

# Guide to Court of Protection appointments



**No-one chooses to have an accident or suffer ill health with longer-term consequences, but if such circumstances occur the management of personal matters may become more difficult. That's where the Court of Protection steps in as a safeguard to appoint a deputy or make one-off decisions.**

If an individual has the capacity to make one, then a Power of Attorney may be possible. However, if this isn't an option and support is required to make important decisions, then the Court can provide the necessary powers.

## When would I need to make an application for a deputy for someone?

If capacity has always been an issue, there is a sudden change, such as a catastrophic injury, or if an individual shows signs of significantly fluctuating behaviour with a lack of acceptance, it may be appropriate to consider an application.

You need to consider carefully what might be the best option for the individual concerned, and we often liaise with medical teams and privately commissioned experts to ensure the least restrictive option is pursued.

If the application relates to a personal injury claim, then the costs of all applications and of running the deputyship (including a professional deputy) are normally reclaimable.

## What is the difference between an attorney and a deputy?

An attorney is freely appointed by an individual under a legal document called a Power of attorney.

A deputy is appointed on application to the Court where a Power of Attorney is not available and/or no attorney is validly appointed.

Appointments under a Lasting Power of Attorney or a Court of Protection order for the appointment of a deputy are governed by the Mental Capacity Act 2005 (MCA) which has five guiding principles:

- an assumption of capacity
- supporting people to make their own decisions
- people have the right to make eccentric or unwise decisions
- where someone lacks capacity, an attorney or deputy must act in the person's best interests
- where someone lacks capacity any action taken on their behalf must generally be the least restrictive option

Where possible, individuals are encouraged to make decisions, or at least be involved in the decision making process. If this is not possible, then the appointed person may make decisions on their behalf.

Attorneys are less heavily regulated, which generally makes them slightly less expensive. The lack of regulation occasionally gives rise to an attorney abusing their position, but the vast majority of people who agree to act as attorneys will have the best interests of their charge at heart.

As a Court appointment, a deputy is much more closely monitored. Whilst a more expensive option, a Court appointment can provide greater security.

### Who can be a deputy?

Anyone can apply to be the deputy, but notice should be given to the individual concerned and those closely involved with them. Family, friends, Social Services departments, and solicitors are those commonly involved.

Most appointments are to family although in more complex cases, especially where there are difficult family dimensions or significant sums of money or assets involved, a professional may be appointed.

### What can a deputy do?

This depends entirely on the powers granted by the Court. Many non-professional deputies need to apply to undertake specific transactions such as property purchases, investment, or are limited to how much money they can access without further Court approval, where a professional deputy is often granted wider powers more routinely.

A deputy is often appointed on a long term basis in respect of property and financial affairs.

In health and welfare matters, it is more likely that the Court will make or facilitate a decision rather than appoint a deputy, unless there is overwhelming evidence and a clear need for a deputy to be appointed.

## How it works Court of Protection appointment following serious personal injury

Jayne has been injured in a car accident, suffering a severe frontal lobe brain injury. Although capable of independent living, as a result of the injury she is prone to making rash decisions and being impulsive where she would not previously have been; she also has trouble dealing with major decisions and complex financial matters.

It is anticipated that her personal injury claim will be settled for more than £1 million.

Jayne's parents and her partner fulfil the primary care roles, and the family are coping with the consequences of the injury and providing care. However, they are not experienced in dealing with complex financial matters, and it is difficult to reason with Jayne. They agree to a solicitor being appointed, and the costs of the professional deputy are added to the personal injury claim (so the deputy becomes "free").

As a professional deputy, the solicitor has quite wide powers that enable him to be more responsive. It also removes the burden of financial management and conflict between the carers and Jayne.

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