



Court of Protection Deputyship

What is the Court of Protection?

The Court of Protection is a specialist Court which looks after the affairs of people who lack the mental capacity to make decisions for themselves regarding their property, affairs or personal welfare

The Court will only usually intervene when there is nobody with authority to deal with the person's affairs (ie no attorney has been appointed under an Enduring or Lasting Power of Attorney) or where concerns are raised about the person with that authority. The Court is able to make a wide variety of Orders relating to people who lack capacity, the most common of which are Deputyship Orders.

Sometimes it may be necessary to apply to the Court for an Order even though there is an Enduring or Lasting Power of Attorney (EPA or LPA) in place. This might be the case where the attorney requires authority to make gifts from the person's assets or to make a Will on their behalf.

Orders authorising specific one-off actions are not Deputyship Orders but a Deputy might need to make such applications during the course of their Deputyship.

What is a Deputyship Order?

A Deputyship Order is an Order of the Court of Protection appointing one or more people to act as Deputies. The people appointed as Deputies are given the authority to make decisions on behalf of someone who lacks capacity to make decisions for themselves. Normally a Deputyship Order will only be required if there is no effective LPA or EPA in place and so no attorneys who can act on the person's behalf. The Order authorises the Deputies to act as such and sets out their powers. Deputies may only act in accordance with the terms of the Order which can be quite restrictive.

If a Deputy wishes to take any action which is not authorised by the Deputyship Order then they must apply to the Court for a further Order.

Types of Deputyship

There are two distinct types of Deputyship which are:

- Property and Affairs: relating to decisions about property and financial affairs, including the sale and purchase of houses and dealing with bank accounts and investments; and
- Personal Welfare: relating to decisions about health and personal welfare including medical treatment and residence.

A Property and Affairs Deputyship is much more common than a Personal Welfare Deputyship. It is unusual for the Court to grant an ongoing Order appointing someone as a Personal Welfare Deputy. Instead the Court will decide issues as they arise and make specific Orders as required.

Who can be a Deputy?

Any person who is aged 18 or over, is not a bankrupt and who is capable of acting may apply to be appointed as a Deputy. In most cases the person applying will be a spouse, partner or close relative, but a professional such as a solicitor or social worker may be appointed in certain cases.

Anyone applying to be appointed as a Deputy must supply relevant personal information to the Court to enable the Court to decide whether or not to appoint that person.

How do I apply to be a Deputy?

To apply to become a Deputy you must complete an application form and submit that to the Court together with information about the patient and their finances. You must also obtain a medical report confirming that the patient lacks capacity to send to the Court.

Once the Court has received all of the necessary forms, the Court will consider the matter and issue directions. Normally this will require you to serve notice on the patient and relatives. This give other interested parties the opportunity to support or object to your application. The Court will then consider any additional information before making a decision as to whether or not to grant the requested Order.

If applying for a Health and Welfare Deputyship Order you must first ask the Court for permission to apply for the Order.

The whole application process can often take six months or more to complete.

What Powers does the Deputy have?

The Deputy's powers derive from the Deputyship Order made by the Court of Protection. The Deputy cannot exceed or do anything which is not specifically authorised by the Order.

Typically a Property and Affairs Deputy would have authority to manage the patient's property and financial affairs including selling property and making investments as well as settling debts and liabilities. If the patient's assets were considerable, the Deputy would be required to take professional advice about the best way to manage them.

The Deputy would not normally have authority to purchase land, make gifts or prepare a Will on the patient's behalf. A further, specific Order would be required for that.

What are the Deputy's duties?

The Deputy must comply with the terms of the Order appointing them and with the principles set out in the Mental Capacity Act 2005. In particular the Deputy must always act in the patient's best interests.

The Deputy must also comply with any specific requirements placed on them by the Court which will include a requirement to submit annual accounts to the Court for approval.

How is the Deputy supervised?

The Court, through the Office of the Public Guardian will supervise the Deputy's activities. The level of supervision will depend on a number of factors including the status of the patient, the value of their assets and the Deputy's knowledge and experience. The Deputy's precise reporting obligations will depend on the level of supervision.

In all cases an official visitor will meet with the patient and Deputy from time to time to ensure that the Deputy is acting properly. Again the regularity of these visits will depend on the level of supervision required.

All Deputies are required to put in place a security bond to cover the patient's assets in case of any wrongdoing by the Deputy. In such a case the security bond would reimburse the patient and the bond provider would seek payment from the Deputy personally.

How does the Deputyship end?

There are five main reasons why a Deputyship will end:

- The person who lacks capacity dies.
- The person recovers capacity.
- The Order is limited in time and expires.
- It is discharged by Order of the Court of Protection.
- On application by the Deputy, if they wish to retire or resign.

The Process

When you instruct us to make an application to the Court of Protection, we will take the following steps on your behalf:

- Meet you to take your instructions and advise you about the application process.
- Liaise with the patient's doctor to obtain any necessary medical evidence.
- In the case of a Health and Welfare application only, seek the Court's permission to apply for a Deputyship Order.
- Prepare the appropriate application and supporting forms and submit your application to the Court.
- Liaise with the Court as necessary during the course of the application.
- If the Court is willing to make the Order we will issue the required notices to the relevant people.
- Assist you to put in place any required security bond.
- Prepare any further documents required by the Court to issue the Order.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.