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DEPUTYSHIP



Deputyship

If a person does not have the mental capacity to make decisions for themselves and does not have in place either an Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA), an application will need to be made to the Court of Protection (“the Court”) for someone to be appointed to make decisions on that person's behalf. The person appointed by the Court is called a ‘deputy’.

A deputyship order gives a deputy the authority to make decisions on behalf of a person who does not have mental capacity. The protected party who lacks capacity is commonly referred to in proceedings as “P”.

There are two types of deputyship orders:

- **Property and financial affairs**

These are quite common and the applications are rarely refused by the Court. The deputy will manage P's financial affairs in their best interests. This can include authority to buy and sell property on P's behalf, subject to any restrictions the Court may impose.

- **Health and welfare**

Health and welfare deputyship orders are less common and more difficult to obtain. An order will only be granted in the most serious of cases. Usually, this is where there is a series of healthcare decisions that need to be made over a period of time and it is not feasible for multiple applications to be made to the Court each time a decision needs to be taken. If there is a dispute about where P should live or about his medical treatment, the Court prefers to deal with this by way of a one-off application for a court order.

What is mental capacity?

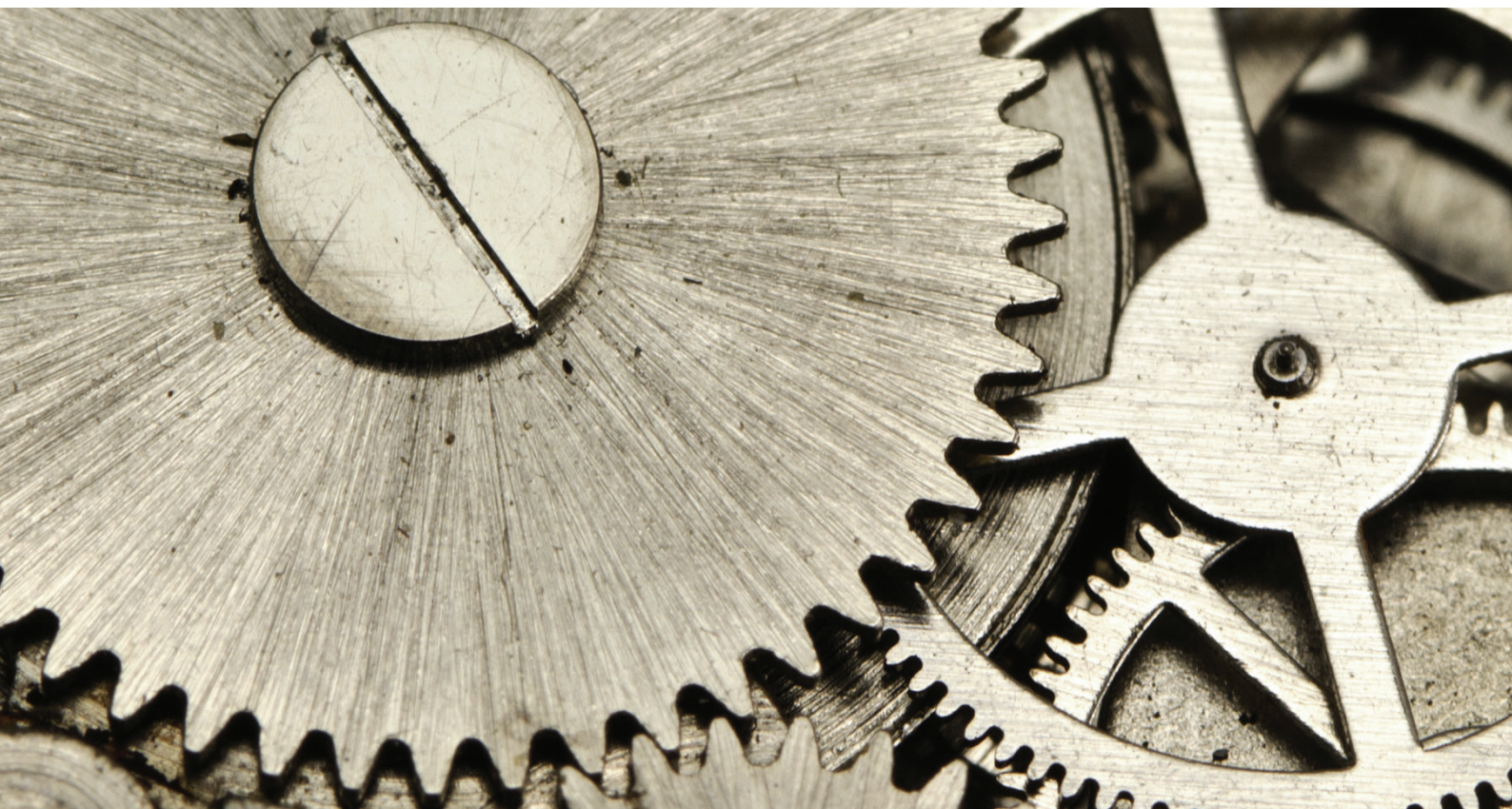
Mental capacity refers to the ability of a person to make a specific decision at the time it needs to be made. Different types of decision require different levels of capacity. For example, a person may have the capacity to pay his household bills but not to invest his money. A person is treated as lacking mental capacity to make a decision for themselves if at the material time they are unable to:

- understand the information relevant to the decision;
- retain that information;
- use or weigh up that information as part of the process of making the decision; or
- communicate their decision.

