

## **COURT OF PROTECTION – Making decisions for someone else about their health and welfare**

If you are concerned that a friend or a member of your family is not able to make decisions about their care and treatment, you might be able to apply to the **Court of Protection** asking that you are appointed to make certain decisions on their behalf, as a **personal welfare deputy**.

Being a deputy means you have the power to make decisions for someone who does not have the mental capacity to make the decision for themselves or voice their point of view. Where someone grants this power before losing capacity, it is known as a power of attorney. Deputies however are appointed by the Court of Protection.

There are two types of deputies, personal welfare deputies and property and affairs deputies. Property & affairs deputies have powers in relation to handling financial matters on someone's behalf and this factsheet concentrates only on becoming a personal welfare deputy, which gives powers in relation to care and treatment.

### **Who can apply to be a personal welfare deputy?**

To be a deputy you must be an adult, and you can apply as an individual or with other people. Usually people who apply to become a deputy are a friend or family member of the individual who lacks capacity.

### **How do you apply to become a personal welfare deputy?**

You do not need a solicitor to apply to be a deputy, although seeking some legal advice before you make an application may assist in giving it the best chance of being successful.

The first thing you will need to confirm is that the person lacks the capacity to make personal welfare decisions. You will usually need medical evidence to prove this, such as a report from a GP or a psychiatrist.

In recent years the Court of Protection has only appointed individuals as personal welfare deputies in exceptional circumstances. This is because deputyship is generally used as a last resort when it is not possible or practicable for the Court of Protection to make the decision itself. However there are some circumstances when the court is more willing to appoint a deputy, including if a series of related decisions is required, for example if someone needs lots of operations in relatively quick succession or their health can fluctuate with very little warning.

To apply to be a deputy you will need to fill in some forms and register these with the Court of Protection along with evidence that the person lacks capacity. You will also need to pay a fee of £400.

One of these forms is a formal Deputy's Declaration. This is to confirm your understanding of the duties of a deputy (see below).

The Court of Protection may grant the deputyship on the papers, although sometimes a hearing will be required.

If the court grants the application it will provide you with an Order that will set out the terms of your deputyship. This will set out exactly what you can and cannot do as a deputy, i.e the type of decisions you

are permitted to make.

## What are my duties as a deputy?

As a deputy you must make decisions that are in the person's **best interests**. You should have regard to their wishes and feelings, whenever this is possible, and, in some cases, consider the decisions that the person made a time when they had capacity.

You must also act with honesty and integrity, and not let any personal interests come into conflict with your role as a deputy. In most cases you will be expect to commit formally to visit the person regularly, to take an interest in their welfare and to work with them and their carers to maximise their quality of life.

## Does it last forever?

Being a deputy is a commitment until or unless you apply to the Court of Protection to vary the Order appointing you. You can apply at any time to the Court of Protection (paying another fee) to change the Order – such as to increase the powers of the deputy or to end someone's deputyship.

## Telling others

If you become a personal welfare deputy, it is important to tell everyone involved in the person's care. This could include carers, social services, and the GP. If the person is admitted to hospital ask for it to be recorded on their medical notes. You will probably be asked to show the Court's Order so keep these safe and always ask for the Order to be returned as extra copies are £5 each from the Court of Protection. Solicitors may be able to offer to do certified copies for you as well.

## What if the Court does not grant my application?

If the Court of Protection does not agree that you should be appointed as a personal welfare deputy but you have concerns about a person's treatment care and/or contact, you can make an application to the Court of Protection for a 'one off' decision. You may want to seek the advice of a solicitor to help with these types of application and legal aid is sometimes available, if you meet the financial criteria.

## What we can do to help?

You may wish to seek legal advice before making an application for deputyship or if you want to apply to the Court of Protection to make a 'one off' order.

If you would like to discuss making an application for personal welfare deputyship or making a 'one off' application to the Court of Protection, please contact our Court of Protection team to discuss this further.

## Meet the Team

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