

July 2026



JE Bennett Law

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About JE Bennett Law's Mission

- ▶ Our Mission:
- ▶ **Empowerment and Protection** for individuals either **facing circumstances** that create vulnerability or their family supporting them to make informed decisions
- ▶ **Empowerment and Protection** for individuals **anticipating circumstances** in the future that could create potential vulnerability to make informed decisions
- ▶ Holistic approach: finances, health, **wishes and preferences**
- ▶ Lifetime: from **birth to death** and everything in between on life's journey
- ▶ Accredited lawyers with **lived experience** of many situations faced by our clients and their families, personally and professionally – *experience, expertise, empathy, empowerment*



About JE Bennett Law

- ▶ Founded in 2012 as a specialist Court of Protection, vulnerable client practice. **Team of over 50**. Head office in Tunbridge Wells but national reach.
- ▶ We are entrusted with in excess of **300 professional deputyships**
- ▶ **Legal 500** and **Chambers** ranked for Court of Protection
- ▶ **Law Society Lexcel** accredited for management and supervision quality
- ▶ We're **OPG panel deputies**
- ▶ **Exciting news at the end.....** *“stay with us”* 😊



THANK YOU for the invite

– Why JE Bennett Law?

- ▶ We love learning
- ▶ We're a dedicated, specialist Local Authority team and Professional Deputy Companies
- ▶ Colleagues here have worked in LA teams
- ▶ We enjoy collaborating for the client's best interests
- ▶ We have hard earned experience to share from empowering and protecting clients from birth to death
- ▶ We appreciate the challenges and restrictions that a variety of LAs team operate under (Client Affairs, Finances, Safeguarding, Community, Legal etc)

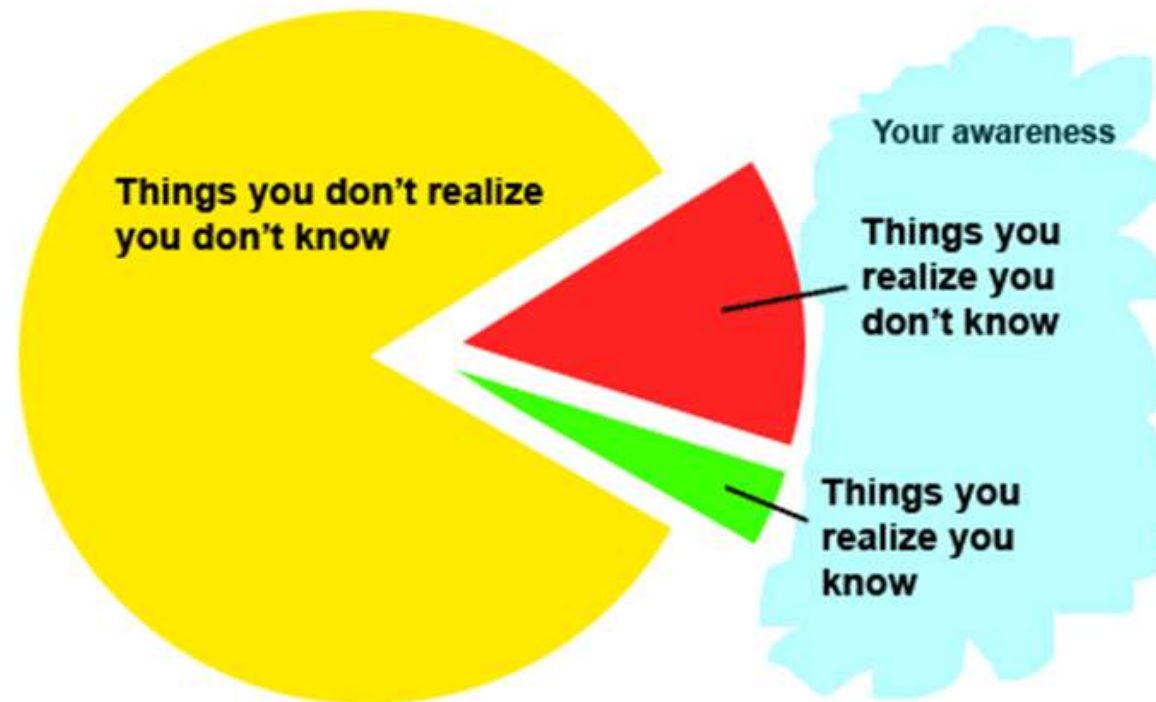


JE Bennett Law

INFORMED DECISIONS

"Always Learning"

Body of all possible knowledge



THANK YOU for the invite

– “Professional vs Public Authority”

