

A GUIDE TO DEPUTYSHIP ORDERS

Court of Protection

What is a Deputyship Order?

A Deputyship Order is made by the Court of Protection. The Court helps to look after the affairs of a person who has lost the ability (mentally and/or physically) to make decisions for themselves. One of its functions is to appoint a “Deputy” who will manage that person’s financial affairs and, if required, to make decisions about their health, medical treatment and welfare.

The Order sets out what the Deputy can do for the person who has lost capacity.

The difference between a Lasting Power of Attorney (LPA) and a Deputyship Order is that an LPA must be made by a person **before** he or she loses capacity whereas a Deputyship Order is made on application to the Court once a person has lost capacity by a third party – normally the person wishing to be appointed as Deputy. It is possible for the Court to appoint more than one Deputy to act jointly.

Why apply for a Deputyship Order?

If the person who has lost capacity has money in the bank, investments, pensions or a house for example, these assets essentially become frozen. Quite often, the relatives of a person who can no longer look after their affairs are placed in severe financial difficulties because bank accounts and other cash assets have become inaccessible or they are unable to sell a person’s home to provide for alternative accommodation needs. A person’s assets however can be lawfully managed by a court appointed Deputy.

A Deputyship Order to enable a Deputy to make decisions about someone’s health and welfare is unusual. Normally, such Orders are only made in relation to specific medical or welfare situations.

Who can apply to be a Deputy?

To be a Deputy you must be over 18. When making the application, the Deputy must disclose any criminal convictions, bankruptcies or arrangements with creditors . The Court will assess whether the person applying is a suitable person to be a Deputy.

In many cases, it is a close relative or spouse who applies to be made the Deputy but if there is no such person able or willing to take on this role, then the Local Authority or a professional Deputy (such as a solicitor or an accountant) can be appointed.

What powers and duties does a Deputy have?

The powers that a Deputy has will be decided by the Court of Protection and are set out in the Order that it makes. The powers can be wide or very specific or both depending on what a person's personal and financial circumstances and needs are. Explaining those circumstances and needs in the application is important so as to ensure that as far as possible the Deputy is given the powers that will assist the person the most.

The duties and responsibilities of a Deputy are set out in the Mental Capacity Act 2005 which enshrines 5 important principles which a Deputy must adhere to. These are:-

- 1. Presumption of Capacity** – a person is presumed to have capacity unless it is proven otherwise.
- 2. Supported decision making** – a person cannot be treated as lacking capacity to make a decision unless they have been given all practical assistance to help them make their own decision.
- 3. Making unwise decisions** – a person has the right to make a decision based on their own values, beliefs, preferences and attitudes without being labelled as lacking the capacity to make their own decisions.
- 4. A person's best interests** – any decision made on must be in a person's best interests – this is an objective test.
- 5. Less restrictive options** – before doing something it will be necessary for the Deputy to consider whether there is a less restrictive way (in relation to a person's rights and freedoms) of doing so.

A Deputy also has a legal duty to have regard to the Mental Capacity Act "Code of Practice". This provides guidance and information about how the Act works on a day to day basis. If a Deputy departs from the Code when acting they will have to explain their reasons for doing so should they ever be questioned by the Court of Protection.

When a Deputyship Order is made, the Court will also require that a security bond (a type of insurance) is taken out by the Deputy (but normally paid for from the assets of the person for whom he is acting) as a security against possible financial losses to assets caused by failures by the Deputy to perform his duties. A Deputy will not be able to start acting until this bond is in place.

Deputies must keep records of their dealings with a person's assets and provide the Court with an Annual Report.

What is the procedure for obtaining a Deputyship Order?

Medical evidence must be provided to the Court and obtaining this is therefore the first step that usually needs to be taken. The medical report is provided on a standard form COP3 which in most cases the person's GP or psychiatrist completes. Sometimes additional medical evidence is required from other medical specialists such as occupational therapists. There are also other forms that must be completed setting out what Order is being asked for, information about the person applying to be a Deputy and information about the person who will be the subject of the Order. These forms are then submitted to the Court with the appropriate court fee. In most cases, no actual court hearing is needed.

How long does it take to obtain a Deputyship Order

The application process can take 2-3 months to complete and ultimately means that the Court of Protection is more heavily involved in dealing with a person's affairs than if they had been able to make a Lasting Power of Attorney. There can be delays at the start because of having to wait for the medical evidence.

How much does it cost and who pays for it?

The Court fee is currently £400.00 and there is an additional fee for appointing a new Deputy of £100.00.

Each year the Court charges a supervision fee which can range from between £35 – £320.00 depending on what level of supervision is required.

Depending on what type of deputy you are applying to be and on how much you or the person you are applying for has, these fees can be reduced or waived completely.

Medical report fees vary but usually start from £80 upwards.

Solicitors costs will vary depending on the complexity of the matter but in cases where no court hearing is necessary we offer a **guaranteed fixed fee quote** right at the start.

Our fixed fee includes :-

- seeing you to take your instructions and to give you comprehensive advice throughout the process
- preparing all the necessary application forms
- obtaining the medical evidence
- applying for registration to the Court of Protection

All fees and costs are ultimately payable from the assets of the person for whom the application is being made and we will agree to postpone payment of our costs until the Order has been made if the Deputy has to wait until then to gain access to the person's bank account. Court fees and medical report fees will have to be paid by the proposed Deputy who can then reimburse himself or herself from the person's assets.

Further information regarding Deputyship Orders can be found on the Government's website - <https://www.gov.uk/become-deputy/overview>

If you would like to discuss making an application for a Deputyship Order or want a quotation for our fees then please telephone or if you prefer, arrange an appointment.

We hope you have found this Guide useful.

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