

Acting as a professional deputy

What is a deputy and why appoint one?

Where an individual is not capable of making certain decisions for themselves, and this has been formally assessed by a relevant professional, they are deemed to lack 'capacity' in that area. In that case the Court of Protection can appoint a deputy to make those decisions which the client lacks the capacity to make. A deputy is responsible for making decisions for someone until either the person they are looking after dies, is able to make decisions on their own again, or until someone else takes over as deputy.

The appointment is made to afford the deputy with a sufficient amount of autonomy so that they can make determinations without the need to defer to the Court each time a decision needs to be made, as this would be time consuming, expensive and it would result in unnecessary and potentially damaging delays to the client. However, a deputy has a wide range of legal and moral responsibilities towards the client and therefore, despite not involving the Court each time a decision is made, a deputy will need to carefully consider all of the available information, as well as follow certain principles, each time they do make a decision on the client's behalf.

What types of deputyship are there?

There are two distinct areas within the Court of Protection where a deputy can be appointed to act either in relation to a person's property and financial affairs or their personal health and welfare.

There can be more than one person appointed as deputy to each type or one deputy can be appointed to look after both aspects of the client's life (although this is not very common).

A property and affairs deputyship appointment is more common because the issues tend to be fairly straightforward, less subjective and more suited to a general power of management and administration. Health and welfare deputyship orders can be, and are, made but these are less common because often the issues involved are more complex and they can often be the subject of intense disagreement, usually involving family members but also including the local authority, NHS and other third-party professionals.

We act as professional deputies under both types of Order, but more commonly in relation to a person's property and affairs.

A health and welfare deputyship may be required to enable a deputy to make general welfare decisions on the incapacitated person's behalf which do not justify an application to Court on every occasion. These decisions will usually relate to routine medical treatment, the administration of medication and matters relating to general day to day living. Where a more important welfare decision needs to be made, including issues relating to the contact a client has with family members or friends, where that person may live and what serious medical treatment or care they may receive, an application will still generally need to be made to the Court seeking an order or declaration.

A deputy must only make decisions in the client's best interests, only make the decisions the Court says they can make and apply a high standard of care when making decisions. Neither the Court nor a Deputy has the authority to make a decision which the client has capacity to make for themselves. Certain powers are also expressly reserved to the Court, in particular:

- The commencement of legal proceedings
- The making of a settlement or Will, or an amendment to a Will (see [Statutory Wills](#))
- The making of a large gift (see [gift applications](#))
- Whether to stop life-sustaining medical treatment

Who can act as a deputy?

Deputies must be over 18 and of sound character (therefore criminal convictions and bankruptcy may impede an application). It is also an expectation that the proposed deputy will have a close connection to the incapacitated party, or they will be a qualified professional.

The first port of call, when a deputy is required for an incapacitated individual, is to see if a close friend or relative of the person is able to act. This is often sensible in cases where limited decisions need to be made, where there is consensus amongst family members about treatment or financial decisions or where the person's assets are of a limited value and fairly straightforward in their management.

There are however certain situations where it is more appropriate for a professional deputy to be appointed (usually a solicitor) instead of a family member and this is often where the client has no family members or close friends, the case is complicated due to the size or value of the estate, there is a family conflict or there are no suitable family members willing or able to take on this role. There can also be practical limitations in some cases, usually where the client has significant assets, in that non-professional deputies can struggle to secure insurance to protect the client in the event of them mismanaging the client's affairs (all deputies must take out insurance). This can then result in a professional deputy being required, even if a lay deputy was originally proposed.

It is also largely accepted that where there has been a large personal injury claim, the appointment of a professional deputy is usually preferred. The deputyship costs (solicitor's fees) are ordinarily claimed as part of the claimant's special damages, and therefore, the professional management of the client's award is at no extra cost to them.

Family members of brain injured and vulnerable clients often say that one of their worst difficulties is saying "no" to their injured relative when requests for money are made. Many will confirm that it is a huge relief to have a deputy managing the finances and lifting this burden from them.

What is the role of a financial deputy?

The role of a deputy is an important one that carries a great deal of responsibility with it. A deputy steps into the client's shoes, and "becomes" them for all financial purposes.

A property and affairs deputy must involve themselves fully in every aspect of the client's life that will have an impact on their personal and financial situation. To some extent this may involve stepping outside what might be perceived as the strict role of a deputy and becoming involved in any decision that has a cost implication (where a financial deputy is appointed) .

However, the requirement to act in a person's best interests is a fundamental part of the Mental Capacity Act 2005. A deputy (or any other person or body making a decision on behalf of another who lacks capacity to make that decision) is required by the Act to act in that person's best interests. If the client has capacity to make their own decision, that right must be respected.

On a practical level, the tasks facing a deputy are extensive, and they will often need to undertake the following;

- Deal with the payment of all the client's bills and put in place a structure such that their cash needs can be adequately met whilst also protecting the client from their vulnerability in handling cash
- Liaise with the client and the rest of the family over cash needs, bill payments, reimbursement for items bought on the client's behalf and authorisation for how and when such items may be purchased
- Employ the services of a professional in order to manage the investment of the client's monies
- Liaise with the client and the rest of the family regarding financial and investment decisions
- Monitor the client's income and capital gains tax position
- Deal with the recruitment, monitoring and payment of carers
- Attend meetings regarding the client's care and wellbeing with Court of Protection Visitors, case managers, care workers, social workers and other family members
- Deal with the purchase and adaptation of a property for the client to live in

- Deal with the purchase and adaptation of a vehicle for the client to use
- Deal with the purchase of other significant items for the client such as wheelchairs and therapy equipment
- Ensure the client's property, contents and vehicle are properly maintained, serviced and insured, including the employment of persons needed to carry out maintenance, such as gardeners and handymen;
- Obtain quotes for significant works that need to be carried out, in order to ascertain who will provide the best service at the most appropriate price;
- Liaise with persons with whom a client with limited capacity, may have sought to contract to carry out works on the property, deal with the termination of contracts and payment or otherwise for services rendered;
- Spend time educating the client as to what they can and can't do with their money, help them budget and plan financially;
- Ensure the client receives all the state benefits they are entitled to.

Supervision/Termination

The Court will order that the deputy is required to make regular reports to the Office of the Public Guardian (OPG). The OPG supervises all deputies, both lay and professional, across the UK and this is to make sure that the deputy is acting in the incapacitated person's best interests.

The deputy must keep a record of any decisions they make, including making a major investments, changing the care a person is receiving or deciding where someone should live.

The deputy must keep copies of any documents about decisions they have made, including receipts, bank statements, letters and reports from health agencies or social services and the deputy will usually have to complete a report once a year detailing all of this information, which is then submitted to the Office of the Public Guardian (the administrative arm of the Court of Protection).

The Court can set different levels of supervision depending on the complexity and value of the estate of the client, the relationship between the client and the deputy and the types of decisions that the deputy is allowed to make.

The powers of the Court and the authority and role of a deputy are governed by the Mental Capacity Act 2005, the Code of Practice and the Court of Protection Rules.

Contacts

If you would like to discuss the appointment of a professional deputy then please [contact us](#) for further information.

Further useful contacts are:

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