

DEPUTYSHIP INFORMATION SHEET

Deputyship for property and financial affairs



OVERVIEW

In some circumstances it may be desirable for an individual to have their affairs looked after and managed by someone else. If an individual has mental capacity, they can appoint an attorney to deal with their affairs via a Lasting Powers of Attorney ('LPAs') for both property and financial matters. Where an individual has been deemed to lack mental capacity by a relevant professional 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 rules that govern the actions of a Deputy and these are overseen by the Office of the Public Guardian (OPG), an arm of the Court of Protection. There are standard forms produced by the Court of Protection to be completed and signed and these can be found online:

<https://www.gov.uk/become-deputy/apply-deputy>.

Deputies for property and financial affairs will commonly take control of the individual's bank accounts, and deal with their liabilities and any assets that they own. The Deputy will secure and administer these assets for use on behalf of the individual, acting always in the individual's best interests. Deputies are responsible for helping the individual make decisions or for making decisions on their behalf which relate to their property and financial affairs. The Court will make an Order that appoints the Deputy, and this will set out what the Deputy can and cannot do. The Deputy must keep the individual's property and money separate from their own, keep detailed accounts and record the reasons for decisions they make on behalf of the individual.

WHO CAN BECOME A DEPUTY?

Anyone can apply to be a Deputy if 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. It is possible for more than one person to apply to become a Deputy for the same individual, meaning that families and friends can collectively manage their affairs.

The Court of Protection can put requirements and safeguards in place to protect the interests of the individual. These will include a duty on the Deputy to file annual reports and accounts and the Court of Protection 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.

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 individual and the Deputy must consider what the individual 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 individual understand the decision that has been made.

SOLICITORS AND LEGAL ADVICE

If you are applying to be appointed as a Deputy, a Solicitor can advise you on the application process and support you in your role. Should you wish to seek support from a Solicitor you must contact a Solicitor of your choosing to arrange this. Dependent on the individual's circumstances, some Solicitors may act as a Professional Deputy if family members do not wish to do so.

FEES

There are fees associated with the role of becoming a Deputy for an individual. You may pay these fees from money you hold for the individual or pay from your own money and be reimbursed when you have access to the individual's bank account. The Court will inform the applicant/Deputy when these fees are to be paid. It may be possible to claim refunds and exemptions of 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. There is a fee of £385 for each application to the Court of Protection which must be sent with the application. 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 requires. 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. You will also be required to take out a security bond which is a type of insurance protecting the finances of the individual you are a Deputy for, the cost of this relates to the value of the estate of the individual.

If you choose to appoint the services of a Solicitor to support you in your role as a Deputy this may incur further charges, payable by the individual you are making the application for.

SUPPORT FROM THE OFFICE OF THE PUBLIC GUARDIAN

As well as protecting the individual, the OPG is also there to support people in their role as a deputy. There are numerous ways that the OPG will do this, and this is all included in the annual supervision fee. The OPG services include:

- Phone call within the first few months – The OPG aims to contact all new deputies six weeks after their appointment. This is your chance to ask them about any concerns that you have, or any problems you are experiencing, for example with banks. Remember they are there to help, so do ask any questions you might have.
- Visits – If you feel it would be helpful, someone from the OPG can visit to help with your role in being a deputy. This is about helping and supporting you in your role, and deputies generally find these visits very useful.
- Case worker – Those deputies who are in the higher level of supervision have a specific case worker. You can contact your own case worker as needed to ask any questions that you may have, and they are there to help you in your role as a deputy.
- Contact centre – The OPG has a contact centre that all deputies, especially those who don't have a case worker, can contact to ask questions.

To be sure that you are acting within the powers you are given, it can be helpful to ask the OPG any questions you have or run any queries by them. Often a quick phone call can resolve any issues that you may have and can be a good way of getting support if you are experiencing problems.