



Terms of Business

The Professional Deputy Service ('PDS') won't start unless and until it is universally acknowledged that our engagement is accepted as being in the best interests of the Client, irrespective of whether the Client has capacity or not. If the Client has capacity, the Client then makes the decision; if the Client lacks capacity, then a best interests decision has to be made for the Client.

1. General

The Professional Deputy Service ('PDS') is a trade name of the Professional Deputy Trust Corporation Limited. It is authorised & regulated by the Solicitors Regulatory Authority (SRA), by the Court of Protection, & the Office of the Public Guardian.

All PDS activities in support of Clients are strictly confidential, but it is important for relevant information to be shared with others, as necessary, who have the clients' best interests at heart; ordinarily these will be next-of-kin, other family members, carers or members of a dedicated support team. For these reasons, a '**ring of confidence**' is normal, keeping all those who can help a Client, informed of their situation, needs and choices available. (see clause Confidentiality - 'the ring of confidence')

In circumstances in which a Client (or a potential Client) lacks capacity, the PDS is unable to take instructions without leave of the Court of Protection, unless a Lasting Power of Attorney (LPA) is already in place. There are two types of LPA; these are:

- Health & Welfare, which deals with consent to operations and termination of medical life support; this is not something the PDS undertakes.
- Property and Financial Affairs. Managing the money is 'what we do'.

Neither can be completed after a person has lost capacity. In such a case, application must be made to the Court of Protection for a Deputy Order. The Court of Protection refers to an individual subject to an application for a Deputy Order as a 'Patient'; the PDS prefers 'Client' which is the term used in this document.

This document provides information about the business arrangements that will exist between a Client, the Client's family and the PDS, standards of work and conduct as well as some of the legal and professional obligations that are maintained when carrying out Client instructions.

The PDS

PO Box 223 Woodbridge IP12 1WY

Phone: 01473 736 296

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Contact details for the PDS are 01473 736 296 (landline) and admin@thepds.net (email).

Our offices are at: -

- The Blue Farmhouse, 86-90 Cumberland Street, Woodbridge, Suffolk IP12 4AE
- 23/2 Marchmont Crescent, Edinburgh, Scotland EH9 1HQ
- 39 Copperhill Street, Aberdyfi, Wales LL35 0HL

2. Our Services

The services that the PDS can carry out for a Client will be detailed in an individual Client Care **Letter**. Those services include:

- i. Application to court for deputyship to manage the financial affairs of a client
- ii. Application to the Office of the Public Guardian for an LPA so the PDS can support the management of the financial affairs of a client.
- iii. To take instruction to process the registration of an LPA on behalf of a client with the OPG
- iv. To take instruction to create new or amend a will for a client.

The **Client Care Letter** will set out the details of any service provided along with the appropriate charges.

2.1. Direct Payments

As outlined in section 1, the PDS is not involved with Health and Welfare which means where clients have elected to have their care provision through Direct Payments with the local authority, the PDS is only able to provide limited support on facilitating banking. The PDS does not undertake any aspects of operating the services within a Direct Payment such as recruitment, pay as you earn, staff rota etc.

3. Principles

The following paragraphs outline principles of business between a client and the PDS.

3.1. On Engagement

Having received instructions, perhaps in an emergency, all PDS activities are undertaken on the understanding that, unless otherwise agreed, the terms set out hereunder shall apply.

3.2. Client Care Letter

The **Client Care Letter** will set out the specific service and charges applicable to the Client. The PDS will advise the clients as soon as practicable of the member of the PDS staff who will be acting as Client Manager, and who will manage and support their affairs

These terms of business may, if needed, be amended by the **Client Care Letter** (or letters) as necessary, and as circumstances develop.

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3.3. Mode of Operation

As appropriate, the PDS will agree with the client, next-of-kin, family and support team a plan of action. The PDS will ensure the client is kept informed of progress to allow decisions to be made wherever and whenever needed.

3.4. Compliance

The PDS is subject to current Money Laundering Regulations. Any ID evidence held on file may be made available to third parties instructed on a client's behalf; it must also comply with Money Laundering Regulations.

3.5. Full disclosure of Financial Information

To give the best advice, and to assist in the best way, it is a pre-requisite that full disclosure of the entirety of a client's financial position is given.

