



Deputyship

What is a deputy?

- A person appointed by the Court of Protection (Court) to manage the property and financial affairs and/or (in very rare cases) to make health and welfare decisions on behalf of someone who lacks capacity. The Court refers to the person lacking capacity as "P".

Who can be appointed?

- A deputy must be an individual aged 18 or over.
- A deputy will usually be a member of the family or friend but a professional adviser, such as a solicitor, can be appointed.
- The Court may appoint more than one deputy who can act jointly, jointly and separately or jointly for some matters and separately for others.

How to apply?

- An application for a Deputyship Order must be made to the Court using a set of application forms which can be downloaded or obtained by post from the Office of the Public Guardian (OPG). The Court assesses the suitability of each deputy from the information provided in these forms.
- An assessment of capacity form will need to be completed by P's healthcare professional and submitted with the application.
- The application fee is £400 with an additional £125 (deputy set-up fee) payable on appointment.

What are the powers, duties and responsibilities of deputies?

- The deputy's powers are set out in the Deputyship Order.
- The deputy's powers may apply to P's financial affairs i.e. to take control of P's property and finances or their personal welfare, e.g. consenting to medical treatment.
- The document 'COP4: Deputy's declaration' (which must be submitted with the Court application) sets out the main responsibilities of deputies.

The deputy must:

- ensure they always act in P's best interests;
- only make decisions authorised by the Deputyship Order;
- follow the Mental Capacity Act 2005's statutory principles;
- have regard to all relevant guidance in the Code of Practice (which provides guidance and information as to how the Mental Capacity Act works in practice); and apply a high standard of care when making decisions.



Are there any restrictions on a deputy?

A deputy may not:

- prevent a person from having contact with P;
- make a decision for P if they believe P has capacity to make that decision themselves;
- refuse consent to the carrying out or continuation of life-sustaining treatment;
- go against a decision made by an attorney acting under a Lasting Power of Attorney granted by P;
- make gifts from P's funds except in very limited circumstances;
- make a Will for P (unless authorised to make a Statutory Will by an order of the Court) or exercise any power vested in P as trustee.

How are deputies supervised?

- The OPG assesses each deputy to decide the appropriate level of supervision.
- In practice, supervision could involve ensuring the deputy complies with the Court Order (e.g. by providing annual reports to the OPG), a Court of Protection Visitor checking how the deputyship is working, and/or regular contact with the deputy or others with an interest in P's welfare
- A fee is charged for the OPG's supervision. This is usually paid from P's funds

When does a deputyship end?

- If P recovers;
- if the Court Order appointing the deputy expires;
- when P dies;
- if the deputy is unable or does not want to continue as a deputy. In this case they must apply to the Court for the Order to be discharged;
- the Court may end the deputy's role e.g. If he has not acted in P's best interests or not carried out his duties correctly.