Standard	Professional Deputy	Public Authority Deputy	Key Difference
1a Technical knowledge	Expected to possess necessary technical expertise and ensure staff have access to expertise on benefits, NHS funding, inheritance planning, trusts, statutory wills, mediation and family conflict. [opg-deputy...l-deputies PDF]	Expected to know relevant law and keep up to date with case law. Recognised as working collaboratively with social workers and wider local authority teams. [assets.pub...ice.gov.uk]	Professional guidance places greater emphasis on specialist legal and financial expertise.
1e Security/Bond requirements	Must maintain security <u>bond</u> , review adequacy of <u>bond</u> , apply to vary <u>bond</u> if required and hold professional indemnity insurance (PII). [OPG Deputy...s Feb 2023 PDF] , [opg-deputy...l-deputies PDF]	<u>Standard does not</u> apply. Public authorities do not require a security bond. [OPG Deputy...s Feb 2023 PDF]	Significant difference.
1f Conflicts of interest	Must follow Re ACC and Others procedures, obtain quotations where necessary and seek court authority in certain conflict situations. [opg-deputy...l-deputies PDF] , [OPG Deputy...s Feb 2023 PDF]	Must avoid conflicts and declare interests, but no specific Re ACC requirements. [OPG Deputy...s Feb 2023 PDF]	Higher governance requirements <u>on</u> professionals.
1g Court applications	Must consider from the outset what authority is needed; specific guidance on litigation authority and limitations of deputyship powers. [OPG Deputy...s Feb 2023 PDF] , [opg-deputy...l-deputies PDF]	Must make applications when necessary. No equivalent litigation guidance. [OPG Deputy...s Feb 2023 PDF]	Professional guidance is substantially more detailed.



THANK YOU for the invite

– “Professional vs Public Authority”

1i Changes to COP4 information	Must notify OPG of changes such as bankruptcy, criminal convictions, conflicts, ill health, stepping down etc. [opg-deputy...l-deputies PDF] , [OPG Deputy...s Feb 2023 PDF]	Not applicable. [OPG Deputy...s Feb 2023 PDF]	Professional-only obligation.
3a Visiting P	Must visit at least annually, demonstrate awareness of P's circumstances and justify additional visits. Must manage frequent contact proportionately to avoid unnecessary cost. [opg-deputy...l-deputies PDF] , [OPG Deputy...s Feb 2023 PDF]	Must ensure P is visited at least annually. Evidence from social worker reports may suffice. [OPG Deputy...s Feb 2023 PDF] , [Finders Pu...ance 07.26 PowerPoint]	Local authorities can rely more heavily on wider professional networks/social work input.
4 Financial management costs	Must consider proportionality of costs, complete OPG105, provide estimated future costs and notify SCCO where appropriate. [opg-deputy...l-deputies PDF]	No equivalent SCCO or professional costs requirements.	Professional-only costing obligations.
4b Holding funds	Specific reference to SRA Accounts Rules and solicitor client accounts guidance. [opg-deputy...l-deputies PDF]	Must keep funds separate and transparent. [OPG Deputy...s Feb 2023 PDF]	Additional regulatory requirements for solicitors.
4d Investments	Detailed guidance on risk profiling, life expectancy, investment review, conflicts where advice comes from <u>same firm</u> and declarations of trust. [opg-deputy...l-deputies PDF]	Similar investment guidance but without firm-conflict considerations. [Finders Pu...ance 07.26 PowerPoint]	Professional guidance focuses more on regulatory conflicts.
4f Funding care	Guidance on family care payments and value-for-money reviews of care. [opg-deputy...l-deputies PDF]	Additional emphasis on obtaining local <u>authority</u> financial assessments where P is publicly funded. [Finders Pu...ance 07.26 PowerPoint]	Public authority-specific focus on charging assessments.



THANK YOU for the invite

– “Professional vs Public Authority”

