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## A Guide to Deputyship

- Understand what Deputyship is as well as the powers and duties of a Deputy.
- Understand the key differences between Deputyship and Powers of Attorney.
- Understand the process of applying to become a Deputy.



### **What is a Deputy?**

A Deputy is a person appointed by the Court of Protection to manage the personal welfare or the property and affairs of another person (known as 'the client' or 'the patient'), who lacks the mental capacity to manage them themselves. A Deputy can only act under a Court Order from the Court of Protection. This Order sets out the Deputy's powers and entitles the Deputy to act on behalf of the person lacking capacity.

A Deputy will not be required if the person lacking capacity has previously made a Lasting Power of Attorney (LPA). In this case, provided the LPA has been properly registered, the attorney can continue to make decisions on behalf of the person lacking capacity.

### **What is the difference between a Lasting Power of Attorney and a Deputyship?**

Both LPAs and Deputyships are legal methods by which decisions can be made for persons lacking mental capacity. The main difference between the two is that a LPA is made by the person before they lose capacity and a Deputyship application is made by a third party after the person loses capacity. The person therefore has more control over the LPA process and choice of attorney and the LPA may therefore be more likely to reflect the person's own wishes.

### **Types of Deputyship**

A Deputy can be appointed by the Court to act as:

- A Property and Affairs Deputy - making decisions about property and financial affairs, including the sale and purchase of real property;

- A Personal Welfare Deputy - making decisions about health and personal welfare, including treatment options. However the Deputy cannot refuse consent to life sustaining treatment.

### **What are the Powers and Duties of a Deputy?**

A Deputy's powers derive from the Deputyship Order made by the Court of Protection and the Deputy cannot exceed those powers. The Court Order may give wide powers to the Deputy, or it could set limits to those powers, for example providing that large items of expenditure or investment cannot take place without further permission of the Court.

The Deputy's duties are set out in the Mental Capacity Act 2005 and in particular follow the general principles set out in the Act:

- A person must be assumed to have capacity unless it is shown otherwise;
- A person cannot be treated as unable to make a decision until all practicable steps have been taken to help him, without success;
- A person cannot be treated as lacking capacity merely because he wishes to make an unwise or eccentric decision;
- Any decisions made on behalf of a person must be in the person's best interests;
- Before making a decision, consideration must be given as to whether its purpose can be achieved in a way that is less restrictive of the person's rights and freedom.

In addition to following these general principles, the Court of Protection places numerous obligations on the Deputy, as a safeguard to the person lacking capacity. These include obtaining a Security Bond, complying with supervision by the Court and filing Annual Reports and Accounts.

## The Deputyship Order

Once the Court has considered the application, they will, if satisfied, make a First General Order appointing a Deputy and detailing what initial steps the Deputy must take.

The Deputy will then have a number of duties to be discharged over the course of time. These will include (but is not an exhaustive list):

- To act in the best interests of the client;
- To open a Deputyship account at a local bank/building society;
- To prepare Deputyship Accounts annually;
- Pay any Court fees, doctor's fees, care home fees and discharge any other outstanding bills;
- Sell property and other items belonging to the client (if they are unlikely to be used);
- Maintain assurance policies;
- Provide for documents such as a Will or stock/share certificates to be retained safely;
- To ensure that all income is collected and all bills paid on time; and
- To take out a form of insurance known as a 'Security Bond'. This is to cover any loss to the client's estate should a Deputy fail in their duties. This is usually arranged by the Solicitor lodging the application through an insurance company/bank.

## Are Deputies supervised?

The Office of the Public Guardian assesses each Deputy and applies to each Deputy a level of supervision. There are four levels of supervision, ranging from close supervision to a light touch supervision.

Once appointed, a Deputy should keep records of day to day expenditure and will usually be required by the Court to complete Annual Returns.

## How to apply for a Deputyship Order

To apply to become a Deputy, an application must be submitted to the Court of Protection. The Court of Protection then assesses the suitability of each Deputy from the information provided on the application forms.

The person who lacks capacity must be assessed by their GP (or other medical practitioner) in order to assess whether they lack capacity and a form will need to be completed (called a 'Medical Certificate') and submitted alongside the application to the Court of Protection.

The application process involves supplying detailed information about the vulnerable person's circumstances and finances. In more detail, to apply to be appointed as Deputy, you will need to complete the following forms: -

1. Main Application form (COP1)
2. Annex A - Supporting Information for Property and Affairs (COP1A)
3. Medical Assessment (COP3)
4. Deputy Declaration (COP4)

An application fee of £371.00 (from 30 September 2021) is payable to the Court of Protection at the time the application is submitted.

Other fees include a supervision fee (known as a Deputy or Security Bond) which is payable per annum. The fees differ depending on the level of supervision given to the Deputy.

### What should I do now?

Our lawyers at Band Hatton Button are experienced in dealing with all aspects of Court of Protection work. We can help to prepare applications on behalf of prospective Deputies, liaising with the Court of Protection regarding applications, assisting Deputies in managing their Deputyships, preparation of Tax Returns and in making further applications to the Court when required.

We can also advise on making applications within Deputyships to the Office of the Public Guardian for example to make statutory gifts, sell property, make statutory Wills or to remove funds from the Court Funds Office in the light of recent interest rate changes.

**For individual advice and assistance contact our Wills, Trusts and Probate Team to find out how we can help.**

**Disclaimer - This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated into the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice.**

#### Why choose Band Hatton Button?

We deliver excellent legal services with a human touch and are proud to have a reputation for being approachable and going the extra mile for our clients. We provide high quality, pragmatic advice and offer a comprehensive range of legal services, delivered by experts and supported by our culture of respect and understanding.

#### Our expertise includes:

- Wills, estate and succession planning;
- Powers of Attorney and Court of Protection;
- Administration of estates and post death planning;
- Trust creation and administration;
- Will disputes;
- Matrimonial and family law; and
- Buying or selling a property.

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