3.6. Legally binding

Following an initial and best interests meeting, provided it is universally accepted that it is in the Client's best interests for the PDS to act, the PDS will charge for work carried out, including work in relation to the initial meeting. It will be accepted by all parties involved with the Client that the PDS will be paid for such work.

4. Death of a client

Following the death of a client a Deputyship and LPA is terminated automatically. Where the client has a will, monies held will pass in accordance with instructions in the will. At this point the PDS will cease to act.

Where the Client has no will in place, in lieu, NCA Legal, a tradename of NCA, a private legal practice related to the PDS, will act and hold funds in accordance with standard Law Society and Court requirements.

NCA Legal will seek a Form of Authorisation for work carried out following the death of a client. NCA Legal will charge at the Court set rates for any work carried out regarding the affairs of the estate of the deceased, subject to a review by an independent assessor. Charges are subject to separate Terms and Conditions and appropriate **Client Care Letter**.

5. Disability Related Expenses

Local Authorities can ask an individual for whom they provide care to contribute towards the cost of that care. Where people are in receipt of the care component of Disability Living Allowance (DLA) or a Personal Independence Payment (PIP), local authorities can ask for some or all these benefits to be paid to them as a contribution towards care costs.

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Some County Councils provide an individual with a personal expenses allowance which is disregarded in the care contribution calculation. Unless that person has additional Disability Related Expenses (DRE), they will ask for the remainder of an individual's care component to be paid to them as a contribution towards the cost of care.

The PDS charges can be accepted as DRE and therefore can be offset. **This effectively means the services of the PDS are free** when they are deducted in full of any payments otherwise payable towards care costs. This is the position with approximately 75% of PDS clients subject to court orders.

The position regarding DRE and claw back of expenses can be complex and there may be additional circumstances, e.g., the holding of additional capital, that may mean that DRE are not effective. This can be discussed and advice given in individual circumstances.

6. Other legal matters

The PDS will make every effort to meet agreed deadlines unless agreed otherwise in writing. In relation to any time, date or period for delivery or performance, time shall not be of the essence.

The PDS will ask clients or their representatives to read these terms and conditions and sign a copy of the Covering Letter sent with these Terms confirming acceptance and return it. If a client (or potential client) does not sign and return the letter these terms and conditions will deem to have been accepted insofar as capacity allows.

The PDS is subject to the Proceeds of Crime Act 2002 and may have reporting obligations which override its professional duties to an individual client. Similarly, the Solicitors Regulation Authority and HM Revenue & Customs have the power to inspect PDS books and client files. Accreditation for professional standards includes random inspections of files.

7. Custody of papers and other items

As standard practice, the PDS will scan all documents which are deposited for safe keeping providing an electronic back-up. Subject to any restriction imposed by law, The PDS does not accept liability for the loss of, or damage to items held in its custody, or any further liability which might arise because of an item being lost or damaged.

Details of the PDS professional insurance cover is available from the PDS.

All correspondence and working papers (including advice by Counsel and others), other than documents specifically deposited for safe-keeping, will be stored electronically or in paper form and destroyed after the statutory period.

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8. Holding client funds

The PDS will hold money received in a separate designated client bank account which will be subject to the strict provisions of the Solicitors Accounts Rules.

9. Variations of Terms and Other Changes

The PDS reserves the right to supplement or vary these terms of business either at the outset in correspondence or subsequently by agreement with a client. It is important to note that other changes to the relationship between the PDS and its clients may occur by law, for example, changes to rules of professional conduct or statutory changes over which the PDS has no control.

10. Termination

A seminal principle for the PDS is to offer cost effective solutions for its clients, and advice will be given with this in mind. If a client, their next-of-kin, family or support team wishes to pursue a course that is contrary to the advice that has been given, then, generally, the PDS will cease acting, or if the appointment of the PDS is by the Court, seek the Court's approval to cease acting.

10.1. Where PDS is discharged as Deputy or LPA

In such cases where the PDS is discharged as deputy or LPA by the court or the Public Guardian, then the PDS will undertake to transition the management of the financial affairs of the client to the newly agreed deputy or appointee.

The PDS will seek agreement from whoever is taking over to act for the client any transition activities that are required of the PDS to complete the handover. A new **client care letter** will be agreed which sets out the transition activities and any appropriate charges.