6 Property management	Includes extensive guidance on tenancies, landlord obligations, insurance, property sales, inventories and deferred payment agreements. [opg-deputy...l-deputies PDF]	Similar <u>guidance, but</u> specifically recognises local authority powers under the Care Act and that social workers may undertake many practical steps. [Finders Pu...ance 07.26 PowerPoint]	Public authority guidance is more collaborative and operationally flexible.
8a Internal audit	Regular internal audits <u>required</u> , usually through regulatory compliance systems. [OPG Deputy...s Feb 2023 PDF] , [opg-deputy...l-deputies PDF]	Same requirement. [OPG Deputy...s Feb 2023 PDF]	No substantive difference.
8b Professional obligations	Must comply with <u>regulator's</u> code of conduct and submit transparent SCCO bills where applicable. [OPG Deputy...s Feb 2023 PDF] , [opg-deputy...l-deputies PDF]	Must ensure appropriate use of public resources. [OPG Deputy...s Feb 2023 PDF]	Different accountability frameworks.
8c Investigations	Must report police, <u>civil</u> and regulatory investigations. [opg-deputy...l-deputies PDF] , [OPG Deputy...s Feb 2023 PDF]	Must report police and civil investigations only. [OPG Deputy...s Feb 2023 PDF]	Additional reporting <u>obligation</u> for professionals.
8d Governance systems	Detailed best practice section requiring delegated authority records, staffing ratios, governance arrangements, business continuity, information security, complaints procedures and safeguarding processes. [opg-deputy...l-deputies PDF]	No equivalent detailed governance section.	One of the most significant professional-only requirements.



What Our Clients Say....

Extracts From the 2025 Legal 500 + Team Testimonials

'**Ian Macara**'s approach when talking to vulnerable clients and their families is done so with compassion and empathy. He has a unique ability to put clients at ease and instils confidence and calm in what is often difficult situations.'

 JE Bennett Law provide a highly efficient, responsive and professional service which always keeps the client at the very centre of their work. BHCC feels very assured by the high level of integrity of the firm and the firm's focus on the best interests of their clients. 
Senior Lawyer, Social & Education Services, Brighton & Hove City Council

- ▶ *'My experience of the team at JE Bennett Law is that they really **take time to listen** and approach their work with the **client at the heart of their work**. I have always found them to be **extremely reliable, responsive** and professional'*
- ▶ *'I think it is just a very strong practice that deals with these matters in a **sensitive and efficient way**. The individuals I have dealt with manage the right **balance between professionalism and a personal touch** that I think is required in this field'*
- ▶ *'The team... is the most **caring client-focused team** in the field. The stand-out differences are the **outstanding customer service, professional package**, and the feeling of safety and comfort clients experience'*



JE Bennett Law

"Back to Basics"

1. *The Deputy Standards – Professional vs Public*
2. *The Public Authority Deputy Standards Guidance*

1. *MCA 2005 + 5 Principles*
2. *The MCA Code of Practice*
3. *The OPG Guidance and Practice Directions*
4. *The Order*



JE Bennett Law: Shared Experiences with and for Public Authority Deputies

5 “Cs” to Consider with a Client

1. *Complexity*
2. *Capacity for action*
3. *Contentious or Conflict*
4. *Collaborate and/or Outsource*
5. *Court of Protection*



JE Bennett Law: Shared Experiences with and for Public Authority Deputies

Specific Topics

1. **Statutory Wills**
2. **Financial Advice**
3. **Capacity**
4. **Best Interests Decision Making**
5. **Property**



JE Bennett Law: Guidance for Public Authority Deputies *"Standards and Actions"*

Guidance for Public Authority Deputies

Published 13 February 2023

- ▶ The OPG deputy standards list **a number of actions** you are expected to take as a deputy appointed by the Court of Protection to make decisions for a person who lacks capacity to make particular decisions for themselves (referred to as 'P' throughout this guidance).
- ▶ This guidance has been written specifically for Public Authority deputies; it provides additional information about **meeting the standards** and **what actions** you need to take
- ▶ Certain standards are only applicable to lay or professional deputies. The guidance will state **where standards do not apply** to Public Authority deputies.
- ▶ In addition to the core standards, this guidance will cover **actions that may be considered best practice**.
- ▶ The Public Guardian recognises that Public Authority deputies are likely to be **working collaboratively with social workers and other members** of the wider Public Authority team to meet the deputyship standards



JE Bennett Law: Guidance for Public Authority Deputies "Practice Notes + Case Law"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

OPG expects Public Authority deputies to know the relevant law well enough to perform their role. You must know and understand the relevant sections of the MCA, Code of Practice and the LPA, EPA and Public Guardian Regulations 2007. You must be aware of emerging issues described in caselaw and take appropriate actions.

OPG has published practice notes on [specific issues](#) which are available on the GOV.UK website.

Contents

- ▶ [Acting as a professional attorney](#)
- ▶ [Claiming deputy travel costs](#)
- ▶ [Deputy final reports](#)
- ▶ [Family care payments](#)
- ▶ [Notification of death](#)
- ▶ [Professional deputy costs](#)
- ▶ [Public authority deputyship responsibilities](#)
- ▶ [Release of visitor reports](#)
- ▶ [Requesting a search of the Public Guardian registers](#)
- ▶ [Solicitor client accounts](#)
- ▶ [Surety bonds](#)

•**Giving Gifts** Public Guardian practice notice
26 February 2026

•**Family care payments:** Public Guardian practice note SD14
8 April 2026



JE Bennett Law:

Guidance for Public Authority Deputies

"Practice Notes + Case Law"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶ Giving Gifts

Details

This guidance advises deputies and attorneys on how to approach giving gifts on behalf of the person they act for.

