

The Role of a Court of Protection Deputy

What is the Court of Protection?

The Court of Protection is a specialist court that makes decisions about the property; finances; and personal welfare of those who lack the mental capacity to take decisions themselves.

Why can't my next of kin make decisions for me?

The phrase 'next of kin' is common but has no legal status in relation to financial decisions. The only person able to manage your finances, if you lose the capacity to do so for yourself, is a court-appointed deputy or attorney acting under a registered lasting or enduring power of attorney.

What is a Court of Protection Deputy?

A deputy is someone appointed by the Court of Protection to deal with the property and financial affairs of a person who lacks the mental capacity to do so themselves.

Who can be a Deputy?

A deputy must be at least 18 years old. It could be a family member or a friend. It can also be a professional person such as a lawyer. In complex cases, particularly those involving large sums of money, the Court may prefer to appoint a professional deputy. If you don't know anybody that is able, suitable or willing to act as deputy, a partner of Wilson Browne, or Wilson Browne Trust Corporation Ltd could apply to the Court of Protection to be appointed.

What's the difference between a Property and Affairs Deputy and a Personal Welfare Deputy?

A deputy for property and affairs can make decisions about financial matters, such as paying bills or buying services; whereas a personal welfare deputy can make decisions about health and welfare matters; such as deciding where someone lives and the care and treatment they receive.

It is rare for the court to appoint personal welfare deputies and it will only do so in the most difficult cases. If there is a dispute about a health and welfare decision the court will usually make the decision itself rather than appoint a deputy to make the decision.

What is 'incapacity'?

The law presumes that everyone has the capacity to make a decision unless it can be shown otherwise. An assessment of capacity (on form COP3) by a qualified

practitioner must accompany the deputyship application, so the court can decide whether the person lacks capacity to make certain decisions for themselves.

Will the Deputy have to show their fitness to act?

The court will require the proposed deputy to complete a deputy's declaration (COP4) to ensure they are financially sound and understand their responsibilities as deputy.

How does the Court of Protection decide whether a Deputy should be appointed?

The court will decide whether the person lacks capacity and what sort of decisions the deputy will need to make. This will be set out in a court order.

What powers will the Deputy have?

Only those which are set out in the court order. The deputy will usually be allowed to:

- deal with any income, and to pay any bills and debts;
- deal with any cash assets, e.g. bank and building society accounts;
- manage or sell property;
- make small gifts on special occasions such as birthdays; and
- deal with any capital assets and make any investment decisions.

Does the Deputy have complete control over the person's affairs?

No, the deputy can only do what it says in the court order. They must also work within the rules set out in the Mental Capacity Act 2005 and the Code of Practice that accompanies this Act.

How long will it take?

It can take 5 to 8 months for a deputy to be appointed. It can take even longer if the court needs more information to decide the application. To avoid delay, it is important that all of the forms are completed properly and the court is given all the relevant information at the start.

In very urgent cases, you can ask the court to grant an interim order, for example to access funds to pay debts.

What is a security bond and why do I have to take one out?

The court requires that all deputies for property and financial affairs arrange a security bond with an approved insurer. Security is a type of insurance to protect the person who lacks mental capacity in the unlikely event that the deputy were to misappropriate their funds. The deputy must set up their security before their appointment takes effect. The level of security is set by the Court. The deputy is responsible for paying premiums from the funds of person lacking capacity.

Are Deputies supervised?

Deputies are supervised by the Office of the Public Guardian (OPG), and the deputy must send a yearly report to the OPG explaining what decisions they have made and accounting for the money they have spent. The deputy can instruct a solicitor or accountant to prepare the annual report on their behalf.

How long will the deputy order last for?

The court order will say how long the deputyship will last for. If the person stops lacking capacity, then an application will have to be made to the Court of Protection to discharge the deputy. If the person dies, the deputyship automatically comes to an end

Can a Deputy sell a person's property?

This will depend on what the court order says, as many deputyship orders restrict the sale of property. The deputy may need to make another application to the court for permission to sell the property. If the property is jointly owned then a special new trustee application will be needed.

We can advise deputies on selling property and whether they need to make another application to the Court of Protection

Can the Court of Protection make a Will for someone or let gifts be made from the funds?

Yes. In certain circumstances the court can make what is known as a statutory Will or authorise gifts over and above those that the deputy can make. These are however separate applications to the Deputyship application.

For further information please contact our Court of Protection team to discuss your options and receive expert advice.