

Court of Protection deputyships

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Julia Abrey

PARTNER | UK

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What is a Deputy?

A Deputy is appointed by the Court of Protection when a person lacks mental capacity to make either financial or health and welfare decisions, has not appointed anybody to act for them in these matters and day to day decisions need to be taken to manage or supervise their property and financial affairs and/or healthcare. It is one of the principles of the Mental Capacity Act 2005 (MCA) that the appointment of a Deputy should be very much a last resort – the Court of Protection prefers to make single orders in respect of specific matters rather than appointing a Deputy with ongoing responsibilities. Most Deputies are appointed for financial matters. Where it is simply impractical to assume that a person who cannot manage his property and affairs should rely on one off decisions being made by an application to the Court of Protection, a Deputy will be appointed.

Who can be a Deputy and what do they do?

The Court decides who is appointed as a Deputy as different skills may be required depending on what the Deputy wishes to do. In the majority of cases the Deputy will be a family member or someone who knows the incapable person well. In some cases, the Court appoints a professional Deputy. The Office of the Public Guardian (OPG) has a panel of professional Deputies who may be appointed for unusually complex property and affairs matters. A Deputy must be over the age of 18. More than one Deputy can be appointed but this is unusual. It is possible to appoint a health and welfare Deputy, but appointments are only made in unusual cases where a series of ongoing welfare or healthcare decisions are needed. The Court can also appoint a hybrid – a Deputy who has both financial and health and welfare responsibilities.

Becoming a Deputy

Becoming a Deputy requires an application to the Court of Protection. The application process for a financial deputy tells the Court about the assets, liabilities, income and expenses of the vulnerable person for whom a Deputy is required. The Court also requires confirmation from a doctor that the person does not have sufficient mental capacity to deal with their finances on their own. The Court will want to know a number of other facts about the vulnerable person including:

- their family structure and who their friends are;
- whether they have a Will or are involved in any trusts; and
- whether they own or run a business.

Once the Court has received all the information they will consider the whole position and make an Order setting out how the Deputy it appoints should look after the vulnerable person's money and assets. It is quite common for the Order to be made without the Court holding a formal hearing, but in some cases it may wish to hold one, for example, where there are two competing applications to become Deputy. As part of the Deputy appointment process, those who are close to the vulnerable person will be told about the application as will the vulnerable person themselves.

Powers and responsibilities

The Court of Protection's Order will set out the Deputy's powers and responsibilities and what decisions they can and can't make. In general, Deputies must:

- only make decisions in the vulnerable person's best interest;
- only make decisions the Court says they can make;
- apply a high standard of care in making decisions; and
- act in accordance with the principles of the MCA and the provisions of the Code of Practice which goes with it. The Code gives guidance to the Deputies on a number of matters in carrying out their role.

Financial Deputies normally have a broad based Order which extends to a whole estate of the vulnerable person and is without limit. The Order setting out the powers of the health and welfare Deputy will be bespoke depending on the circumstances.

How a Deputy decides

When making decisions for a person, a Deputy should always have in mind the following points:

- involve the vulnerable person as much as possible in any act or decision;
- consider any values, views, beliefs, wishes and feelings that they have expressed in the past;
- consult others, such as family, friends, carers, attorneys or other Deputies about their views on the person's best interest; and
- identify any other factors that the person may have considered if they had the capacity.

Decisions a Deputy cannot make

In the financial context, a Deputy cannot:

- make a Will for the vulnerable person or change their existing Will;
- make large gifts out of the vulnerable person's money;
- make a trust for the vulnerable person; or
- hold any money or property in their own name on the vulnerable person's behalf.

Deputies can request authority to deal with particular matters such as litigation for a vulnerable person.

Acting as a Deputy – supervision and reports

The Court of Protection's Order will require the Deputy to make regular reports to the OPG – the body which supervises Deputies – to make sure that they are acting in the vulnerable person's best interests. The OPG will have decided how closely the Deputy needs to be supervised when they are appointed. There are four basic levels of supervision, ranging from type 1 – the highest level of supervision used for large and/or complex cases- to type 3 – the minimal level for small matters where a reduced fee is paid. Most Deputies require type 2 or type 2A levels of supervision. New Deputies start on type 2A and move to type 2 after the first year. The OPG charges an annual fee for its supervisory role which is paid from the estate of the vulnerable person.

Deputies need to keep careful records of the decisions they make, including making major investments, changing the care the vulnerable person receives or deciding whether they should move house. They must also keep copies of relevant documentation, including receipts, bank statements and details of investments. Deputies will need to complete a report once a year, using the standard Deputy Declaration Form, which they then submit to the OPG. A sample of Deputies' reports are reviewed each year by the OPG (unless a high level of supervision has been ordered). The Court will also require the Deputy to provide security, normally in the form of a bond which is an insurance policy based on the capital assets of the vulnerable person. If there is any loss to the estate due to the Deputy's default, the estate can be compensated from the bond. The annual premium for the bond is paid by the Deputy out of the assets of the vulnerable person.

The Court has a wide range of powers to investigate and take action in relation to the Deputy where they are in breach of their duty. A Deputy can be called to account in a number of ways and might be restricted in their future management of the vulnerable person concerned, have their level of supervision increased or be discharged and replaced. The Court can also send a Court of Protection Visitor to discuss matters with the Deputy.

Cancelling or ending a deputyship

A Deputy's role can end on one of the following events:

- the Order expires – the Court of Protection can appoint a Deputy for a limited period of time. On expiry, a Deputy can re-apply to the Court of Protection for a new order or a new Deputy could apply for the role;
- the Court of Protection ends the Deputy's role – this can happen if the Deputy has not been acting in the person's best interests or the person no longer needs a Deputy. If the Deputy is removed, the Court of Protection will appoint a new Deputy;
- the vulnerable person dies – the Deputy must tell the OPG as soon as possible when this happens and they may have to provide a final report about their decisions and transactions; or
- the Deputy dies – the Court will only appoint a new Deputy if the vulnerable person still needs one.

Authors

Julia Abrey

PARTNER | LONDON

Private client and tax

 +44 20 7597 6053

 julia.abrey@withersworldwide.com