



# Renaissance Legal

## Helpful definitions

A quick-reference guide to legal jargon, helping you understand decision making:

### Decision making

The action or process of making important decisions

### Mental Capacity

The ability to make your own decisions. If you lose mental capacity the Mental Capacity Act protects you and your rights

### Court of Protection

Part of the court system that safeguards the property, financial affairs and welfare of those who lack capacity to make decisions

### Power of Attorney

A legal document where you give authority to another person (the 'Attorney') to make certain decisions on your behalf. There are two types of Lasting Power of Attorney that can be created: Property and Financial Affairs and Health and Welfare



## Guide to Decision Making

The legal position regarding decision making changes once a person becomes an adult and it is important to understand how your disabled or vulnerable child may be affected by this. This information sheet will highlight what needs to be considered both from a disabled individual's point of view and their family's/carer's.

### Parental Responsibility

Until a child reaches the age of 18, their parents (in most cases) will have Parental Responsibility (PR) for their child. PR means 'all the legal rights, duties, powers, responsibilities and authority a parent has for a child and the child's property'. Therefore, as a parent, you have the right to make decisions about your child's care and upbringing. If both parents have PR then they must agree on any important decisions that they make regarding their child.

Important decisions include deciding:

- Where your child lives
- Whether or not they receive particular medical treatment
- How and where they are educated
- Whether they can leave the country, either on holiday or permanently
- What happens with your child's property

We generally take this role for granted and don't often consider our legal responsibilities in this regard.

However, once a child reaches the age of 18 then parents lose PR and no longer have any legal responsibilities or automatic rights to make decisions about their child. For parents or carers of a child with a disability or vulnerability they are often surprised to find out that this is the case and that their role as a decision maker changes considerably.

So what changes and how can you prepare for your disabled or vulnerable child becoming an adult? This is broken down into the two key areas with regards to decision making.

## **Health and welfare decisions**

Probably the most important type of decisions but also the least straightforward covers decisions about medical treatment, where to live, what care is given etc.

The starting point is to consider each decision separately and establish whether your child is able to make these decisions for themselves.

This is a key principle of the Mental Capacity Act 2005 (MCA) and we must assume that everyone has the capacity to make a decision for themselves unless it can be shown that they lack capacity.

There may be things you, or others, can do to assist your child to make a decision. For example, finding ways to present information about the options in a different way, discussing the options in a comfortable environment or at a particular time of day when your child is more likely to be receptive.

If it is clear that your child isn't able to make a particular decision then the decision must be taken on their behalf and the MCA sets out how this must be done. The person making the decision may vary depending on the type of decision required. It could be a carer, a health professional, a social worker or a parent. This person must consider a number of factors before the decision is made and it is the most important principle of the MCA that any decision must be made in the 'best interests' of your child.

Any person making a decision for your child should consider whether it is appropriate to consult others, including you as parents, for your views on what is in your child's best interests.

If there is a dispute in the decision making process then attempts should be made to resolve these. It might be necessary to obtain a second opinion on a particular matter or hold a 'best interests' meeting or conference with the relevant parties. There may be a complaints or appeals

procedure that can be followed if the decision is made within a particular organisation such as the NHS.

In our experience, the majority of decisions can be made in a person's best interests without any dispute between parties or, where there may be disagreement, a suitable option can be found.

### **How does the Court of Protection fit in?**

The Court of Protection has the power to make decisions on behalf of a person who lacks the mental capacity to make their own decisions or they can appoint a Deputy who is given specific powers to make decisions on behalf of that person.

For most situations and decisions that need making, following the MCA will enable decisions to be taken that are in the best interests of your child. There should be no need to involve the Court and it is generally considered a last resort to apply to the Court.

However, it may be necessary to apply to the Court in some circumstances and these are generally where:

- The decision to be made concerns medical treatment to which the person cannot consent
- The decision is difficult or complex and requires the Court to decide
- There is a dispute between relevant parties over a particular proposed course of action
- The individual who lacks capacity needs ongoing help with decisions and the appointment of a Deputy is considered the best way of assisting with the decision making

The type of application made will vary depending on the circumstances at the time. The Court could be asked to make a decision about a particular matter such as where your child should live or what treatment they should or shouldn't receive. The Court can also be asked to appoint a Deputy who will have certain powers to make decisions on your child's behalf for a specific period of time.

In some situations an emergency application can be made to the Court if a decision is required urgently and there is a risk of harm or loss to an individual.

An application to the Court on health and welfare matters needs to be carefully considered. The Court can order you to pay any costs and fees personally if they determine that the application was unnecessary. If your child does have mental capacity to make decisions for themselves we would recommend that they consider putting a Health & Welfare Lasting Power of Attorney in place, to appoint someone or a group of people to make decisions on their behalf if they were unable to do so in the future.

## How Renaissance Legal help?

We will discuss with you your specific situation and what is required to meet your needs. We can then put in place the necessary legal documents which are in the best interest of your disabled and vulnerable child. We can also act as an Attorney or Deputy if you would like us to.

If you would like to discuss this further then please call us on 01273 610 611 or email us at [info@renaissancelegal.co.uk](mailto:info@renaissancelegal.co.uk)

This information sheet is intended as guidelines for clients and other readers. It is not a substitute for considered advice on specific issues. Any action taken depends upon your individual circumstances. Consequently, we cannot accept any responsibility for action which may be taken as a result of reading this information

## Financial decisions

The position regarding financial decisions is usually more straightforward.

As a parent it is important to think about what financial matters your child may need help with. What assets (bank accounts, Premium Bonds, savings) do they have in their name? What income do they receive?

If your child is receiving benefits then you should check if you are the appointee for their benefits and, therefore, are the person responsible for managing these. If not, you can apply to the Department for Work and Pensions to become the appointee.

Any organisations where your child has assets may not allow you to manage those assets once your child is 18. For example, banks will require your child to take control of their account and they usually only accept instructions directly from the account holder.

If your child does not have the mental capacity to manage these assets then you should consider applying to the Court of Protection to become their Deputy for financial matters. The Court will require evidence that your child is unable to manage their financial affairs and they will require full details of their financial circumstances.

Any application for a Deputyship will be considered by the Court and, if approved, they will issue a Deputy Order appointing the Deputy and setting out what the Deputy can and can't do. The Order is often restricted so a Deputy can't sell a property without further approval from the Court or they can't make gifts on behalf of the person they are acting for. The Court also requires the Deputy to provide an annual report and fulfil other duties and obligations.

The Deputy Order will then give you the necessary legal authority to manage your child's financial affairs. As with health and welfare decisions, if your child does have the mental capacity to manage their affairs then they should do so. However, they may also wish to put a Lasting Power of Attorney in place for Property & Financial Affairs. This allows them to appoint an attorney or attorneys to assist with financial decisions at any time. Unlike the Health & Welfare Lasting Power of Attorney, this type of Lasting Power of Attorney can allow the attorney or attorneys to act even if the person who made the Lasting Power of Attorney has mental capacity to make decisions about their own affairs. This can be particularly helpful if your child is able to make decisions but would prefer you to do so or to help them on certain matters.