Attorneys and deputies can only give gifts on behalf of that person:

- in some situations
- if it's in the person's best interests

The guidance explains:

- the legal framework to gifting
- the approach the Office of the Public Guardian (OPG) takes when deputies or attorneys go beyond their authority to give gifts

Published 11 September 2024

Last updated 25 February 2026 — [Hide all updates](#)

25 February 2026

Public Guardian guidance has been updated.

27 January 2026

Reverting updates made on 25 January 2026 until 25 February 2026.

25 January 2026

Guidance has been updated to reflect changes to the Office of the Public Guardian's approach.

11 September 2024

Added translation



5 foundational principles of the MCA

“Capacity”



JE Bennett Law: Guidance for Public Authority Deputies "Capacity"

Published 13 February 2023

1h Considering whether a deputyship is still required

- ▶ You must apply to the Court of Protection if **P regains capacity** to manage their own affairs.
- ▶ You must consider **whether a deputyship is still required** if P's circumstances change. For example, it may be more appropriate for a case to be managed as a **DWP appointeeship** if P has few assets and all their income is from state benefits.
- ▶ If you decide to end the deputyship and **apply for an appointeeship**, you must consider **any risks and safeguarding issues**.
- ▶ Once those actions have been completed you must consider whether a deputyship order is still required and, if necessary, apply to the court to have the deputyship discharged.
- ▶ You must inform OPG if P dies (**and COP**)



JE Bennett Law: Guidance for Public Authority Deputies "Capacity"

Published 13 February 2023

1h Considering whether a deputyship is still required

PRACTICAL

1. Is a Deputyship Order required in the first instance?

1. Decision Specific, Time Specific
 1. Initial MCA at a time of crisis and disorientation if not D in hospital²

2. Is a Deputyship Order still required?

1. Settled care and support needs provision
2. Feeling supported
3. Stroke recovery
4. Medication effective

► Specific Capacity Assessments

- COP prioritise applications
- Fluctuating Capacity
- Decision specific, time specific

► LPAs vs Deputyship

- MCA for Care and Support Needs and Accommodation
- MCA for Property and Financial Affairs



JE Bennett Law: Guidance for Public Authority Deputies "Testamentary Capacity"

Published 13 February 2023

1h Considering whether a deputyship is still required

- ▶ Should it be necessary to apply for a statutory Will it will be necessary for the court to be advised whether:
 - ▶ *there is an impairment of, or a disturbance in the functioning of mind or brain, and*
 - ▶ *the impairment or disturbance is sufficient to cause P to be unable to make relevant decisions concerning the making of a Will.*
- ▶ The [Mental Capacity Act 2005 \(MCA 2005\)](#) gives some guidance on these issues:
 - ▶ *the impairment can be permanent or temporary*
 - ▶ *capacity cannot be established merely by reference to a person's age or appearance*
 - ▶ *capacity cannot be established with reference to a particular condition or behaviour*
 - ▶ *a person cannot be treated as unable to make a decision merely because they have made an unwise decision*
- ▶ [MCA 2005](#) provides that a person would be unable to make a decision if they were unable to:
 - ▶ *understand information relevant to the decision*
 - ▶ *retain that information*
 - ▶ *use or weigh that information as part of the process of making that decision, or*
 - ▶ *communicate the decision*
 - ▶ *The ability to retain this information for only a short period of time is not a reason that P is disqualified from making a Will.*
- ▶ Statutory guidance on the interpretation of the provisions of the [MCA 2005](#) has been provided in the [MCA 2005](#) Code of Practice Chapter 4.



JE Bennett Law: Guidance for Public Authority Deputies "Testamentary Capacity"

Published 13 February 2023

1h Considering whether a deputyship is still required

The common law

- ▶ The [MCA 2005](#) statutory criteria set out above will assist the assessor in reaching their opinion but the case of Banks v Goodfellow sets out the information that P must be able to understand.
- ▶ P must be able to:
- ▶ understand the nature of the act of Will-making
- ▶ understand the effects of making the Will in the form proposed
- ▶ understand the extent of the property which is being disposed of by the Will - deputyship clients may have relatively limited knowledge of their finances if they do not play a significant part in managing them.
- ▶ comprehend and appreciate the claims of all the people to which he or she should have regard - this is based on an ability to recognise individuals and their moral claims. For example, they may decide to prefer one child over another because that child is in poor health and unable to work whereas another is highly paid and well founded.