11. Governing Law

The Law of England and Wales will govern the professional and contractual relationship with clients notwithstanding where they may be based.

12. Feedback and Complaints Procedure

The PDS is clear; there is always room for improvement. Suggestions, recommendations or comments from clients are always welcome.

The PDS do not 'do fights', so if you're not happy, tell us, and if we can't deal with it, so far as possible, we'll stop. If the Client Manager can't resolve any issue, the CEO is responsible for Client Care. Every attempt will be made to address any issue that is raised using the PDS's internal complaints procedure.

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In the event of dissatisfaction with the handling of a complaint, the key contact is the Legal Services Ombudsman. Contact details are:

Legal Services Ombudsman
3rd Floor
Sunlight House
Quay Street
Manchester
M3 3JZ

email: Iso@olso.gsi.gov.uk to consider the issues.

The PDS is regulated by the SRA; registration number SRA 648164.

13. Confidentiality - ‘the ring of confidence’

The PDS is bound by professional confidentiality rules regarding its work generally, but when dealing with clients with special needs, it takes the view that next-of-kin, friends, family and support workers/carers can best help its client if they are aware of the client’s financial position. If a client or their representative does not want the PDS to disclose any information or documents to another person (this includes any lawfully appointed attorney), the PDS will require written instructions to that effect.

14. Conflicts of Interest

If, on instruction, the possibility of conflict of interest with another client emerges, and it may not be possible for the PDS to act then, and without delay, options will be discussed, including and without limitation, with family, next-of-kin and support team as appropriate.

In such circumstances, the PDS shall have no obligation to disclose or use any information in its possession from time to time in respect of which a duty of confidentiality is owed to another person.

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15. Privacy

The PDS is obliged to report to the Court annually and provide information as detailed. It is also subject to an audit acting in accordance with standing instructions from the SRA. There may be a need to “process your personal data” (defined by the Data Protection Act 1998 (the Act)) for, inter alia, the following purposes:

- i. Verification of identity or office holders in an organisation.
- ii. The provision of Legal, Financial, Investment, Public Affairs, Media and Consultancy Services.
- iii. Administration of files and records.
- iv. Trust administration.
- v. Transfers of data between other professionals and advisers notified to the PDS.
- vi. Marketing and promotion of PDS services; and
- vii. Legal Compliance.

There may be a need to “process sensitive personal data” (defined by the Act) for the same purposes. If it is necessary to process sensitive personal data for other purposes, this will only be done to the extent permitted by law and will be based on the Contract with the PDS.

This does not mean that consent to process personal data for the provision of services is required. A more detailed list of the purposes for which personal data can be obtained and processed is obtainable from:

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

www.informationcommissioner.gov.uk.

The PDS will only use personal information to provide updates about services and latest news (for example, firm-related announcements and forthcoming events) and legal developments. If a client does not agree to personal data being used for these purposes, please write to CEO.

16. Bank Account Details - Security

The PDS seeks to promote financial independence, in accordance with the Mental Capacity Acts. Banks are required to comply with strict laws however, and will not generally deal with anyone other than their client. For this reason, and to ensure and promote independence, it is the policy of the PDS to open new bank accounts in client names to one of which the Client has access. The individual client main account receives benefits and other receipts, and deals with standing orders and regular payments, including PDS charges.

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The individual client cash account is an account into which a regular weekly sum is placed and to which the client has access via a bank debit card. This account has a limit of funds held, usually £500, to prevent loss by fraud or theft.

If an e-mail is received, which appears to be from the PDS, and the email provides PDS or other bank account details, please contact the Client Manager by telephone immediately. Do not reply to the email or act on any information contained in it. The PDS will not accept responsibility for the transfer money into an incorrect account.

It may be necessary in the provision of services for the PDS to transfer money to a client. Please, therefore, provide relevant bank account details. Please do not provide such details in the text of an e-mail or in an attachment to an email that may be altered to guard against e-mail modification fraud.

17. Scope of liability

All PDS advice is particular to individual circumstances. Liability regarding any person or organisation to whom advice is not addressed, except where its very nature raises a legal Duty of Care in favor of a third party will not be accepted. The Provisions of the Contracts (Rights of Third Parties) Act 1999 are to that extent excluded.

