

# Professional Guardians' Scheme

## Terms and Conditions

### 1. Definitions and Interpretation

**Professional Guardians' scheme (referred to as 'the Scheme')** means the Scheme operated by OPG and open to eligible firms of professionals who have five guardianship cases or more.

**Membership by Firm** means the Firm which is a member of the Scheme as opposed to individual professionals within the Firm. Firms must have five or more guardianship cases initially to join the scheme.

**Scheme Members** means individuals who work within the Firm.

**Nominate Scheme Owner (NSO)** means a person within the Firm who has authority to address any issues in relation to the Scheme or how individuals within the Firm operate the Scheme.

**OPG Account Manager** means a designated member of the OPG team who will contact the NSO, or the individual professional financial guardian who is submitting accounts, to provide feedback and support.

**Declaration and Account Summary** means the form that is completed and signed for each account due under the Scheme. The information is a summary of the actual account which may be called upon by OPG. The summary includes:

1. general information about the case, the account balances and any changes since the last account; and
2. that it is a true and fair reflection of the transactions with the adult's estate during the period of the account.

The declaration signed by the financial guardian:

1. confirms that the work carried out and that any fees and remuneration taken are in line with the Adults with Incapacity (Scotland) 2000 Act and the [Code of Practice](#) issued by the Scottish Government; and
2. that all information relating to the account is kept and can be called upon at any time by OPG.

**Full Review** means a full account for the accounting period is completed and evidence is provided to support the information detailed in the account form.

**Random Sampling** means we will only call for a random % of cases to be submitted for a full review (excluding first and final accounts).

**Clean Standard** means accounts falling under the scheme must meet a quality standard, which we refer to as 'a clean account'. We will operate a point system and score against a number of [basic questions](#). The point system will be applied to the accounts we randomly sample for the full review. A 90% pass mark will be set to ensure that accounts meet our clean standard. Members who continue to meet the 90% standard, will have the percentage of accounts to be fully reviewed reduced on sliding scale of 100%, 50%, 25% and 10%.

**OPG** means the Office of the Public Guardian.

**Website** means the OPG website.

**These terms and conditions** mean the terms and conditions set out in this document.

## 2. General

2.1 These terms and conditions govern the use of the Scheme and have contractual effect between the OPG and each Firm and are governed by the law of Scotland.

2.2 The OPG reserves the right to alter these terms and conditions from time to time and will publish the current version on the website.

## 3. Obligations of Membership of Scheme by Firm

3.1 Each Firm undertakes that it, and any other person authorised by it, will not do or omit to do anything that will or may adversely affect the operation or integrity of the Scheme.

3.2 If a Firm at any time

(a) ceases to comply with these terms and conditions, or

(b) becomes aware that its ability to maintain its compliance with them is impaired or likely to become impaired,

it must notify OPG immediately of this fact and its membership of the Scheme shall be suspended until such time as the Firm can demonstrate to the reasonable satisfaction of the OPG its ability to maintain compliance with these terms and conditions.

3.3 Membership of the Scheme may not be used in contravention of any legislation currently in force.

## 4. Participation in the Scheme

4.1 Eligible Firms wishing to join the Scheme must complete an application form, which will be available from the OPG, and nominate their NSO and detail all current guardianship cases.

- 4.2 To be eligible to join the Scheme, the Firm must have five or more live guardianship cases.
- 4.3 Each Firm shall nominate a Scheme owner (known as NSO). This shall be a person within the Firm who has authority to address any issues in relation to the Scheme or how individuals within the firm operate the Scheme.
- 4.4 If the NSO leaves the firm that person will inform OPG that they will no longer act as the NSO. To remain in the Scheme, the Firm must identify a new NSO who will then contact the OPG to advise of the change.
- 4.5 The NSO must complete mandatory training provided by OPG.
- 4.6 The NSO will ensure that those within the Firm who complete and submit the accounts will also attend the mandatory training.
- 4.7 The OPG will provide mandatory training which will outline the Scheme rules, as well as the expected standard and quality of accounts which will be accepted. Firms are expected to meet the 90% standard. In meeting this standard, Firms will progress to a reduced % of cases reviewed under random sampling, and remain in the Scheme.
- 4.8 All accounts will be completed using the OPG accounting form only. Accounts of charge and discharge are not acceptable.
- 4.9 A full account will be completed by the financial guardians for all cases in compliance with guidance issued by Law Society of Scotland. All accounts will be completed at the end of the account period, whether they are called for sampling or a full review. The OPG has the right to call for any account to be subject to a full review.
- 4.10 All first and final accounts will be subject to a full review. All intermediate accounts will fall under the Scheme rules and will be subject to random sampling.
- 4.11 An annual declaration and account summary will be completed for all intermediate accounts and submitted timeously to the OPG. If requested to do so by the OPG, the financial guardian will make the full account and supporting information available within the prescribed timescales.
- 4.12 The OPG will identify, at a point during each year, which of the Firm's accounts will be called on for a full review over the next 12 month period. On receipt of the Annual Declaration and Account Summary, the OPG will check and identify if a full review is required and, if so, inform the Firm.
- 4.13 Random sampling will be applied to a Firm when it continues to meet the 90% clean standard. The OPG will review the Firm's performance on an annual basis. The percentage of the Firm's accounts to be fully reviewed will decrease when that standard is met.
- 4.14 The OPG will publish and make available the checklist used to score accounts against the 90% clean standard.
- 4.15 The OPG will review and amend the checklist from time to time to ensure the success of the Scheme. Any amendments will be published on the website and each Firm will be notified.

