



The Court of Protection - A Guide

It is vitally important to protect people who cannot make decisions for themselves. This could be due to a mental health condition, a severe learning difficulty, a brain injury, a stroke or unconsciousness due to an anaesthetic or sudden accident. There is a system in place which allows someone to be formally appointed to make decisions for the person with the incapacity.

The Court of Protection is the part of the court system that helps safeguard the property, financial affairs and welfare of those who lack capacity to make decisions for themselves. The Court of Protection can make orders authorising a person to act on behalf of someone who lacks capacity. The person who acts is called 'the Deputy'.

Who can act as a Deputy?

Anyone who is over the age of 18 may be considered by the Court of Protection to be appointed as a Deputy. However, it is unlikely that a person will be appointed as a Deputy for property and affairs if they are bankrupt.

What does the Court of Protection do?

The Court of Protection has wide powers, including:

- Deciding whether a person has the mental capacity to make particular decisions for themselves
- Making decisions or orders on financial or welfare matters affecting people who lack capacity to make such decisions
- Deciding whether a Lasting Power of Attorney (LPA) or Enduring Power of Attorney is valid
- Removal of Attorneys who fail to carry out their duties
- Hearing cases concerning objections to register an LPA.

What Powers does a Deputy have?

The Court of Protection will set out the Deputy's specific powers in any Deputy Order they make. The powers given will depend on the needs of the person who lacks capacity. The powers can relate to property and affairs, personal welfare or both areas. For example, the Deputy could deal with the person's bank accounts and make arrangements for day to day care needs. In addition, the Deputy may have the power to arrange investments or sell the person's property.

What are the Duties of a Deputy?

A Deputy must only make decisions authorised by the Deputy Order. It is essential that any decisions are made in the best interests of the person who lacks capacity, and the Deputy must apply certain standards of care and skill when making decisions

It is a key requirement of the Deputy that, where possible, they involve the person lacking capacity in making any decisions. The Deputy should consider the person's values, beliefs and wishes and should consult family, friends and carers when important decisions are taken. The Court of Protection will offer support to the Deputy and will provide supervision where necessary.

If you would like to discuss this further, please call us on 01273 610 611 or email: info@renaissancelegal.co.uk

Complementary services

If you are considering applying for a Deputy Order you should also consider what would happen to the estate of the person with the incapacity on his or her death. If necessary, you can apply to the Court of Protection for an order authorising a Will to be made for that person.

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