

Wills, Trusts and Probate Briefings

Deputyship under the Court of Protection

About Deputies

- A Deputy is a person appointed the Court of Protection to be legally responsible for someone who lacks capacity to make decisions for themselves where there is no Enduring or Lasting Power of Attorney.
- The lack of capacity may be because of any impairment of or disturbance in the functioning of the mind, or brain such as dementia or a stroke.
- The Court of Protection's order will set out the Deputy's powers.
- The powers may relate, for example, to the person's finances, property or accommodation (including where they live or whether they go into care), their medical treatment and other healthcare issues, and their personal welfare, eg what clothes they wear, and anything needed for their general care and well-being. The powers given depend on the person's needs.
- If a decision is complex or difficult, the Court of Protection recommends that the Deputy takes legal advice. Fees can be paid from the funds of the person lacking capacity.

Who can be Deputy

- A Deputy must be over 18 and is often a family member or friend, although anyone can apply to the Court of Protection to be appointed.
- The proposed deputy completes a set of application forms and the Patient's doctor completes a medical report - no Court hearing is required. An application fee is payable, which can be recovered from the funds of the person lacking capacity.
- If a family member or friend is not willing to act, a professional adviser can be appointed. Again, professional fees are payable from the funds of the person lacking capacity.

Deputies' duties

- Deputies must comply with the order appointing them.
- They must also comply with five statutory principles in the Mental Capacity Act 2005 ('the Act'):
 - Every adult has the right to make decisions, and must be assumed to have capacity unless it is proven otherwise.
 - People must be given all appropriate help before they can be considered unable to make their own decisions.
 - Individuals have the right to make unwise decisions, including decisions that others may consider eccentric.
 - Anything done for or on behalf of a person who lacks capacity must be in their 'best interests'.
 - Anything done for them or on their behalf should be the least restrictive of their basic rights and freedoms.
- Deputies are under a duty to apply a high standard of care when making decisions.

Restrictions

- There are certain things a Deputy cannot do, including:
 - Make a will or create a trust for the person lacking capacity.
 - Exercise that person's powers as trustee.
 - Make a decision to physically restrain the person, unless it is necessary to prevent them coming to harm.
 - Make a decision that contradicts a decision made by an Attorney who was acting under a Lasting Power of Attorney.
 - Refuse consent to any medical treatment to keep the person alive.
 - Decide who the person can and cannot communicate with.

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- If the Deputy is in doubt whether they have power to make a particular decision or if they have a conflict of interest with the decision to be made they can apply to the Court for guidance.

Liabilities

- A Deputy who complies with the Act, the Code and the Order appointing them is unlikely to incur any legal liabilities.
- If a Deputy acts beyond their powers, or does not carry out their responsibilities properly, for example, they fail to claim benefits so there is financial loss, the Court may enforce any security bond, or authorise legal action against them.

Supervision

- Each Deputy is assessed to see what level of supervision they need from the Office of the Public Guardian ('OPG'). Supervision fees are payable from the funds of the person lacking capacity.
- Supervision may involve ongoing OPG support; a requirement to submit report and accounts periodically; or a Court Visitor checking how the Deputyship is being managed.
- The level of support and supervision received is regularly assessed.

Payments to Deputies

- Deputies can be reimbursed reasonable and legitimate expenses, such as telephone calls, travel and postage. If these exceed £500, they may have to explain why.
- Deputies are not entitled to remuneration unless the order appointing them authorises it.

Ending a Deputyship

- A Deputyship ends automatically if:
 - The person lacking capacity recovers or dies.
 - The order expires.
- If the person becomes able to make their own decisions, the order stays in force until it expires or is discharged by another Court order.
- A Deputy who cannot, or does not want to, remain a Deputy must apply to the court to have their order discharged.
- The Court can also discharge a Deputy who it believes has acted improperly, eg not in the person's best interests.

This is a complicated area and we can assist you with your application for Deputyship and guide you in the performance of your duties or act as Deputy where there is no suitable alternative.