

# INFORMATION SHEET



## Getting legal authority to make decisions about money, property & welfare

This information sheet has been written for family carers who wish to gain legal authority to make decisions about money, property and/or welfare on behalf of a family member who has severe learning disabilities.

- Are you a family carer?
- Do you support a family member aged 16 years or above?
- Does your family member have severe learning disabilities?
- Do they live in England or Wales?

If the answer is yes to all these questions, then this information sheet is for you.

If you have a family member with severe learning disabilities they may not be able to make all of their own decisions e.g. choosing a house or deciding whether or not to have a major operation etc.

In order to get legal authority to make specific decisions on behalf of your family member you may need to apply to the Court of Protection to be appointed as a 'Deputy'.

### 1. What is a Deputy?

“Deputies” were introduced in England & Wales in 2007 when a new law called the **Mental Capacity Act** was introduced.

A **Deputy** is someone (usually a family member) appointed by the **Court of Protection** with ongoing legal authority to make decisions on behalf of a person who lacks capacity to make particular decisions for themselves.

**Mental Capacity** refers to the ability to make decisions.

**Mental Capacity Act (2005)** is a Law for England and Wales which sets out what should happen if someone is unable to make decisions for themselves.

**Court of Protection** makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare.

The Mental Capacity Act allows people 16 and over to choose and appoint someone to make their health, welfare and/or financial decisions if they are concerned that they may lack capacity to make these decisions for themselves in the future, for example if they have dementia. The person they appoint is called an Attorney and is appointed by a formal document called a **Lasting Power of Attorney (LPA)**. However, it is important to note that if your son/daughter already lacks capacity they will not be able to apply for a LPA; a Deputyship will be more appropriate.

For further information on the Mental Capacity Act and the Court of Protection please refer to:

- *Making decisions - A guide for family, friends and other unpaid carers* (reference number OPG602). Office of the Public Guardian  
[www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/opg-602-0409.pdf](http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/opg-602-0409.pdf) or Tel: 0300 456 0300 (free publication)
- *Making decisions – An introduction to the Mental Capacity Act*. National Family Carer Network. [www.familycarers.org.uk](http://www.familycarers.org.uk) Tel: 01883 722 311 (free publication if a Self- Addressed A4 envelope with 1<sup>st</sup> class (£1.65) or 2<sup>nd</sup> class (£1.48) stamps for this size is sent to NFCN, Gaddum Centre, Gaddum House, 6 Great Jackson Street, Manchester, M15 4AX).
- *Brief Guide to the Mental Capacity Act 2005. Implications for people with learning disabilities*. BILD: [www.bildservices.org.uk](http://www.bildservices.org.uk) or Booksource  
Tel: 0845 370 0067 orders@booksource.net £10.00
- *Mental Capacity Act 2005*. Alzheimer's Society Factsheet 460.  
[www.alzheimers.org.uk](http://www.alzheimers.org.uk) Tel: 0300 303 5933 (free publication)
- *Mental Capacity Act 2005 - Code of Practice*.  
[www.justice.gov.uk/guidance/protecting-the-vulnerable/mental-capacity-act/index.htm](http://www.justice.gov.uk/guidance/protecting-the-vulnerable/mental-capacity-act/index.htm) (free to download) or Tel: 0870 600 5522  
(£17.50 + £3.75 P&P for a hard copy - free to family carers who state that they are applying to the Court of Protection)

## 2. Who Can Become a Deputy?

A Deputy is usually a close friend or relative of the person who needs help making decisions.

A Deputy can also be a professional, like an accountant or a solicitor. Local authorities are often appointed as a deputy.

Deputies must be over 18.

The Court of Protection can appoint a 'Panel Deputy' to look after someone's financial affairs if no one else can do this.

A Panel Deputy is someone with specialist knowledge of mental capacity law.

## Types of Deputies

There are 2 types of Deputies:

- **those who look after property and financial affairs** (decisions regarding any possessions owned by a person such as a house or flat, jewellery or other possessions as well as the money they have in income and expenditure)
- **those who look after a person's health and welfare** (decisions about a person's healthcare, where they live, what clothes they wear, what they eat and anything needed for their general care and wellbeing)

There can be more than 1 person appointed as Deputy to each type.

