

GUIDE TO DEPUTYSHIPS

WHAT IS A DEPUTY?

If you lose the capacity to manage your affairs yourself, and you have not previously appointed someone as your Attorney under a Lasting Power of Attorney ('LPA') or an Enduring Power of Attorney ('EPA'), an application will need to be made to the Court of Protection to appoint someone to manage your affairs on your behalf. This person is called a Deputy.

TYPES OF DEPUTYSHIP

A Deputy can be appointed to act in relation to someone's property and financial affairs (including the sale and purchase of land and houses) and/or very rarely in relation to matters of personal welfare.

WHO CAN BE A DEPUTY?

In principle, any person over the age of 18 can be a Deputy: in many cases, the most appropriate person to appoint will be the spouse, partner or close relative of the person lacking capacity. If there is no-one able or willing to take the role, the local authority may do so (although normally only if the value of the estate is low), or a professional Deputy such as a solicitor can be appointed.

WHAT ARE THE POWERS AND DUTIES OF A DEPUTY?

The Deputyship Order will set out in detail what the Deputy may do in each case. Normally, the terms of the order will be wide enough to allow the Deputy flexibility to manage matters day-to-day; however, the Deputy may have to apply to the Court for specific authority to, for example, sell property.

The Mental Capacity Act 2005 states that the Deputy can only make a decision where he or she reasonably believes someone lacks capacity to make that decision for themselves; any decision made on someone else's behalf must be made in their best interests. A welfare Deputy cannot regulate who does or does not have contact with the person lacking capacity, and he or she cannot refuse consent to the carrying out or continuation of life sustaining treatment. There is a Code of Practice issued by the Lord Chancellor which Deputies must follow.

SUPERVISION OF DEPUTYSHIPS

The Public Guardian (supported by the Office of the Public Guardian or 'OPG') is responsible for supervising Court-appointed Deputies, and will check that the Deputy is complying with the terms of the Deputyship Order and that decisions made are in accordance with the rules set out above.

The Deputy will need to take out a security bond and he or she will normally also have to submit an annual report and accounts, setting out details of all the decisions made on behalf of the person who lacks capacity. The OPG charges supervision fees, which are normally paid out of the funds of the person lacking capacity.



TERMINATION OF DEPUTYSHIPS

If the Public Guardian considers that a Deputy has not fulfilled his duties, the Court can discharge the Deputy and appoint a new Deputy in his place. Otherwise, a Deputyship Order is terminated when the person lacking capacity dies or recovers capacity, or if the order is limited in time and expires. It can also be discharged by the Deputy, if he or she wishes to retire or resign.

Bath 01225 750 000 | **Sherborne** 01935 813 691 | **Wells** 01749 342 323