

## **Deputyship – what is it and when is it necessary?**

A deputy is appointed by the Court of Protection and becomes legally responsible for someone who lacks mental capacity to make decisions for themselves.

It is possible for the Court to grant you powers, as deputy, in relation to an individual's:

- Property and financial affairs; and
- Health and welfare.

Although it is possible, it can be quite difficult to obtain an order in relation to health and welfare unless the Court considers it absolutely necessary.

### **Becoming a Deputy**

An individual can only appoint an attorney whilst they have capacity to do so.

We always recommend people have a Lasting Power of Attorney in place while they are still capable, as this 'lasts' beyond any change in capacity.

Once an individual lacks mental capacity it would be necessary to apply to become an individual's deputy.

### **Application forms and medical report**

The process requires the completion of a number of different application forms. Wansbroughs will be happy to complete these on your behalf, subject to receiving all the necessary information.

A medical practitioner will also need to complete a medical report confirming the individual's lack of capacity. This is typically their personal physician. A fee is likely to be charged by the doctor for the completion of the medical report.

Once the application forms and medical report have been completed, they are submitted to the Court of Protection.

### **Fees**

A fee of £365 is payable for each application completed and forwarded to the Court. An annual supervision fee will also be required.

In addition, property and financial affairs deputies have to pay a security bond before the Court will send the Order. The bond is used to protect the estate of the person you are acting for should you fail to perform your duties as their deputy. The Court will set the value of the bond based on:

- The size of the individual's estate; and
- The access you will have to the estate.

If you have to provide any fee yourself, it can be recovered from the individual's funds once the Order is made.

Similarly, any legal fees incurred by you when obtaining legal advice regarding the deputyship can be recovered from the individual's funds as well.

### **Notification**

The Court requires you to tell certain people about your application and requires the completion of separate documents.

It will be necessary for you to notify:

- Relatives of the individual for whom you are applying to become the deputy; and
- Any others named in your application as likely to have an interest in your application.

Additionally, the individual lacking capacity will also need to be informed of your application.

### **Order**

Once the Court is satisfied it is necessary to do so, an "Order" will be issued setting out the deputy's powers.

The powers granted will depend on the circumstances and needs of each individual. The Court will not grant the deputy any powers that are not absolutely necessary.

### **Safeguards**

After an Order has been granted, you will be assessed to see what level of supervision you require from the Office of the Public Guardian ("OPG"). This requires an annual fee which varies depending upon the supervision required.

It is important to note that deputies are under a high standard of care when making decisions for others and as a deputy will have a major influence on an individual's life going forward.

Deputies must be aware and try to comply with five statutory principles in the Mental Capacity Act 2005.

These are as follows:

- Every adult has the right to make decisions, and must be assumed to have capacity unless it is proven otherwise;
- People must be given all appropriate help before they can be considered unable to make their own decisions;
- Individuals have the right to make unwise decisions, including decisions that others may consider eccentric;
- Anything done for or on behalf of a person who lacks capacity must be in their "best interests"; and
- Anything done for them or on their behalf should be the least restrictive of their basic rights and freedoms.

### **Timescale**

Due to the current workload of the court, applications are taking a substantial period of time to be processed; in excess of six months. If necessary, an application can be made in the interim whilst we await the Order.

**If you think this may be relevant to you, please do not hesitate to contact the Private Client Team at Wansbroughs on 01380 733 300, or via email at [wealth@wansbroughs.com](mailto:wealth@wansbroughs.com).**

This guide is for information only and is not a substitute for taking legal advice.