- 4.16 If Scheme Members within the Firm do not meet the standard, OPG will contact the NSO to discuss issues and agree how and for how long performance will be measured.
- 4.17 If a Firm does not meet the standard, the OPG will increase the percentage of checks or, where it considers necessary, remove the Firm from the Scheme.
- 4.18 The OPG will provide a dedicated mailbox for enquiries to be sent to.
- 4.19 The annual declaration and account summary form may be submitted to the OPG by post or electronically via the dedicated mailbox.
- 4.20 The OPG will assign a designated Account Manager to the Firm. The Account Manager will provide regular feedback and support in order to help members meet the clean standard.
- 4.21 The financial guardian will notify the OPG if the Adult or the financial guardian changes address.
- 4.22 If a Firm merges with another Firm which is already on the Scheme, the Firm will identify an NSO who will act for the merged Firm and have responsibility for the cases of each of the pre-merger Firms. The merged Firm will notify OPG of the details of the new NSO.
- 4.23 If a Firm merges with another firm which is not part of the Scheme, the existing NSO of the Firm which is part of the Scheme will confirm to the OPG if they wish to act as NSO for with responsibility for the cases of each of the pre-merger Firms. If they do not wish to act as such an NSO, the cases belonging to the non-Scheme Firm will not be included in the Scheme.
- 4.24 If the NSO or a solicitor in the Firm is appointed as a financial guardian and they leave the Firm to join another Firm, their guardianship cases will move with them. If their new Firm has not joined the Scheme, their membership of the Scheme will terminate.
- 4.25 The criteria below will apply to all completed accounts and all financial guardians will be expected to ensure :
- Caution will be renewed and put place
  - Contact has occurred on at least two separate occasions with the adult, the primary carer, nearest relative and/or any other interested party
  - Any account holding more than £500 of the adult's funds is held in an account in the adult's name thus in accordance with Schedule 2(S4) of the Act. This may be a client account but must be in the adult's sole name. Any excess funds, over and above those meeting monthly living costs, should be transferred to an account in the adult's name. OPG can be flexible should the global funds slightly exceed this amount.
  - Bank statements for an adult's account are provided and form part of the supporting documentation when submitting an annual account. Client ledgers are accompanied with the relevant bank statements.
  - The account accurately reflects the position of the estate over the period being reviewed
  - All entries in the summary and declaration form and in the full account match the evidence submitted

- Monies due to the adult have not been added or deducted to match opening and closing balances in the summary and declaration form or account form
- That the closing balances on the summary and declaration form or account form match bank statements regardless of what is stated in the client ledger
- Transactions occurring out with the account period are not included on the summary and declaration form or account form
- All fees for legal work are charged separately and evidenced
- No professional fees will be taken for actions carried out as routine guardianship functions
- Travel costs will be taken at the allowed mileage rate which is currently 31.4p per mile
- Remuneration and interim remuneration is exclusive of VAT and will be taken only when awarded and within 12 months of the award.

4.26 A Firm may be a member of and operate under the Scheme only in accordance with these terms and conditions. On applying to join the Scheme, the NSO must have and demonstrate sufficient authority to agree to these terms and conditions on behalf of the Firm.

4.27 OPG may by notice impose additional conditions on the Firm which OPG acting reasonably considers appropriate to protect the integrity or stability of the Scheme.

## 5. Registration Fees

5.1 A reduced fee will be due when a Summary and Declaration form has been submitted in lieu of a full review. The full fee will be due when a full review is carried out. The current fees table can be viewed on the website.

5.2 Payment can be made by BACS transfer, debit or credit card or by cheque.

5.3 A fee exemption scheme is available if the adult is entitled to this.

## 6. The OPG's right to request documents and evidence

6.1 The OPG reserves the right to ask at any time for sight of the full accounting and all supporting information when a Summary and Account Declaration submitted.

6.2 All information relating to the account must be kept as it may be called upon at any time by the OPG.