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The Appointment of a Deputy by The Court Of Protection

What is a Deputy?

A Deputy is someone appointed by the Court of Protection to make decisions for another person who is mentally incapable of making those decisions for him or herself.

What types of decision can a Deputy make?

The decisions a Deputy can make will be set out in the Deputy Order when the Deputy is appointed. Such decisions can include those involving finance, property, serious medical treatment, social care and personal welfare.

This contrasts with the position of a Receiver. Prior to the implementation of the Mental Capacity Act 2005, the previous Court of Protection was able to appoint a Receiver to look after the financial affairs of another person who was mentally incapable of managing them. Since the implementation of the Mental Capacity Act 2005, the new Court of Protection is able to appoint a Deputy to make decisions on health and welfare issues as well as on financial matters.

Who can be a Deputy?

It is for the Court to decide who to appoint as a Deputy. Different skills may be required depending on whether the Deputy's decisions will be about a person's welfare or their finances, or both.

In the majority of cases the Deputy is likely to be a family member or someone who knows the person well. In some cases the Court may appoint a Deputy who is independent of the family, such as the Director of Adult Services in the relevant local authority, or a professional deputy (such as a solicitor).

Deputies must be at least 18 years of age. Deputies with responsibility for property and affairs can be either an individual or a trust corporation.

Two or more Deputies can be appointed to act "jointly", "jointly and severally" or "jointly in respect of some matters and jointly and severally in respect of others".

When might a Deputy be appointed?

The Court will appoint a Deputy to manage a person's property and affairs in similar circumstances to those in which they would have appointed a Receiver in the past.

A Deputy may be appointed if there is a need for on-going decision making powers and the person who loses capacity has not made an Enduring Power of Attorney or Lasting Power of Attorney. The Court will state what decisions the Deputy has authority to make on the person's behalf.

Where possible the Court will make the necessary decision itself rather than appointing a Deputy and if a Deputy is appointed the Court will limit the appointment both in scope and time.

What are the duties of a Deputy?

A Deputy must:

- Make decisions in the person's best interests;
- Make only those decisions authorised by the Court Order;
- Have regard to all the relevant guidance in the Code of Practice published by the Office of the Public Guardian ("OPG");
- Adhere to the Act's five statutory principles;
- Apply a high standard of care when making decisions.

What are the five statutory principles of the Act?

The five statutory principles of the Mental Capacity Act 2005 are as follows:

1. Every adult has the right to make his or her own decisions and must be assumed to have capacity unless it is proven otherwise.

2. People must be given all appropriate help before they can be considered unable to make their own decisions.
3. Individuals have the right to make unwise decisions, including decisions that others may consider eccentric.
4. Anything done for or on behalf of a person who lacks capacity must be done in their best interests.
5. Everything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

What is the role of the Office of the Public Guardian?

The OPG is responsible for ensuring that Deputies act in the best interests of the person who lacks capacity and that they follow the directions of the Court.

The level of support and supervision the OPG allocates to a Deputy is decided after carrying out an assessment of the individual circumstances of the case, based on the complexity of the affairs of the person who lacks capacity, the types of decisions that have to be made, care requirements of the person who lacks capacity and the relationship between the Deputy and the person who lacks capacity.

There are three levels of supervision. Supervision fees must be paid to the OPG, depending on the level of supervision.

If the OPG considers that a Deputy has not acted in the best interests of the person who has lost capacity it may discharge the Deputy.

When do the powers of the Deputy end?

The powers of a Deputy will end if;

- The person who lacks capacity recovers;
- The order ends;
- The person who lacks capacity dies;
- The Deputy dies or retires;
- The Court discharges the Deputy.

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