serco Court of Protection Admin Team will either apply to the Court of Protection to have a Panel Solicitor appointed or they will commence the process of applying for Deputyship on behalf of Lincolnshire County Council, whereby these processes should be followed.

#### **5. Process If Appointeeship has not been awarded or applied for:**

If Appointeeship has not been awarded or applied for, the Serco Adult Care Finance Team will notify the relevant practitioner or team, so they can start the process of applying for Appointeeship.

## 6. List of contacts

### **Serco Adult Care Finance Team**

- Penny Hewitt – Team Leader Assessments – 01522 555697
- Donna Crashley – Team Leader Payments – 01522 555696

### **Serco Court of Protection Team**

- Email – [copadminteam@lincolnshire.gov.uk](mailto:copadminteam@lincolnshire.gov.uk)
- Cheryl Moore – 01522 555698

### **Adult Care Finance Team**

- Emma Farley – Senior Finance Officer East & West – 01522 554235
- Janet Grant – Senior Finance Officer South – 01522 555107

### **Appointeeship Team**

- Email – [Client.Accounts@lincolnshire.gov.uk](mailto:Client.Accounts@lincolnshire.gov.uk)
- Telephone – 01522 555555