Helpful information for the assessor:

- ▶ A schedule of P's assets
- ▶ Genealogy research
- ▶ Copy of any previous Wills and any draft Wills and any explanatory letter for the draft



JE Bennett Law: Guidance for Public Authority Deputies *"Complexity and Conflict"*

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

- ▶ You should make sure you have access to appropriate advice and expertise on
 - ▶ inheritance planning and trusts and
 - ▶ know how to apply for a statutory will if required.
- ▶ You should make sure you have the skills to manage family conflict or access to mediation where appropriate.



JE Bennett Law: Guidance for Public Authority Deputies "Statutory Wills"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶know how to apply for a **statutory will** if required".

1. ".....If required" - *Q. How do you currently evaluate the circumstances?*
2. ".....how to apply....." *Q. Have you ever made an application for a Statutory Will?*



JE Bennett Law: Guidance for Public Authority Deputies "Statutory Wills – If Required"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶know how to apply for a **statutory will** if required".

1. ".....If required"

▶ *Considerations for a Best Interests Decisions:*

- ▶ Is there a Will?
- ▶ Is it valid? (Professional or DIY)
- ▶ What were the contents of previous wills?
- ▶ How would the Intestacy provisions apply?
- ▶ How long ago and what circumstances have changed
- ▶ Would the likely costs be proportionate to the assets and seriousness
- ▶ What evidence of P's wishes and feelings now and in the past?
- ▶ What is the life expectancy of P?
- ▶ What evidence of capacity or coercion?



JE Bennett Law: Guidance for Public Authority Deputies *"Statutory Wills –How?"*

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶know how to apply for a **statutory will** if required".

9. 9.1 Will Search - Paralegal Certainty Will Search

9.1.1 Carry out Certainty Will Search (The National Will Register).

9.1.2 If a Will is located contact Will holder and ensure they have the original and make note of where it is held.

9.1.4 If we have a copy of a Will that is not identified on the Certainty Will search, again establish where the original Will is held – if it cannot be located ensure there is a detailed note setting out steps taken to locate it and why it cannot be located.

9.1.5 In all cases **where there is a Will** consider **if an application for a stat. Will or codicil** is required/appropriate

9 9.1.6 If no valid Will is located initiate genealogy search for relatives who would be entitled on intestacy.

9.1.7 In all cases **where there is no Will** **consider if an application for a stat. Will or codicil** is required/appropriate



JE Bennett Law: Guidance for Public Authority Deputies "Statutory Wills"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

► [Practice Direction 9E Applications relating to statutory wills, codicils, settlements and other dealings with P's property](#)

Information to be provided with application form 6. In addition to the application Form COP1 (and its annexes) and any information or documents required to be provided by the Rules or another practice direction, the following information must be provided (in the form of a witness statement, attaching documents as exhibits where necessary) for any application to which this practice direction applies—
1Section 20(3) of the Act.

- (a) where the application is for the execution of a statutory will or codicil, a copy of the draft will or codicil,² plus one copy;
- (b) a copy of any existing will or codicil;
- (c) any consents to act by proposed executors;
- (d) details of P's family, preferably in the form of a family tree, including details of the full name and date of birth of each person included in the family tree;
- (e) a schedule showing details of P's current assets, with up to date valuations;
- (f) a schedule showing the estimated net yearly income and spending of P;



JE Bennett Law: Guidance for Public Authority Deputies *"Statutory Wills – How?"*

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶ [Practice Direction 9E Applications relating to statutory wills, codicils, settlements and other dealings with P's property](#)

Information to be provided with application form 6. In addition to the application Form COP1 (and its annexes) and any information or documents required to be provided by the Rules or another practice direction, the following information must be provided (in the form of a witness statement, attaching documents as exhibits where necessary) for any application to which this practice direction applies— 1Section 20(3) of the Act.

