

Information sheet – for family and friends of a Care UK home resident who does not have the mental capacity to look after his or her own affairs and has not made a Lasting Power of Attorney (' LPA') whilst they had the capability to do so

Deputyship and the court of protection

Overview

In some circumstances it may be desirable for an individual to have their affairs looked after and managed by someone else. If a person has capacity, they can appoint an attorney to deal with their affairs via a Lasting Powers of Attorney ('LPAs') for both Property & Financial matters and Health & Welfare matters (see separate information sheet on LPAs).

In other circumstances however it may become **necessary and essential** for a person's affairs to be controlled by someone else.

Where an individual (the 'Person') lacks capacity and does not have a LPA in place already (or their LPA has become invalid) then the only legal way in which another person can make decisions on their behalf is through an application to the Court of Protection for Deputyship.

There are strict rules that govern the actions of a Deputy and these are overseen by the Office of the Public Guardian, an arm of the Court of Protection.

There are two forms of Deputyship:

1. Deputyship for Financial Affairs (DFA)
2. Deputyship for Health and Welfare decisions (DHW).

Each type of Deputyship application requires separate forms to be completed and signed. Each Deputyship application must be sent to the Court of Protection and a fee is payable for each. There are standard forms produced by the Court of Protection and these can be found online: <https://www.gov.uk/become-deputy/apply-deputy>

Mental capacity

Mental capacity is the ability to make and understand the consequences of a specific decision at the time that the decision needs to be made.

A person with mental capacity has at least a general understanding of:

- The decision they need to make
- Why they need to make it
- Any information relevant to the decision
- What is likely to happen when they make it

They should be able to communicate their decision through speech, signs, gestures or other ways. It is possible for a person to have mental capacity to make some decisions but not others.

It is likely that a person lacks mental capacity if they have a problem with their brain or mind that stops their brain or mind from working properly and, as a result, which causes them to be unable to make a particular decision, at the time it needs to be made.

A Person is unable to make a particular decision if they are unable to:

- Understand relevant information about the decision that needs making
- Keep that information in their mind long enough to make the decision
- Weigh up the information in order to make the decision
- Communicate their decision by talking or by using sign language, pictures, blinking or squeezing a hand

Deputy for Financial Affairs ('DFA')

This is the most common form of deputyship. It allows a Deputy to take manage a Person's finances, for example bills, pensions, savings and investments.

A DFA will commonly take control of the Person's bank accounts, and deal with their liabilities and any assets that they own. The DFA will secure and administer these assets for use on behalf of the Person, acting in the Person's best interests at all times.

Deputy for Health & Welfare ('DHW')

These deputyships are less common and the Court may be reluctant to allow applications for health and welfare in all but the most serious of cases. A DHW may, for example, make decisions over where a Person lives, what medical treatment they will receive and how they are looked after. A DHW cannot make decisions on decisions such as the withdrawal of medical treatment, nutrition or hydration.

Who can be a Deputy?

Anyone can apply to be a Deputy as long as they are over 18 and have mental capacity. Deputies are usually close relatives or friends. The applicant must declare any bankruptcy arrangements or criminal convictions and these may result in the application being refused. The Court can appoint two or more Deputies for the same Person, although one Deputy is allowed. Where more than one Deputy is appointed, the court will determine whether decisions must be made jointly, which means all the Deputies must agree on the decision, or jointly and separately.

A DFA will need to show that they have the relevant experience or skills to make financial decisions for someone else. A DFA may be expected to take appropriate expert financial advice.

Where there is no suitable applicant but a Deputy is needed, the local authority can be appointed or the Office of the Public Guardian can appoint a specialist "panel Deputy". This is usually a solicitor who is approved by the Court.

Responsibilities of a Deputy

Deputies are responsible for helping the Person make decisions or for making decisions on their behalf. The Court will make an Order that appoints the Deputy and this will set out what the Deputy can and cannot do.

The Mental Capacity Act 2005 sets out the duties of a Deputy and the Mental Capacity Act 2005 Code of Practice sets out other general rules. Decisions must be made in the best interests of the Person and the Deputy must consider what the Person has done in the past and or would do in the same situation. The Deputy must apply a high standard of care and do everything they can to help the Person understand the decision that has been made.

The Deputy must keep the Person's property and money separate from their own, keep detailed accounts and record the reasons for every decision they make on behalf of the Person.

One-off decisions

Deputies can apply to the Court if they want or need to make decisions that are not in the original Order or to make a one-off decision on something not covered by the Order.

Supervision and insurance

The Court of Protection can put requirements and safeguards in place to protect the interests of the Person. These may include a duty on the Deputy to file annual reports and accounts and the Court can contact and make visits to the Deputy.

On making the Deputyship Order, the Court of Protection will allocate the Deputy to a supervision category, ranging from close supervision to light touch. The Deputy's reporting obligations will depend on the level of supervision.

DFAs must pay an annual security bond. This is a form of insurance that protects the Person. The cost of the bond will depend upon the value of the Person's estate (see fees below).

The application

An application must be made to the Court of Protection and must include an assessment of the Person's capacity by a registered medical practitioner.

Two copies of the application forms and one copy of the supporting forms must be sent to the Court of Protection, along with an application fee. Once the application forms have been stamped ("issued") by the Court and returned to the applicant (ie the proposed Deputy), the applicant must tell the Person that the application has been made, along with anyone named in the application as having an interest, for example any relatives.

Once the application has been considered, the Court will decide if the application can be approved, rejected, or if they need more information. In certain circumstances the Court may appoint the Official Solicitor to be joined in proceedings if it is felt that the Person requires the Official Solicitor to act in their best interests.

The Court must be completely satisfied that it is in the best interests of the Person to appoint a Deputy. This means that the Court requires detailed information and evidence. There are therefore a number of forms to complete. More detail on the forms can be found here: <https://www.gov.uk/become-deputy/apply-deputy>

Applicants may wish to take legal advice on completing the forms or before submitting their application to the Court.

Fees

There is a fee of £400 for each application (ie if an individual is applying for a DFA and a DHW they will have to pay £800) which must be sent with the application.

There may also be an additional fee of £500 to pay if the Court of Protection decides that an oral hearing is needed.

Once a Deputy is appointed, they must pay an annual supervision fee. The amount of the fee depends on the level of supervision that the deputyship needs. The fee for general supervision is £320 and for minimal supervision (where a deputy is managing less than £21,000) it is £35.

There is also a £100 assessment fee for a new Deputy. The Court will inform the applicant/Deputy when these fees are to be paid.

It may be possible to claim a refund of the fees in certain situations and it may be possible for the Deputy to claim some expenses. The Court can provide more information on this and there is guidance on the Court's website.

Security bond

A bond must be paid to protect the finances of the Person before a DFA can start acting. The Court Order will tell the applicant/Deputy when to pay and how much the bond is.

More detailed guidance can be found on the Court of Protection's website: <https://www.gov.uk/become-deputy/overview>

This information sheet contains general information only and does not constitute legal advice. If you have any questions about the Deputyship application process you will need to contact the Court of Protection. You may also need to consider seeking independent legal advice.

This information sheet contains general information only and does not constitute legal advice. Its purpose to suggest to family and friends of a resident at a Care UK home (or prospective resident) who no longer has mental capacity certain matters they may wish to consider. Anyone who has any questions about the Deputyship application process will need to contact the Court of Protection. They may also need to consider seeking independent legal advice.

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