

# Deputyship under the Court of Protection

August 2009

## What is a Deputy?

- If someone lacks the capacity to make decisions for himself or herself and they do not have an Enduring Power of Attorney or Lasting Power of Attorney, the Court of Protection (Court) may appoint a Deputy to manage their property and affairs and/or personal welfare.
- The Court will decide if it is in their best interests to appoint a Deputy and will make the relevant Order, which sets out the Deputy's powers. 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 of Protection using a set of application forms which can be downloaded from the Office of the Public Guardian ('OPG') website at [www.publicguardian.gov.uk/forms/cop\\_forms.htm](http://www.publicguardian.gov.uk/forms/cop_forms.htm) or obtained from the OPG by post. 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 doctor and submitted with the application.
- The current application fee payable to the Court 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 the P's property and finances, or their personal welfare, e.g. consenting to medical treatment.
- The document 'COP4: Deputy's declaration' sets out the main responsibilities of deputies.
- The Deputy must ensure that 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 he or she believes P has capacity to make that decision him/herself;
- 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 a Will for P (unless authorised to make a statutory Will by an order of the Court of Protection) or exercise any power vested in P as trustee;
- decide to physically restrain P, unless it is necessary to prevent them coming to harm.

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## How are Deputies supervised?

- The Office of the Public Guardian (OPG) assesses each Deputy to decide the appropriate level of supervision. There are four levels of supervision.
- In practice, supervision could involve ensuring the Deputy complies with the Court Order (e.g. providing annual reports), a Court of Protector Visitor checking how the Deputyship is working, and/or regular contact with the Deputy or others with an interest in the 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.

For further information please contact:



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