## When Would I Need to Apply to Become a Deputy for Property & Affairs?

Some examples of when a Deputy for property & affairs may be necessary are if:

- To sign a tenancy agreement to rent a property
- To enter into a mortgage agreement to buy a property

## When Would I Need to Apply to Become a Deputy for Welfare?

Some examples of when a Deputy for welfare may be necessary are where:

- Someone needs to make a series of linked decisions over time e.g. a series of decisions relating to a medical condition
- There is a history of serious family disagreements over welfare issues
- Someone is living in supported living accommodation and there is a need for clarity over their capacity to refuse or invite people into their home.

Please note that:

- If the only income of an individual is social security benefits and they have no property or savings, there will usually be no need for a deputy of property and financial affairs to be appointed.  
This is because the person's benefits can be managed by an **Appointee**, (who can be a friend/relative/organisation or representative of an organisation) appointed by the Department for Work and Pensions  
The Appointee will receive and deal with the benefits of a person who lacks capacity to do this for themselves.

- **Not every family carer will need to apply to be a Deputy for welfare issues, indeed Personal Welfare Deputies are rarely required.** Most welfare decisions can be made using the 'best interests' principle as set out in the Mental Capacity Act. Personal Welfare 'Deputyships' are granted very much less often than property and Finance Deputyships and permission is ordinarily required from the Court of Protection before the rest of the application process can continue. Please note that the fee which you pay is for the whole application process and if you are not granted permission, you will lose the whole amount.

### He needs me to do this

When my son Seth was seventeen years old, I became his Deputy for financial affairs. I mention his age because some people think that you cannot apply to the Court of Protection until the cared for person is eighteen. Not so. I applied in his sixteenth year, 2007, and was accepted in September 2008. I did this because although I accepted Direct Payments for my son's care when he was Sixteen, there had been rumblings from the Local Authority that it would finish when he became eighteen - because he lacked the capacity to consent.

So I found a solicitor and filled in the forms and collected the necessary evidence and support letters. I am on Income Support, so the service was free to me. At the time I didn't know that becoming a Deputy was a very new thing, and that I had applied in the first year it became a law in England and Wales. This did mean that the Local Authority were unsure of the process, and needed time to educate themselves as to its legality. I was just looking for the best way to support my son, and protect his interests and rights to appropriate care and support at home....he needs me to do this.

It had taken years to negotiate a higher rate of pay than was normal for Personal Assistants on Direct Payments. I did not want to go back to Agency Staff chosen by the ever-changing care managers in Social Services. Direct Payments were working well for us and I wanted it to continue, so that I had more input into the choosing and training of the P.A.s who came into our home and lives. With Direct Payments they get the appropriate training to work with Seth's complex needs, all have Makaton, for example. I have found becoming a deputy invaluable in meetings with both Social Care and Health professionals.

Sol Jorgensen, Mother to Seth

### 3. Responsibilities

The Court of Protection will tell the Deputy about:

- their powers and responsibilities
- what decisions they can and can't make (e.g. about money or healthcare)

Deputies must:

- only make decisions in the other person's best interests
- only make the decisions the court says they can make
- apply a high standard of care when making decisions

### **Decisions a Deputy Cannot Make**

Deputies can't make a decision for someone if the person can make the decision without their help (e.g. they can't overrule the person's decision). However, a Deputy can still help the person reach a decision.

Deputies can't:

- restrain the person, unless it's to stop them coming to harm
- stop life-sustaining medical treatment, e.g. turn off a life-support machine
- make a will for the person, or change their existing will
- make large gifts out of the person's money
- hold any money or property in their own name on the person's behalf

However, a Deputy can use the Court Funds Office, or a bank or building society account to help someone with their finances.

## **4. Applying to Become a Deputy**

Check if the person already has a Deputy or Attorney acting on their behalf before you apply to become a Deputy.

If they don't, you can apply to the Court of Protection to become their Deputy.

### **See Appendix A for How to Apply to Become a Deputy for Property and Affairs.**

If the court approves your application you will be sent a court order appointing you as a Deputy.

You will receive several copies of the order so you can provide a copy to people or organisations to show you have authority to make certain decisions on behalf of your family member.

The court order will explain what decisions you're legally allowed to make

The whole process should take approximately **16 weeks**.

Further information can be found in the Office of the Publication Guardian publication "*A guide for Deputies appointed by the Court of Protection*" (Reference: OPG510).