- (g) a statement showing P's needs, both current and future estimates, and P's general circumstances;
- (h) if P is living in National Health Service accommodation, information on whether P may be discharged to local authority accommodation, to other fee-paying accommodation or to P's own home;
- (i) if the applicant considers it relevant, full details of the resources of any proposed beneficiary, and details of any likely changes if the application is successful;
- (j) details of any capital gains tax, inheritance tax or income tax which may be chargeable in respect of the subject matter of the application;
- (k) an explanation of the effect, if any, that the proposed changes will have on P's circumstances, preferably in the form of a 'before and after' schedule of assets and income;
- (l) if appropriate, a statement of whether any land would be affected by the proposed will or settlement and if so, details of its location and title number, if applicable;
- (m) where the application is for a settlement of property or for the variation of an existing settlement or trust, a draft of the proposed deed, plus one copy;
- (n) a copy of any registered enduring power of attorney or lasting power of attorney;
- (o) confirmation that P is a resident of England or Wales; and (p) an up to date report of P's present medical condition, life expectancy, likelihood of requiring increased expenditure in the foreseeable future, and testamentary capacity.

7. The court may direct that other material is to be filed by the applicant, and if it does, the information will be set out in the form of a witness statement.



JE Bennett Law: Guidance for Public Authority Deputies "Statutory Wills"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶know how to apply for a **statutory will** if required".

▶ *Examples*

- ▶ Clear and uncontentious case
- ▶ Complex and contentious case



JE Bennett Law: Guidance for Public Authority Deputies *"Investment Advice"*

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶have access to appropriate advice and expertise on **inheritance planning** and **trusts**".

1. ".....access to appropriate advice and expertise"

PRACTICAL

1. Another Best Interest Decision

1. Whether to take advice
2. Who to take advice from



JE Bennett Law: Guidance for Public Authority Deputies *"Financial Advice"*

Published 13 February 2023

- ▶ **4d Managing investments**
- ▶ **Applicable to:** Property and financial affairs
- ▶ You must manage P's investments to get the maximise returns, with minimal risk. You may seek professional or expert advice if P's investments are complex.
- ▶ You must consider your fiduciary duty when managing investments and act in P's best interests.
 - ▶ **Best practice in relation to management of investments**
 - ▶ You should **regularly review P's investments** to check if they are still suitable and whether they should be varied accordingly. You **may need professional or expert advice** to help with this.
 - ▶ You should consider **P's circumstances such as their age and life expectancy, the size of their estate, any financial consequences of variation and their future financial needs**.
 - ▶ When **deciding the level of risk and investment term**, you should consider P's circumstances such as their age and any physical or mental health conditions.
 - ▶ You should make investment arrangements in line with **P's previous pattern and wishes**, if this continues to be in their best interests.
 - ▶ You should **consider P's immediate and future needs** when considering the length of investment, such as whether funds will be required to pay for care.
 - ▶ **Short-term**, low-risk investments are generally more appropriate if P has a lower anticipated life expectancy (less than 5 years) through old age or a life-limiting condition. A **longer-term investment** with a low to medium level of risk may be appropriate for a younger person without any life limiting health conditions if they have considerable funds.
 - ▶ All investments should be **made in P's name** unless you have authorisation not to do so. If, for any reason, it is not possible to register the investment in P's name, you will need a declaration of trust or some other record acknowledging P's beneficial interest in the asset.



JE Bennett Law: Guidance for Public Authority Deputies "Investment Advice"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶have access to appropriate advice and expertise on inheritance planning and trusts".

1. Whether to access Financial Advice

2. Circumstances to look out for can include:

1. Existing investments
2. Historical investments/wishes and preferences inc. Tax mitigation
3. Significant cash
4. Long term care funding
5. Equity release
6. Immediate Care Annuity
7. Foreign assets
8. Gifting
9. Family Care Payments
10. Beneficiary of an estate
11. Lottery win



JE Bennett Law: Guidance for Public Authority Deputies "Investment Advice"

Published 13 February 2023

1a Awareness of the Mental Capacity Act 2005 (MCA), the Code of Practice; and guidance published by OPG

▶have access to appropriate advice and expertise on **inheritance planning** and **trusts**".

1. Who to seek advice from?

2. Characteristics for advice (usually 3 to compare):

1. **Accreditations**

1. SOLLA
2. Chartered
3. Whole of market

2. **Experience**

1. Client lived experience
2. Later life specific topics
3. What percentage of work

3. **Fee Structure**



JE Bennett Law: Guidance for Public Authority Deputies *"Property Management"*

Published 13 February 2023

- ▶ **Standard 6: Property management**

- ▶ All deputies must manage P's property in line with the deputyship order and in P's best interests.

- ▶ **6a Protecting P's property**

- ▶ **Applicable to:** Property and financial affairs

- ▶ You must make sure that **P's property is secure and maintained appropriately**. You must make sure that appropriate building and contents **insurance is in place** and that you understand the terms of the insurance policies.

- ▶ **6b Selling P's property**

- ▶ **Applicable to:** Property and financial affairs

- ▶ You must make sure that **any decision to sell P's property is in their best interest**. You **must consult any appropriate persons**, if possible, including P and P's family before making this decision. You must make sure that the property is sold at market value and get at least three valuations if possible.

