

# Basis for assessing reasonable care costs

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On an application by the Public Guardian concerned about the payments a deputy had awarded himself for full time care of his mentally incapacitated mother, the Court of Protection judge (Senior Judge Lush) confirmed how the court assesses the reasonableness of claims for the costs of care provided by family members (sometimes referred to as "gratuitous" care allowances).

The court uses the criteria applied by the Queen's Bench Division of the High Court in quantifying care costs as a head of damages in personal injury litigation. It will normally take the commercial cost of care as a ceiling and reduce it by 20%. The percentage reduction takes account of HMRC's view that payments to family members are voluntary, rather than part of their income, so that they will not be subject to income tax at the basic rate.

The court retrospectively approved the payments made to the deputy and his sister to cover the care services they had provided and ordered that future payments could be index-linked in accordance with the care workers and home carers code.

This case highlights a point that will be of interest to deputies in considering how much they can reasonably pay family members of an incapacitated person for providing care.

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