This guide can be found at:

<http://www.justice.gov.uk/downloads/guidance/protecting-the-vulnerable/court-funds-office/court-of-protection/role-duties-deputy/OPG510-0409-1.pdf>

## 5. Reports and Supervision

The court order will inform you of your duty to make regular reports to the Office of the Public Guardian, to show that you're acting in the person's best interest.

Keep a record of any decisions you make, e.g:

- making a major investment
- changing the care a person is getting
- deciding where someone should live

Keep copies of any documents about decisions you've made e.g:

- receipts
- bank statements
- letters and reports from health agencies or social services

You usually have to complete a report once a year, using the **Deputy Declaration form**.

### Application, Supervision and Other Fees

<i>Fee</i>	<i>Cost</i>	<i>Are there any possible exemptions/remissions?</i>
Application Fee	£400	Yes, depending on applicants financial circumstances (need to complete exemption form EX160 if you qualify) More info in booklet "Court and Tribunal Fees- Do I have to pay them?" (Reference: EX160A)
Registration Fee and Risk Assessment Fee to determine how closely you will be supervised	£100	Yes, fees are payable from the funds of the person for whom the deputy was appointed and exemptions and remissions are available depending on financial circumstances. If eligible, you will need to complete exemption form – reference number: EX160A Details of fees can be found in "Office of the Public Guardian-How you will be supervised as a Deputy"(Reference: FS06)
Supervision Fee	£35-£320	4 different levels of supervision ranging from £35-£320. Fee needs to be paid annually. Fees are payable from the funds of the person for whom the deputy was appointed and exemptions and remissions are available depending on financial circumstances. If eligible, you will need to complete exemption form – reference number: EX160A Details of fees can be found in "Office of the Public Guardian-" How you will be supervised as a Deputy" (Reference: FS06)
Insurance Premium	Dependent on total amount of funds you are handling	You may be asked to take out an insurance premium to protect your relative from any losses as a result of your actions.

## Being Supervised as a Deputy

The Office of the Public Guardian will supervise your role as a Deputy.

There are different levels of supervision depending on:

- the complexity and value of the estate of the person you're acting for
- your relationship with the person you're making decisions for
- the types of decisions you're allowed to make

'How you will be supervised as a Deputy' provides further information on supervision and can be downloaded at

<http://www.justice.gov.uk/downloads/global/forms/opg/fs06-how-youre-supervised-as-a-deputy.pdf>

## 6. Cancelling or Ending a Deputy's Responsibilities

A Deputy's role can end or be cancelled for a number of reasons.

### The Court Order Expires

A Deputy can reapply to the Court of Protection if the court order is limited in time and expires.

A new Deputy can also apply for the role.

### The Court of Protection Ends the Deputy's Role

This can happen if:

- the Deputy hasn't been acting in the person's best interests
- the person no longer needs the Deputy's help

In the first case, the Court of Protection will appoint a new Deputy.

### The Person Who Needs a Deputy Dies

The Deputy must tell the Office of the Public Guardian as soon as possible if the person they're acting for dies.

They may have to provide a final report about their decisions and financial transactions.

### The Deputy Dies

The court of protection will only appoint a new Deputy if:

- the person still needs a Deputy
- someone applies to be the Deputy

The court can appoint a Panel Deputy or a local authority deputy if no one applies for the role.

Appendix A and B provide further information on how to apply for Deputyship.

**Please note that the Mental Capacity Act is in the process of being reviewed and changes may occur in the future**

Last updated: October 2014

## Appendix A

### The Application Process

You can apply to become a Deputy for:

- 1) Property & affairs only
- 2) Personal welfare only
- 3) Both property & affairs and personal welfare

If you wish to apply to become a Deputy for personal welfare or both please refer to the guide “Making an application to the Court of Protection” (Reference: COP42)