- ▶ You can **only sell P's property if your deputyship order gives you authority** to do so.



JE Bennett Law: Guidance for Public Authority Deputies "Property"

Published 13 February 2023

- ▶ **Best practice in relation to P's property (if they don't live there) when you receive your deputyship order**
- ▶ Public Authorities can make sure that **P's property is protected if they are away from home** as described in section 47 of the Care Act 2014. In practice many of the actions listed below may be completed by social workers working for the appropriate local authority rather than directly by the deputy themselves.
- ▶ You should **find out who owns the property**, through [HM Land Registry](#)
- ▶ Where there is no other living owner able to do so, **gain access to the property and check it is secure**.
- ▶ If P has been moved into residential care, consider **whether it is appropriate to bring items of sentimental value** for P to their new home.
- ▶ You should consider **completing an inventory of P's belongings**.
- ▶ If you **decide to sell items belonging to P you should keep records** of all items sold.
- ▶ You should make sure that **post is redirected and that any necessary utilities continue to be provided**.
- ▶ If P is in Public Authority funded care, you should consider **setting up a deferred payment arrangement** where this is appropriate and in the best interests of P.
- ▶ If **any family members are living in the property**, you should **review any pre-existing arrangements** and consider whether it may be appropriate for regular payments to be made to P.
- ▶ If P's **property is let**, you should **consider whether notice should be given to terminate the tenancy**. You should make sure correct legal tenancy agreements are in place and maintained (you will need to make sure that you have authority from the court to terminate a tenancy agreement and may need to consider seeking specialist property law advice). You should **consider taking out landlord's insurance**.
- ▶ Detailed guidance on [letting properties](#) is available on the GOV.UK website.
- ▶ There will be a tax obligation if rental income is generated from P's property. Guidance on [paying tax as a landlord](#) is available from HMRC



JE Bennett Law: Guidance for Public Authority Deputies "Property"

Published 13 February 2023

- ▶ **Best practice in relation to P's property (if they live there) when you receive your deputyship order**
- ▶ You should consider whether the property meets P's needs. You should consider commissioning a care plan or occupational therapy report and make sure that any necessary adaptations are made.
- ▶ You should review any tenancy or mortgage arrangements and get the deeds of ownership if necessary.
- ▶ If there is a tenancy agreement in place, you should consider taking out tenant's liability insurance.
- ▶ You should make sure that gas check certificates are obtained for gas fires, boilers, and appliances.
- ▶ You should make sure that electrical checks are carried out and electrical certificates are available.
- ▶ If P is responsible for paying utility bills, you should agree any contributions to be made from other household members.



JE Bennett Law: Guidance for Public Authority Deputies *"Property"*

Published 13 February 2023

- ▶ **Best practice in relation to P's property (if they live there) when you receive your deputyship order**

- ▶ **Common Challenges**
 - ▶ Insurance
 - ▶ Security – squatters
 - ▶ Water Leaks
 - ▶ Hoarding
 - ▶ Personalising P's room
 - ▶ S21A proceedings and investigating whether return is a practicable option
 - ▶ Authority to sell
 - ▶ Ending tenancies



JE Bennett Law: Guidance for Public Authority Deputies *"Best Interest Decisions"*

Published 13 February 2023

▶ **Standard 2: Best interest decision making**

All deputies must comply with **best interest decision** making principles.

▶ **Where to draw guidance from?**

1. MCA Code (301 pages)
2. Case Law
3. Colleagues esp. Social Worker
4. Consult Externally

▶ **How to document and record?**

1. "This Is Me"
2. Template for BID outlining considerations
3. Balanced scorecard



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Chapter 5

- **What does the Act mean when it talks about ‘best interests’?** (64)
- Quick summary (65)
- What is the best interests principle and who does it apply to? (66)
- What does the Act mean by best interests? (68)
- Who can be a decision-maker? (69)
- What must be taken into account when trying to work out someone's best interests? (71)
- What safeguards does the Act provide around working out someone's best interests (73)
- How does a decision-maker work out what ‘all relevant circumstances are’? (74)
- How should the person who lacks capacity be involved in working out their best interests (75)
- How do the chances of someone regaining and developing capacity effect working out what is in their best interests?(77)
- How should someone’s best interests be worked out when making decisions about life-sustaining treatment? (79)
- How do a person’s wishes and feelings, beliefs and values affect working out what is in their best interests? (80)
- Who should be consulted when working out someone’s best interests? (84)
- How can decision-makers respect confidentiality? (86)
- When does the best interests principle apply? (86)
- What problems could arise when working out someone’s best interests? (88)



