



## **Court of Protection and Deputyship Factsheet**

The Court of Protection exists to protect people who are no longer capable of making some or all of their own decisions, usually by authorising the appointment of a 'deputy'.

Understanding how it all works can be overwhelming, so here are some of the most frequently asked questions we come across concerning the Court of Protection and deputyship.

### **What is the Court of Protection?**

The Court of Protection makes decisions for you if you lack the mental capacity to make them for yourself, often by appointing a deputy and sometimes by making a one-off order. The Court can make decisions about:

- your property and finances; and
- your health and welfare.

However, the Court cannot make decisions on your behalf merely because you are ill or vulnerable – it can only do so if you lack capacity.

### **What is the Mental Capacity Act 2005?**

The Mental Capacity Act is an important piece of legislation designed to protect you if you lack mental capacity and to empower you to make your own decisions wherever possible. The Act deals with the Court of Protection, deputies and Lasting Powers of Attorney. There is also a code of practice which professionals should follow when they are working with you.

### **What is 'lack of capacity'?**

The Mental Capacity Act explains exactly what 'lack of capacity' means. You will 'lack capacity' to make a decision if you are unable to make that decision for yourself because you have an impairment of the brain – for example, as a result of Alzheimer's or a brain injury. Capacity is task specific, which means that you may lack capacity to make certain decisions but still have capacity to make other decisions.

### **What is a deputy?**

A deputy is a person appointed by the Court of Protection to make those decisions you cannot make for yourself. The Court will usually appoint a family member but will sometimes appoint a solicitor. The deputy must always act in your 'best interests'. Most deputies are property and affairs deputies. Very rarely, the Court will appoint a health and welfare deputy.

## **What does ‘best interests’ mean?**

When making decisions on your behalf, the Court or the deputy must act in your ‘best interests’, which is a phrase explained in the Mental Capacity Act. It means:

- helping you to take part in decision-making as much as possible; and
- taking into account your wishes and beliefs and consulting with your family members, friends and carers.

## **What are the duties of a deputy?**

Your deputy must always act in your best interests. They must make sure they keep your money separate from their own and not spend your money on themselves. If you have a large sum of money, your deputy should consider whether to invest it.

## **Does my deputy make all my decisions?**

Your deputy can only make a decision on your behalf if you lack capacity to make it yourself. If you have capacity, then the decision is yours and the deputy cannot make it for you, even if he or she disagrees with you.

## **Who pays for the deputy?**

If you have a professional deputy, they will charge a fee for their services, which is paid from your money. However, your deputy cannot just pay themselves as much as they like. Every year, the deputy must send their bill to the Senior Court Costs Office, who will decide how much your deputy is allowed to charge.

## **Who monitors what a deputy does?**

Your deputy must report to the Office of the Public Guardian (OPG) every year about what they have spent your money on. The OPG will consider this report carefully and can ask questions or request further information. If you are concerned about how your deputy (or your attorney under a Lasting Power of Attorney) is behaving, you can ask the OPG to investigate. If there are serious concerns, then the OPG can make an application to the Court of Protection for your deputy to be removed.

## **Is a deputy permanent?**

You only need a deputy if you lack mental capacity. If your condition improves and you regain capacity, then the Court of Protection will make an order discharging your deputy so that you can make all decisions for yourself. If you are not getting on with your deputy, you can ask the Court to remove them and appoint someone new. If the Court agrees that this is in your best interests, they can appoint a replacement deputy.

## **What is the Office of the Public Guardian?**

The Office of the Public Guardian (the OPG) is part of the government and protects the interests of people who lack mental capacity on a more day-to-day basis than the Court of Protection. The OPG is responsible for supervising your deputy.

**To discuss the Court of Protection, deputyship and other capacity issues, our Lifetime Planning and Wills team are available on 01225 755656.**