

THE COURT OF PROTECTION - ACTING AS A DEPUTY FOR PROPERTY AND AFFAIRS

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for Oxfordshire Family Support Network Conference

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What is the Court of Protection?

Established by Mental Capacity Act 2005 – sets out how decisions may be made for those who lack capacity.

The Court protects those who lack capacity to make decisions about their financial and legal affairs, their welfare and medical treatment.

How does the Court of Protection Work?

Contentious cases- there can be an attended hearing before a Judge.

Non- contentious cases (eg; applications for the appointment of deputies) – usually decided “on the papers” without an attended hearing.

All decisions are made in the “best interests” of person lacking capacity.

How does the Court help with money matters ?

Where a person is over 18 and lacks capacity to make financial decisions for themselves, (and has not made a Lasting Power of Attorney), the Court will usually appoint a deputy for property and affairs to manage their finances.

Who might need a deputy?

Elderly and infirm person suffering from dementia;

Victim of an accident with brain injury;

Person who has a sudden illness such as a catastrophic stroke;

Child born with disabilities who reaches age of 16/18.

Making an application for the appointment of a deputy for property and affairs.

It is a formal application.

Who makes the application?

Assessment of capacity essential.

Who can be a deputy ? – family member usually preferred.

How many deputies can apply?

What can a deputy do?

Depends on terms of Deputyship Order made by Court –
may be restrictions, eg, limit on withdrawal of funds;

Open a deputyship bank account;

Manage investments;

Pay bills;

Collect benefits;

Sign legal documents;

Sell, buy or let property (deputy needs specific
authority).

What can a deputy do?

A deputy can only take decisions that the person lacks capacity to make for themselves.

What are deputy's duties?

To act in best interests of person under disability;

To have regard to the Code of Practice;

To keep records – make annual returns to the Office of the Public Guardian;

To keep person's money separate from their own.

What can't a deputy do?

Make a will for person lacking capacity;

Make large gifts from person's funds;

Make decisions where deputy will benefit himself rather than person for whom he is deputy;

Anything not included in Deputyship Order.

Deputy must seek specific authority of Court to do any of the above.

Costs and expenses

Court application fee £400 (one off);

Deputy assessment fee £100 (one off);

Annual supervision fee £320 or £35;

Annual insurance premium (security bond);

Lay deputy cannot be paid, but may take out of pocket expenses;

Professional deputy – is usually paid, but Court guide rates apply and costs are assessed by Court.

Exemptions and Remission of fees may apply.

Supervision by Office of the Public Guardian

Support and supervision;

Visits by OPG representative

Please note: Professional advice should always be sought for assistance in specific areas of the law, and we cannot accept any responsibility for any action based on this presentation