### Property and Affairs Applications

Form	Further Info										
Form COP1 (Application Form)	<p>There are guidance notes to help you complete the form. In section 5 you need to describe what you would like the court to decide. Examples are provided in the following table:</p> <table border="1"> <thead> <tr> <th>Issue</th> <th>Wording</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> <li>• Banking &amp; managing property</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>• To oversee all matters relating to the property and financial affairs of (insert name of your relative)</li> </ul> </td> </tr> <tr> <td> <ul style="list-style-type: none"> <li>• To sign mortgage forms</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>• To enter into a mortgage agreement to purchase a property on behalf of (insert name of your relative) to enable better living conditions.</li> </ul> </td> </tr> <tr> <td> <ul style="list-style-type: none"> <li>• To sign tenancy &amp; or mortgage forms</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>• To sign any necessary deeds or documents on behalf of (insert name of your relative) to enable better living conditions.</li> </ul> </td> </tr> <tr> <td> <ul style="list-style-type: none"> <li>• Making decisions about a direct payment/individual budget</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>• Having the authority to make the decisions about securing the provision of a 24 hour community care service</li> </ul> </td> </tr> </tbody> </table>	Issue	Wording	<ul style="list-style-type: none"> <li>• Banking &amp; managing property</li> </ul>	<ul style="list-style-type: none"> <li>• To oversee all matters relating to the property and financial affairs of (insert name of your relative)</li> </ul>	<ul style="list-style-type: none"> <li>• To sign mortgage forms</li> </ul>	<ul style="list-style-type: none"> <li>• To enter into a mortgage agreement to purchase a property on behalf of (insert name of your relative) to enable better living conditions.</li> </ul>	<ul style="list-style-type: none"> <li>• To sign tenancy &amp; or mortgage forms</li> </ul>	<ul style="list-style-type: none"> <li>• To sign any necessary deeds or documents on behalf of (insert name of your relative) to enable better living conditions.</li> </ul>	<ul style="list-style-type: none"> <li>• Making decisions about a direct payment/individual budget</li> </ul>	<ul style="list-style-type: none"> <li>• Having the authority to make the decisions about securing the provision of a 24 hour community care service</li> </ul>
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Form COP1A	Supporting Information for Property and Affairs Applications										
Form COP3	Assessment Of Capacity Form: You only need to complete Part A of this form. You will then need to pass this form to a practitioner e.g. a psychiatrist or psychologist. The practitioner will then complete Part B and return the form to you. There are guidance notes (COP3 guidance notes) to help you and the psychologist/psychiatrist complete the form. Some practitioners charge a fee for completing the assessment of capacity form.										
Form COP4	Deputy’s Declaration Form										

## **How Do I Get the Application Forms?**

You can request hard copies of all forms by calling: 0300 456 4600

Or you can download the forms at <https://www.gov.uk/apply-to-the-court-of-protection>

## **Who Can I Ask for Help?**

- A booklet is available from the Court of Protection called “*Making an application to the Court of Protection*” (Reference: COP42) which provides full information on making an application to be a Deputy. If you have any questions the Court of Protection have a helpline (0300 456 4600). They may be able to answer general questions but they are unlikely to have specific knowledge about becoming a Deputy for a family member who has severe learning disabilities and behaviour that challenges.
- Your local Citizens Advice Bureau can provide advice on this area but can only provide assistance in form filling for those individuals who know what they want to write but can't due to problems such as language barriers, eye or hand illnesses etc.
- Your local carers centre may be able to help you complete the forms if they have a member of staff/volunteer with experience of the process.
- The Challenging Behaviour Foundation is happy to answer general questions about applying to be a Deputy if your family member has severe learning disabilities and behaviour described as challenging. Please contact our Family Support Service on 0300 666 0126 or e-mail [support@theCBF.org.uk](mailto:support@theCBF.org.uk). Please note whilst we are very happy to answer general questions we cannot provide legal advice.
- Most people will be able to complete the forms without the assistance of a solicitor, using the support listed above. However, a solicitor specialising in Court of Protection matters can complete the forms, if you can finance this support. The fee for processing these forms is a fixed rate: £825 plus VAT.

## **Where Do I Send the Forms When I Have Filled Them In?**

Once you have completed the relevant forms you need to send **two** copies of each of these along with the application fee or exemption/remission form to:

**Court of Protection, Po Box 70185, First Avenue House, 42-49 High Holborn, London WC1A 9JA.**

You will then receive correspondence from the Court asking you to notify certain other people, **within 21 days** about your application. After notifying these people you will need to complete and return a Certificate of Notification (Reference COP20A) for each person you have notified. The court will then make a decision and if an order is made appointing you as a deputy you will receive several copies of the order.

Appendix B **Overview of Applying to be a Deputy for Property & Affairs**

