

Deputyship & the Court of Protection

We advise all our clients prepare Lasting Power of Attorney, to ensure they have appointed someone to make decisions on their behalf, if they do not have the mental capacity to do so themselves. However, if an individual does not have the requisite capacity to enter into a Lasting Power of Attorney, it is necessary to make an application to the Court of Protection.

The Court of Protection helps deal with decisions on financial or welfare matters for people who cannot make decisions at the time they need to. The Court of Protection may appoint an individual to act as a person's Deputy to help make these decisions.

What is a Deputy

A Deputy is the person appointed by the Court of Protection to manage a person's property, financial affairs or their personal welfare. A Deputy can be a family member or friend, though it is possible to also appoint a professional, such as a solicitor.

Application for Deputyship Order

To become a Deputy, it is necessary to submit an application to the Court of Protection. This will include details of the person's circumstances and financial affairs. It will also include a medical statement that the person for whom the application relates is mentally incapable. The application will also set out the specific terms of the powers sought by the intended Deputy.

There are two types of Deputyship Order:

- **Property and Affairs Deputy:** This can allow the appointed Deputy to make decisions such as managing finances, accessing benefits, completing tax returns and paying care fees. This can include permitting the sale of property and making gifts, though this permission must be sought in the application to the Court.
- **Welfare Deputy:** This can allow the appointed Deputy to make decisions such as the type of medical treatment received, how the person is looked after and where they live. Whilst this does not typically include the right to refuse consent to life sustaining treatment, it is possible to apply to the Court for their ruling upon this. It should be noted that Welfare orders are uncommon, and the Court only grant these in exceptional circumstances.

Responsibilities of a Deputy

If the application is successful, the Deputy will be supervised by the Court of Protection. The Deputy will also be required to set up a security bond, to cover any financial losses suffered as a result of failures by the Deputy.

The Deputy must act in the person's best interests and adhere to the requirements under the Mental Capacity Act. The Deputy will be required to submit annual report to the Office of the Public Guardian, which will include detailed accounts.

Statutory Wills

If an individual does not have the mental capacity to make a Will or to update their Will, then it is possible to make an application to the Court of Protection to grant a Statutory Will.

The application is typically made by the person authorised to act for the individual lacking the requisite capacity, such as the Deputy or someone with Power of Attorney. In turn, the applicant will submit a proposed draft Will to the Court for their approval.

This will involve a number of forms, including details of family, financial affairs, medical evidence regarding capacity, and a witness statement. This could also involve a court hearing. This can be a complex application, and it is not appropriate or indeed successful in all circumstances. Therefore, it is important to take expert legal advice in these cases.

How We Can Help You

Court of Protection applications can be unwieldy and complex, requiring efficiency and a keen eye for detail. If mistakes are made then this could delay an already time consuming process.

At Berensens, we have the knowledge and experience to navigate the process, and the professional composure to help unburden you from an already stressful situation. We can guide prepare the necessary Court of Protection application, and guide Deputies in their ongoing duties.

Please contact us to learn about how we can help you.