

Court of Protection: What you need to know



The Court of Protection is a specialist court which was set up under the Mental Capacity Act 2005 to help individuals who lack the capacity to be able to make decisions for themselves. The Court can make decisions on behalf of someone who has lost capacity or appoint deputies to make those decisions. These decisions can be about a person's property and financial affairs or their health and welfare.

The Office of the Public Guardian deals with the administration side of the Court. It is responsible for supervising deputies who are appointed by the Court of Protection as well as keeping a register of all deputies and powers of attorney. They can also investigate any complaints received about a Deputy or Attorney.

An experienced legal specialist can help you understand the legal position and guide you through the process of dealing with the Court or the Office of the Public Guardian. With our expertise we are able to advise appropriately on your circumstances, providing practical advice and the professional support you need.

A bit more information...

Statutory Wills

If a person has lost capacity then it is possible they will lack the required capacity to be able to make a Will.

This could result in their estate being distributed according to the intestacy rules upon their death, or being distributed according to a previous validly made Will which can no longer be changed. This may result in an unfair outcome or importantly may not be the outcome the person would have wanted. By applying for a Statutory Will at the Court of Protection this can be avoided.

We can help you in dealing with all the work necessary in making a Statutory Will for someone who lacks capacity.

Deputyships

It may be necessary for the Court of Protection to appoint a 'Deputy' to manage a person's affairs

where no Enduring or Lasting Power of Attorney is in place.

We can help you to understand this application process and can assist in completing all the relevant paperwork, obtaining the necessary medical evidence, lodging the application, arranging any required insurance and implementing the Court's orders. We can also act as your Deputy.

We can help with other elements of Deputyship, including buying or selling a property, business management and employment of staff. Part of the role of a Deputy will include producing an annual report in a prescribed form for the Court of Protection. These accounts must detail all financial transactions completed and additional information as well. We have experience in this and will be able to help in ensuring this is completed correctly.

Lasting Powers of Attorney

A Power of Attorney is needed to appoint someone to act on your behalf in case, in the future, you

are unable to manage your own financial affairs or decisions in relation to your health and welfare. For more information go to www.wards.uk.com/landing-wills-mental-capacity

Court of Protection Disputes

Disputes can arise in relation to Lasting Powers of Attorney or Deputy appointments.

For instance, you may think a Lasting Power of Attorney is being granted to the wrong person or disagree as to whether a person has lost their capacity or not.

You may also have concerns as to whether the actions of an Attorney or Deputy are in the best interests of the person who lacks capacity. Alternatively you may be a Deputy yourself and find yourself being challenged.

You may also not agree with the steps being taken by an Attorney or Deputy or are concerned that they are not managing the person who has lost capacity's affairs correctly whether that be their finances or their personal health and welfare.

It is important to seek legal advice in this specialist area and we will be able to help advise you on your options. We can help and guide you through the process.

Deputyship

Q *When would the Court appoint a Deputy?*

A A Deputy is appointed when an individual is no longer able to make decisions for themselves and their financial affairs or personal health and welfare need to be looked after.

Q *Who can be a Deputy?*

A Anyone over 18 can be someone's Deputy. However, the Court will ensure that the person being appointed is suitable. Usually the Deputy will have a personal connection to the person who lacks capacity, for example, a family member or close friend. A Deputy can also be a solicitor. A solicitor is usually appointed

if there is no suitable family member or friend who could act.

Q *What are the duties of a Deputy?*

A When making a decision on behalf of someone else a Deputy must

- Make decisions that are in their best interests
- Only make decisions that the patient is unable to make for themselves
- Only make decisions as allowed by the Court
- Make decisions with a high standard of care
- Bear in mind the guidance in the Mental Capacity Act 2005 Code of Practice
- The Court may require regular reports about the decisions that have been made and why.

Q *What decisions can a Deputy make?*

A The Court will advise what decisions are able to be made. If there is a subsequent change in circumstances, the Court can order that other decisions are made.

There are limits on what decisions can be made by a Deputy; to include not being able to make a Will on behalf of the person who lacks capacity or transfer large sums of money or transfer any property they own into the Deputy's name.

We will be able to help guide you through this.

Capacity

Q *How would someone lose capacity?*

A Someone can lose their capacity in a number of ways. The most common is when someone is suffering from dementia, Alzheimer's or has suffered a stroke. Other common ways include those who have suffered from brain injuries or severe post traumatic stress disorders.

Q *Who decides if someone lacks capacity?*

A This is decided by the Court. Initially a solicitor will seek medical evidence from a

medical practitioner. If the medical evidence indicates that person lacks capacity this will be persuasive to the Court.

Q *If someone lacks capacity does that mean they cannot make any decisions themselves?*

A No. The legal tests for capacity are issue specific. It may be that someone lacks the capacity to be able to manage their finances but they may have the capacity to make a Will or a Lasting Power of Attorney.

Q *Where someone has lost capacity, can their spouse or partner automatically take charge?*

A No. There are procedures to be gone through and no automatic right.

Q *Is it possible to make an application in an emergency?*

A It is possible to make an urgent application to the Court of Protection if the person who has lost capacity might suffer financial loss, physical or mental harm. This process is different to a standard application. We can help you to complete the correct forms and ensure the Court deals with them quickly.

Statutory Wills

Q *Can I make a will on behalf of someone who has lost capacity?*

A No. This is not possible even if you have been appointed as their Deputy. You can apply to the Court of Protection for the right to make a 'statutory will'.

Q *What is a Statutory Will?*

A If you do not have the necessary capacity to make a will, a statutory Will can be made by the Court on application.

Q *Who can make a Statutory Will?*

A Statutory wills can be made by a Deputy,

Attorney or someone who is likely to inherit from the person who lacks capacity when they die. The Court has to give permission for a Statutory will.

Q *How do I make a Statutory Will?*

A A number of application forms need to be completed along with a statement setting out why you think the Will should be written as suggested. This is sent to the Court of Protection who will decide if the Will is appropriate. This can be complicated due to Court requirements and we can help with the process.

Q *Can a Will be changed if the person who made it has lost capacity?*

A Yes. A Deputy or Attorney can apply to the Court of Protection to change a Will that was made before the person lost capacity. This may need to be done where someone's financial circumstances have changed or beneficiaries have died.

Looking for a bit more information, still?

View our case study examples please follow the link wards.uk.com/2013/03/court-of-protection-frequently-asked-questions.

View our videos on probate disputes please follow the link wards.uk.com/2013/03/videos-understanding-probate-disputes.

For more information please contact Alison Lamont (Non-Contentious) about the Court of Protection on 0117 9292811 or email: alison.lamont@wards.uk.com.

For disputes on Lasting Powers of Attorney or deputyships contact Elizabeth Fry on 0117 9292811 or email: elizabeth.fry@wards.uk.com.