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- ▶ **2a Complying with section 4 of the MCA including consideration of views of relevant persons**
- ▶ **Applicable to:** Property and financial affairs, health and welfare
- ▶ You must make sure that all the decisions you make are in the best interests of P. When making decisions you must **take into account P's past wishes and feelings**, and the **beliefs and values that would have influenced their approach** to the issue if they had retained capacity.
- ▶ You must **consult other people for their views on P's best interests** where it is **appropriate and possible** to do so. This could include carers, family members and anyone previously named by P as someone to be consulted about that specific issue.
- ▶ You must **keep full records of conversations with P and relevant persons**, including evidence of P's wishes and feelings. You must make sure that formal mental capacity assessments are completed when appropriate.

- ▶ **2b Including P in decision making**
- ▶ **Applicable to:** Property and financial affairs, health and welfare
- ▶ You must **involve P in the decision-making process as far as possible**. You must consider P's capacity to make particular decisions at the relevant time.

- ▶ **Standard 3: Interactions with P**
- ▶ All deputies must **engage with P in an appropriate manner taking into account P's individual circumstances**.
- ▶ For Public Authority deputies, evidence from reports provided by social workers will suffice to meet the requirements of this standard.
- ▶ How practical is this?



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Guidance for Public Authority Deputies

"Views of the relevant person"

Published 13 February 2023

- ▶ **2a Complying with section 4 of the MCA including consideration of views of relevant persons**
- ▶ **Applicable to:** Property and financial affairs, health and welfare
- ▶ How to empower and support the relevant person in the light of
 - ▶ AGNI
 - ▶ DOLS where objecting to placement
 - ▶ Seeking authority to sell property
 - ▶ Only restricted authority – bound by presumption of capacity vs “Client Wishes/Feelings/Preferences”
- ▶ NOTE - Recent PDF Guidance on Authority to Sell and lack of DOLS



JE Bennett Law: Guidance for Public Authority Deputies *"Visiting P"*

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3a Visiting P at least annually

- ▶ You must make sure P is **visited at least once a year** and their **needs regularly assessed**.

Best practice in relation to engagement with P:

- ▶ You should make sure that **records are retained of P's feelings, wishes, beliefs and interests, both past and present**. Where possible, you should discuss these with P, their family, and care providers.
- ▶ You should make sure that **regular contact is made with family members and carers**, and that they are involved in making best interest decisions for P when appropriate.
- ▶ You should make sure that there are regular **reviews of P's needs, spending, and capacity to handle money**.
- ▶ You should make sure that **P is communicated with in an appropriate way**, for example, using their preferred language.



JE Bennett Law: Guidance for Public Authority Deputies *"Personal Allowance"*

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▶ **4f Providing personal allowance**

▶ **Applicable to:** Property and financial affairs

- ▶ You must make sure that **P has enough personal allowance** to pay for items such as toiletries and chiropody if they are in residential care. If P is living in their own home, consider their best interests and capacity to handle money and provide enough spending money for their needs.

▶ **Best practice in relation to the management of P's finances**

- ▶ When first appointed as deputy you should **identify and secure all assets and investments** held by P.
- ▶ You should **obtain a copy of P's will**, if possible, and make sure that any specific items listed as bequests are kept safe. You should get individual items valued where appropriate.
- ▶ You must **notify banks and financial institutions where P holds an account**, that you have been appointed as deputy for P. You should also notify **other income providers**, such as private pension companies.
- ▶ You should **seek to recover any money or assets owed to P**, by the way of debts and loans, for example, rent from lettings or utility accounts in credit.

▶ **Best practice in relation to the financing of care provision**

- ▶ When appointed as deputy you should contact any care providers, inform them of your appointment, and provide contact details.
- ▶ You should make sure that **P's care provision is good value for money**, and appropriate to the level of funds available.
- ▶ Where P is in Public Authority funded care, you should **get a financial assessment** to make sure that charges are accurate and based on up-to-date financial information



JE Bennett Law: Guidance for Public Authority Deputies *"The Order"*

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1b Understanding the authority and obligations of the court order appointing the deputy

- ▶ You must **meet the obligations** conferred by your deputyship order and **not exceed** your authority.

PRACTICAL

- ▶ Check the Order
 - ▶ Typos
 - ▶ Authority esp. for property and gifts
- ▶ Interim Order and Directions Order
 - ▶ Watch out for Directions
- ▶ S21A Proceedings





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Open time for collaborative Questions and Answers





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