If a person is unable to do any one of these, they will be treated as lacking capacity.

Who can be a deputy?

Anyone over the age of 18 can apply to be appointed as a deputy but it is the Court that decides who is appointed.



As a general rule, the Court prefers to appoint a family member or someone who knows P well. In addition, the Court will want to appoint a deputy whose interests do not conflict with those of P. In cases where P has been awarded compensation for personal injury or clinical negligence and there are large sums of money to be managed, the Court, as a rule, prefers to appoint a professional deputy.

The role of a deputy carries with it a great deal of responsibility. It is not a role that should be undertaken lightly. A person wishing to be appointed as a property and financial affairs deputy should have the necessary skills to make financial decisions on behalf of someone else.

The application process, timescale and fees

If you wish to be appointed as a deputy, you must complete and send to the Court the following forms:

- COPI application form;
- COPIA for property and financial affairs
- COP3 assessment of mental capacity form; and
- COP4 deputy's declaration.

If you are applying to become a deputy for health and welfare decisions, you need to send the Court form COPIB instead of COPIA.

A cheque for £408 to cover the Court fee must also be sent.

The Court will consider the application forms and may contact you for further information. In a financial affairs application, the Court will need to be satisfied that you are trustworthy and equipped to manage P's finances.

The Court will consider your history, including whether you have ever been declared bankrupt or refused credit.

Once the Court has considered the application, it will "issue" it. When the application has been issued, a number of people must be given notice of it. This will include P and also those who are closest to P, usually immediate family.

If the Court is satisfied that P lacks the mental capacity, to make decisions for themselves and it is in their best interests to do so, the Court will appoint a deputy.

If I apply to be appointed as P's deputy will I have to go to Court?

Generally, it is not necessary for the Court to hold a formal hearing about the appointment of a deputy. However, if there is a dispute as to who should be appointed or whether P lacks mental capacity, there is likely to be a court hearing to resolve it.

If I am appointed as a property and financial affairs deputy, can I do anything I want?

The authority of the deputy only applies to decisions that P is unable to make. You cannot make decisions on behalf of P if he retains the capacity to make a particular decision at the time it needs to be made.

The Order will set out the extent of your powers and the decisions you can and cannot make. For example, the court order may not give you authority to sell P's house without a further application being made to the Court.

A deputy cannot make gifts from P's money apart from on customary occasions, such as for birthdays or at Christmas, and provided that the value of each such gift is not unreasonable. If you wish to make a

more substantial gift, you need to apply to the Court for its authorisation beforehand and the gift will need to be considered to be in P's best interests.

