



A guide to deputyship

For the carers and relatives of those who lack capacity



Attwaters
Solicitors

As specialist Court of Protection lawyers, we have witnessed first-hand the grief, stress and loneliness that goes hand-in-hand with caring for somebody who has lost capacity. Whether the result of a degenerative condition such as dementia, or a sudden brain injury due to a stroke or accident, watching the mental decline of a loved one is agonising.

Add to this the realisation that you have no legal right to access your loved one's finances or make decisions on their behalf, and the situation can feel impossible to deal with.

However, there is a way to take control of your loved one's affairs, so that you can continue to keep them safe and make decisions in their best interests: applying for deputyship.



What is deputyship?

A deputy is somebody appointed by the Court of Protection to make decisions on behalf of somebody who lacks capacity.

You will need to apply for deputyship if your loved one didn't make a Lasting Power of Attorney (LPA) while they still had capacity. An LPA is a legal document that enables somebody to appoint

another person as their attorney, but only while they are still able to make decisions for themselves.

There are two types of deputy:

■ **Property and financial affairs deputy**

This allows the deputy to look after their loved one's finances, pay their bills, make purchases on their behalf, etc.

■ **Personal welfare deputy**

This allows the deputy to make decisions about their loved one's medical treatment and healthcare. Usually, you will not need a personal welfare deputyship unless there are disagreements amongst family members about care.

Who can become a deputy?

There are some criteria you will have to meet to apply for deputyship. You must:

- Be over the age of 18
- Not have a criminal record
- Be financially sound.

Usually, the deputy appointed is a relative or close friend of the person who lacks capacity. In certain situations, however, the Court may deem it more appropriate to pay a professional (such as an accountant or solicitor) to act as deputy.



How to apply for deputyship

Unfortunately, it is much easier to take over your loved one's affairs with a Lasting Power of Attorney in place. Applying to the Court of Protection for a deputyship order can be a long and complex process, and it may be advisable to instruct a solicitor to support you along the way.

Applying for deputyship

1. Before you can apply, you may need to seek permission to apply (this will only usually be necessary with a health and welfare deputyship).
2. Next, you must make your application by filling in the following forms and sending them to the Court of Protection online or by post:
 - An application form (COP1) together with any supporting information
 - An application fee of £408 at the time of writing
 - An assessment of mental capacity (COP3) – this provides evidence of your loved one's mental state and must be filled in by a medical professional or other qualified expert
 - A Deputy's declaration (COP4), which is designed to assess your suitability to become your loved one's deputy.
3. Once it has been processed, the Court of Protection will return a stamped copy of your application.
4. You will have to notify the person on whose behalf you are making the application, in addition to at least three other people (usually their spouse/partner, close relatives and friends), that you are applying for deputyship.

To do this, you must fill in a notification form which includes an acknowledgement allowing them to give any information they believe is necessary or to dispute the application should they wish to.
5. The notification forms must be returned to the Court of Protection to confirm you have notified the correct people.
6. The Court of Protection will then review your application and tell you whether or not it has been accepted. They may also tell you:
 - a. That you need to pay a financial security bond before you can be appointed as deputy. This is effectively a type of insurance to protect the person whose finances you will be managing.
 - b. That they need more information or evidence.
 - c. A hearing before the Court is required (the fee for this is £494 at the time of writing).
7. If a hearing is required, you must tell the person on whose behalf you are making the application that this is happening and give them a further notification form.
8. If the application succeeds, and after paying the financial security bond (if required), the Court will issue an order to appoint you as deputy. Again, you must notify the person on whose behalf you have applied and let the Court know when this has been done.
9. With a copy of your official court order, you will be able to access your loved one's bank and other financial accounts, and manage their property.
10. Each year, you will need to pay a supervision fee of £320 at the time of writing, as well as submit a deputy report to the Office of the Public Guardian explaining the decisions you have made on behalf of the person who lacks capacity and how you have used their money in their best interests.

The process to become a deputy usually takes around nine months, although this is an estimate rather than a guarantee.

How a solicitor can help

Looking after somebody who lacks capacity can be stressful, time-consuming and upsetting, without the additional stress of a stack of confusing application forms! Instructing a specialist Court of Protection solicitor can help take some of the additional burden off your shoulders. They will be able to fill in all the forms on your behalf and manage the process for you from start to finish. They can also help you to notify your loved one that you

are making a deputyship application, as this can be a difficult and emotional task.

Once your application has been granted, they can also help ensure that you have the best and most appropriate support set up for your loved one, including living, accommodation and care arrangements, benefits and/or grant funding, and ongoing support for you and your family to ensure you have protections such as LPAs and Wills in place.



About our team

The Court of Protection team at Attwaters Solicitors is headed up by Lesley-Ann Mayhew, a highly experienced solicitor and professional deputy who has specialised in this area of the law for many years. She has gained significant industry recognition for her Court of Protection work, and has been consistently named a 'Leading Individual' by global legal directory the Legal 500 in its annual rankings of the world's best law firms. In 2022, Lesley-Ann received

huge praise in the directory, with one client saying that *"she's one of the best [Court of Protection lawyers] we've worked with."* Lesley-Ann is also a fully accredited member of The Association of Lifetime Lawyers and STEP.

Lesley-Ann is backed up by a team of experienced, capable legal professionals including our Head of Wills, Trusts & Probate, Andrew Flannagan, and several highly experienced paralegals.

"She's one of the best [Court of Protection lawyers] we've worked with."

Please note that the information contained in this guide is intended as guidance only, and should not be construed as legal advice. Should you be experiencing any of the issues outlined in this guide, please seek professional legal advice.

Where we are

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