



## **Court of Protection Deputyship Order**

### **What is a Deputy?**

A Deputy is a person appointed by the Court of Protection to manage the personal welfare or the property and affairs of another person, who lacks the mental capacity to manage them themselves. A Deputy can only act under an Order made by the Court of Protection, which sets out the Deputy's powers and entitles the Deputy to act on behalf of the person lacking capacity.

Where the person lacking mental capacity made a Lasting Power of Attorney ('LPA') prior to losing mental capacity, a Deputy will not be required. Provided the LPA has been properly registered, the Attorney can continue to make decisions on behalf of the person lacking capacity.

An LPA provides the person making it with greater control, particularly in relation to their choice of Attorney and what powers they bestow upon their chosen Attorney(s). However, an LPA must be made prior to the person making it losing mental capacity. On the other hand, where no LPA has been made, a Deputyship application is made by a third party, after the person to whom the application relates, loses capacity.

### **Why Set Up a Deputyship?**

A Deputyship may be required for a person who lacks mental capacity and who has assets that need to be administered or decisions taken about their personal welfare e.g. there may come a time where a person with dementia will need a Deputy to collect their income and benefits and sell assets in order to pay care home fees. Similarly a person suffering from a brain injury would need a Deputy to administer his /her affairs, to pay for an ongoing care plan or to make decisions about medical treatment.

## **Types of Deputyship**

A Deputy can be appointed by the Court to act as:

- A **Property and Affairs Deputy** - making decisions about property and financial affairs, including the sale and purchase of real property
- A **Personal Welfare Deputy** - making decisions about health and personal welfare, including treatment options. However the Deputy cannot refuse consent to life sustaining treatment

## **Who can be a Deputy?**

Any person over the age of 18 can be a Deputy though any prospective Deputy must declare any criminal convictions or bankruptcy arrangements to the court when applying to become Deputy and these could lead to the application being refused. In many cases a spouse, partner or close relative will be the Deputy. In cases where there is no-one able or willing to take the role then the local authority can do so (in low value estates) or a professional Deputy (e.g. a solicitor) can be appointed. Where the person lacking capacity has a large estate then a professional Deputy will almost always be appropriate.

## **What are the Powers and Duties of a Deputy?**

A Deputy's powers derive from the Deputyship Order made by the Court of Protection and the Deputy cannot exceed those powers. The order may give wide powers to the Deputy, or it could set limits to those powers e.g. stipulating that large items of expenditure or investment cannot take place without obtaining the further permission of the Court.

The Deputy's duties are set out in the Mental Capacity Act 2005 and in particular follow the general principles set out in the Act:

- A person must be assumed to have capacity unless it is shown otherwise
- A person cannot be treated as unable to make a decision until all practicable steps have been taken to help him, without success
- A person cannot be treated as lacking capacity merely because he wishes to make an unwise or eccentric decision

- Any decisions made on behalf of a person must be in the person's best interests
- Before making a decision, consideration must be given as to whether its purpose can be achieved in a way that is less restrictive of the person's rights and freedom

In addition to following these general principles, the Court of Protection places numerous obligations on the Deputy, as a safeguard to the person lacking capacity. These include obtaining a security bond, complying with supervision by the Court and filing annual reports and accounts.

### **Supervision and Termination of Deputyships**

When a Deputyship Order is made, the Office of the Public Guardian will allocate the Deputyship to a category of supervision. This may range from close supervision (particularly for new cases in the 1st year or two) to a light touch supervision in straightforward cases. The Deputy's reporting obligations will depend on the level of supervision.

A Deputyship Order is terminated when the person lacking capacity dies or recovers capacity, or if the order is limited in time and expires. It can also be discharged by order of the Court of Protection or on application by the Deputy, if he wishes to retire or resign.

### **Deputyship - Completing Annual Accounts**

Once the Court has made the Deputyship Order and appointed a Deputy for an individual who is unable to manage their affairs by reason of impaired mental capacity, the Deputy is required to complete an annual report.

The annual account is supplied in a prescribed form and must be filed with the Court of Protection every year. The accounts must detail the financial transactions of the previous year as well as provide further information concerning the individual's affairs.

The Court have a department which regularly deals with the completion of accounts and other such matters. The accounts department will scrutinise the financial information the Deputy has provided and in the event that anything comes to light regarding the management of the individual's affairs, the Court can advise as to these issues which may include income tax, welfare benefits, the level of a Security Bond or investment of funds.

## **The Role of a Deputy and Annual Management**

If you are appointed as a Deputy for someone lacking capacity then you are responsible for the day to day management of that person's financial affairs. This can involve matters such as:-

- dealing with various financial institutions
- completing tax returns
- liaising with the Department of Works and Pensions
- ensuring that all benefits are claimed, particularly Attendance Allowance
- taking financial advice and investing the person's funds
- dealing with carers
- approving and signing the terms and conditions of a care home

In effect, everything to do with the person's affairs.

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