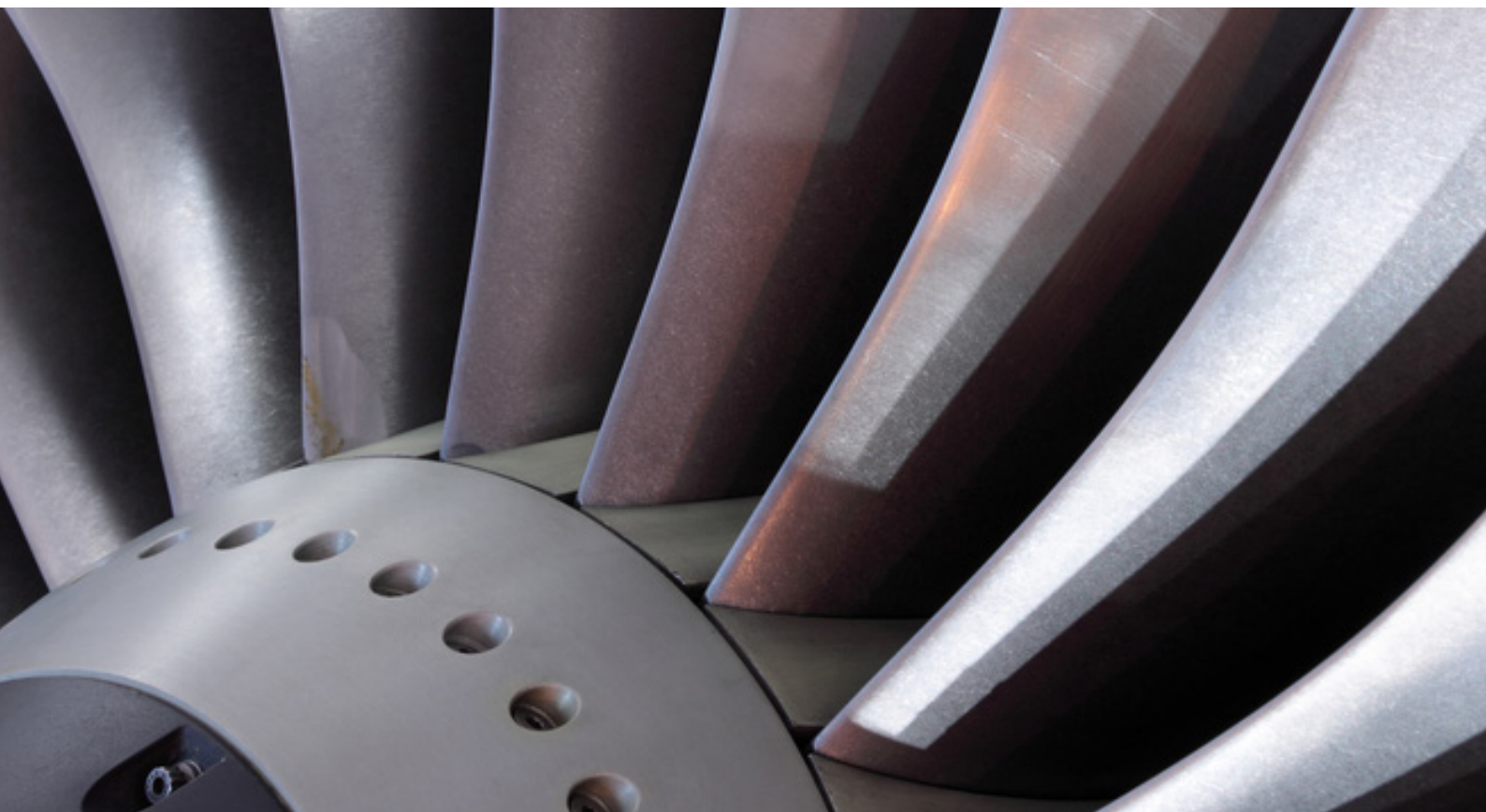
Nor can a deputy make a will on behalf of P or put P's assets into trust without the authority of the Court.

A deputy must make decisions which are:

- in P's "best interests"; and
- authorised by the Court.

When making decisions on behalf of P and deciding what is in P's best interests, you should:

- take into account P's past and present wishes together with their beliefs and values;
- the views of P's family members and carers;
- whether P may regain capacity at some stage in the future and, if so, whether a decision can be delayed until then; and
- involve P, where possible, when making the decision.



What is a deputy's bond?

To protect P's financial assets, should the deputy fail to perform their duties properly, a property and financial affairs deputy has to take out a deputy (or security) bond before the Court will issue the order appointing the deputy. The level of the bond will depend on a number of factors, including the size and complexity of P's financial affairs. The bond's premium is paid annually out of P's assets.

If a professional deputy is a solicitor, they also often have the protection of professional indemnity insurance.

How is a deputy supervised?

A property and financial affairs deputy is required to file an annual report of their deputyship with the Office of the Public Guardian (OPG). The report will include the following:

- an account of all financial transactions on P's behalf during the year, including all payments and receipts;
- up to date valuations of P's assets;
- details of significant financial decisions that were made on P's behalf; and
- how, if appropriate, P was involved in the decision making process.

When a deputy is appointed, the OPG will allocate a level of supervision that will apply to the deputy. There are two levels of supervision: general or minimum.

All new deputies will be allocated to a general level of supervision in the first year of their deputyship.

Existing deputies who manage the affairs of someone with assets below £21,000 will be placed

into minimal supervision, unless there are any concerns about the case.

If you manage the affairs of someone with assets above £21,000, they will receive a general level of supervision. There is an annual fee payable to the OPG, which is £35 for cases of minimal supervision and £320 for general supervision. In addition, you must pay a £100 assessment fee when they are appointed by the Court. These fees are payable out of P's assets.

Can I obtain professional advice to help me?

Yes, a deputy can employ professionals to assist with the management of P's affairs.

Can a professional deputy charge for the work that they do?

A professional deputy is authorised to charge for their time. However, their hourly rates are prescribed by the Court and their fees will be subject to assessment by the Senior Courts Costs Office.

How long does a deputyship last for?

A deputyship will come to an end in the following circumstances:

- If the appointment is for a fixed period of time, for example, two years, at the expiry of that period.
- P regains capacity;
- P dies;
- the deputy dies; or
- the Court removes you.

We would like to thank Wilsons Solicitors LLP for their specialist advice and assistance in preparing this guide.

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