The scope of work will not include advising on business implications of any matter or financial, accounting or actuarial issues, the adequacy of any insurance arrangements or the value or physical condition of any asset.

The PDS insures against the risk of unintentional negligence by arranging a bond when appointed Deputy. If further information about this insurance is required and the level of cover, please contact the PDS.

The liability of the PDS, any Consultant, and other agents of NCA (and any service company owned, or controlled by or on behalf of NCA), in any circumstances whatsoever, whether in contract, tort, under statute or otherwise, and howsoever caused (including but not limited to our negligence or non-performance), for loss or damage arising from or in connection with the services provided shall be limited to £3,000,000 except where the rule of law overrides this.

Please note that where more than one person is recognised as a PDS Client in relation to a single matter then each agrees as follows:

- The limit of liability of £3,000,000 will be divided between them
- Clients are responsible for agreeing the division of the £3,000,000 limit of liability between them.
- Clients are under no obligation to inform NCA of the division
- If, for whatever reason, no such division is agreed between clients then none of them shall dispute the validity or enforceability of the limit of liability on the ground that no such division was agreed between them.

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18. Choice

Choice is important for all clients both those with and without capacity, and also for the PDS.

The PDS will, where possible, offer advice on alternative services (some of which may be free of charges), that may be of interest. The PDS will only accept instructions where it is universally accepted that in so doing, this is in the best interests of the Client.

Exceptionally, the PDS may decline instructions if there seems no prospect of its involvement being of benefit, or there is a possibility of a conflict of interest.

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19. Charges

All fees are quoted exclusive of Value Added Tax (VAT), unless otherwise stated.

19.1. Application to act for a client under a Court Appointed Deputyship

This section applies to clients who are assessed as lacking capacity to manage their own financial affairs.

PDS charges are set by or follow the rates set and approved by the Court of Protection and the High Court in London ('The Court').

These fixed charges are specifically allowed by the Court of Protection, which may allow for detailed assessment of work and charges levied, if and when appropriate.

Payment of these charges are rendered quarterly in advance and will be taken from moneys paid on account or by monthly standing order.

These charges are the subject of review from time to time by the Court of Protection.

19.1.1. Initial assessment:

An initial charge of £250, together with travel expenses, is made for a preliminary financial best interest meeting and assessment. This fee will be waived if the matter does not proceed.

19.1.2. Category 1: Work carried out prior to appointment as deputy

The Court will only approve costs incurred prior to an order if deemed necessary and essential. In such circumstances, a client's family may be asked to pay reasonable PDS fees; because an individual who lacks capacity is not capable in law of entering into legally binding agreements, it is PDS policy to agree that families of clients are legally responsible for PDS charges unless otherwise agreed.

Where the PDS is asked to act for a client before any order is made, either by their family or their Attorneys, charges will be levied at an hourly rate set by the Court as fit, proper and appropriate. These rates range from £317.00 to £153.00 per hour.

19.1.3. Category 2: Application to court

A charge not exceeding £1204 is fixed by the Court for preparing Court papers and administration of an application until the grant of order. Additional fees, for example, a medical assessment fee and/or court fee may be required and will be advised at the time.

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19.1.4. Category 3: On appointment as deputy

The applicable court order will determine the cost structure for managing the financial affairs of the client under a deputyship. The order will state whether they are 'Fixed Costs' or 'Assessed Costs' as per a) or b) below and will be set out in the **client care letter**.

a) Charging for our Services under 'Fixed Costs'

An annual management fee for acting as the deputy is payable on the anniversary of the court order appointing a deputy. The first-year fee is not exceeding £2116.00. Subsequent annual fees are £1672.00.

b) Charging for our services under 'Assessed Costs'

The PDS will manage your affairs under a deputyship, charges will be levied at an hourly rate set by the Court as fit, proper and appropriate. This translates to a range from £317.00 to £153.00 per hour.

These charges will be reviewed by the Senior Courts Costs Office (SCCO) who carry out the assessment of costs incurred by deputies appointed by the Court of Protection.

19.1.5. Category 4: Report to the Public Guardian

Preparation and lodgment of an annual report to the Office of the Public Guardian, the amount is £336.

19.1.6. Category 5: Other costs

Some additional charges, for example, mileage for visits (at standard HMRC rates), or other fees set by the Court.

19.1.7. Where a Local Authority of NHS Trust is directly funding the deputyship

Where The PDS is instructed and fully funded by a Local Authority (LA), i.e. a county council, or a National Health Service (NHS) Trust to become the deputy for a client and to subsequently manage the clients financial affairs under a Court Order then costs associated with sections 19.1.1, 19.1.2, 19.1.3, 19.1.4, 19.1.5 and 19.1.6 do not apply, for the duration of the deputyship.

Instead The PDS will provide a **client care letter** which will set out charges for the equivalent categories of work in sections 19.1.1, 19.1.2, 19.1.3, 19.1.4, 19.1.5 and 19.1.6 for each client that The PDS takes instruction.

The charges set out in the client care letter will be under annual review.

19.2. Application to act for a client under a Lasting Power of Attorney

This section applies to clients who have capacity to manage their own financial affairs, either by themselves or their Attorneys in which the client is requesting that an LPA is issued by the Office of the Public Guardian (OPG) with The PDS nominated as the client's Attorney.

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Payment of these charges are rendered quarterly in arrears and will be taken from monies paid on account or by monthly standing order.

These charges are the subject of review from time to time by The PDS.

19.2.1. Initial assessment:

An initial charge of £250, together with travel expenses, is made for a preliminary financial best interest meeting and assessment. This fee will be waived if the matter does not proceed.

19.2.2. Category 1: Work carried out prior to appointment

Where the PDS is asked to act for a client before any LPA is issued, either by their family or their Attorneys, charges will be levied at an hourly rate set by the Court as fit, proper and appropriate. These rates range from £317.00 to £153.00 per hour.

19.2.3. Category 2: Application to the Public Guardian

A charge not exceeding £1204 is charged for preparing lasting power of attorney papers and administration of an application until the grant of LPA. Additional fees, for example, an application fee may be required and will be advised at the time.

19.2.4. Category 3: Managing your affairs under an LPA

The PDS will manage your affairs under a Lasting Power of Attorney (LPA), under the charging structure a) or b) below.

a) Clients in receipt of means tested benefits

The PDS will seek to charge no more than that which the Court allows under section 19.1.4.a If it is not possible to manage your affairs for this sum, then in agreement with the Client the PDS will assess the level of work, based on several hours per month, necessary to manage the Client's financial affairs. This will be set out in the **client care letter** and will be reviewed periodically.

b) Or clients not in receipt of means tested benefits

The PDS will manage your affairs under a lasting power of attorney, charges will be levied at an hourly rate set by the Court as fit, proper and appropriate. This translates to a range from £317.00 to £153.00 per hour. These charges will be independently assessed before an account is rendered.

19.2.5. Category 4: Other costs

Some additional charges, for example, mileage for visits (at standard HMRC rates), or other fees set by the Court may obtain.

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19.3. Instruction to create or amend a will

If a Client has capacity, but does not have a will or needs changes made to their will, an estimate of the time and cost will be provided. The charges will be levied at an hourly rate set by the Court as fit, proper and appropriate. This translates to a range £317.00 to £153.00 per hour. These charges will be independently assessed before an account is rendered in accordance with the hourly rates set out above. These costs will be charged as above and any independent assessment of the appropriate charges will be deemed due and payable irrespective of any failure to provide any estimate.

19.4. Instruction to create or amend an LPA

If a Client has capacity, but does not have an LPA or needs changes made to their LPA, an estimate of the time and cost will be provided. The charges will be levied at an hourly rate set by the Court as fit, proper and appropriate. This translates to a range from £317.00 to £153.00 per hour. These charges will be independently assessed before an account is rendered in accordance with the hourly rates set out above. These costs will be charged as above and any independent assessment of the appropriate charges will be deemed due and payable irrespective of any failure to provide any estimate.

Some additional charges, for example, registration of LPAs with the Office for the Public Guardian will apply.

19.5. Where a deputyship or LPA have been discharged

In order to support the transition of financial affairs of the client to a new deputy or appointee, The PDS will act under instruction of the new deputy or appointee, via a **client care letter**.

The PDS charges will be levied at an hourly rate set by the Court as fit, proper and appropriate. This translates to a range from £317.00 to £153.00 per hour. These charges will be independently assessed before an account is rendered in accordance with the hourly rates set out above.

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