

INFORMATION SHEET



making a difference
to the lives of people with
severe learning disabilities

Getting legal Deputyship for property or welfare decisions

This information sheet has been written for family carers who reside in England and Wales who wish to gain legal power to make decisions about money, property and/or welfare on behalf of a family member who has severe learning disabilities. If you live in:

- Scotland contact local Sheriff Courts who can award intervention orders or guardianship orders.
- Northern Ireland, the High Court awards Deputyships.

All our information sheets are available to download free of charge because we believe that money should not be a barrier to getting the information you need when you need it.

Please see the end of this information sheet for details of how to support us.

We want to make sure our resources are helpful. Please spend a few minutes giving us some feedback:

www.surveymonkey.co.uk/r/cbfresources.

Please note that many people will not need to apply for a Deputyship as they can ensure the needs of their family member are being met by using the **best interests** principle. It is also worth bearing in mind that Deputyships for Personal Welfare are rarely awarded as family members can ensure the needs of their loved one are being met through the best interests principle. Nonetheless, this does not mean professionals always make best decisions regarding your loved one's care and if you are not happy with their decision after going through the best interests process you may consider applying for a Deputyship to give you more power to challenge their decisions.

Best interests– is a process of considering matters from the point of view of the person who lacks mental capacity and what the best option is for them. There are a number of considerations to make in the process of making the decision (such as person's wishes, beliefs, their participation, views of others etc).

If you are considering Deputyship, ask yourself the following questions:

- | | |
|--|-------------------------------------|
| Are you a family carer? | <input checked="" type="checkbox"/> |
| Do you support a family member aged 16 years or above? | <input checked="" type="checkbox"/> |
| Does your family member have severe learning disabilities? | <input checked="" type="checkbox"/> |
| Do they live in England or Wales? | <input checked="" type="checkbox"/> |

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 power to make specific decisions on behalf of your family member you will 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 after the introduction of the **Mental Capacity Act 2005**.

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

Mental Capacity refers to the ability to understand and make decisions.

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

The **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 aged **16** and over to choose and appoint someone to make their health, welfare and/or financial decisions if they are concerned that in the future they may lack capacity to make these decisions for themselves, 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
<http://webarchive.nationalarchives.gov.uk/20101015074733/http://www.publicguardian.gov.uk/docs/opg-602-0409.pdf> or Tel: 0300 456 0300 (free publication)
- *Mental Capacity Act 2005. Alzheimer's Society Factsheet 460.*
www.alzheimers.org.uk or Tel: 0300 303 5933 (free publication)
- *Mental Capacity Act 2005 - Code of Practice.*
www.gov.uk/government/publications/mental-capacity-act-code-of-practice (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)
- *Making decisions – An introduction to the Mental Capacity Act.* National Family Carer Network. www.familycarers.org.uk Tel: 01883 722 311 (free publication if a Self- Addressed A4 envelope with 1st class (£1.65) or 2nd 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* by Elaine Hardie and Liz Brooks, BILD: www.bild.org.uk or Booksource:
Tel: 0845 370 0067, Email: orders@booksource.net (£10 a copy)

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.

Powers of a Deputy

There are two types of Deputyships:

- **Property and financial affairs** - this includes decisions regarding any possessions owned by a person (such as a house or flat, jewellery or other possessions) as well as their money (income and expenditure).
- **Personal welfare** (also known as Health and Welfare Deputy) - this includes decisions about a person's healthcare, where they live, who they see, what clothes they wear, what they eat and anything needed for their general care and wellbeing.

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

When do I need to apply to become a Deputy for Property and Financial Affairs?

Examples of when a Deputy for property and affairs may be necessary are:

- To sign a tenancy agreement to rent a property.
- To enter into a mortgage agreement to buy a property.
- To pay bills or organise a pension on behalf of the person with a severe learning disability.

When do I need to apply to become a Deputy for Personal Welfare?

Examples of when a Deputy for Personal Welfare may be necessary include:

- The person 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.
- The person 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 to apply for a financial Deputyship. 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 (DWP). 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 Personal 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 far less often than Property and Financial Affairs 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.

A family's experiences of having Deputyship

My mother and I applied for joint Deputyship following the repeated mistreatment of my brother, Ben and issues with the local authority which included a series of poor placements. We applied for both Property and Financial Affairs and Personal Welfare Deputyship and were awarded this on a joint and several basis which meant we could make decisions both with, and without each other. We felt that a Deputyship would help us to be more involved in future decisions and restore in us some power to challenge these where necessary.

Our role involves being available to help make and challenge decisions and to manage finances effectively; it also requires that we report to the Court of Protection (CoP) on an annual basis detailing any decisions made, and information about his finances. The CoP is also able to visit us or Ben to ascertain how the Deputyship is working for him. We are also regularly required to make decisions about his health.

The Deputyship has helped improve Ben's care. We have used our powers to move him from his old home, and be included in decision making, which gives him a stronger voice. It has also improved his access to medical professionals as we can use our powers when speaking on his behalf. We are now asked rather than told about decisions and work closely with the local authority to ensure that these are made in his best interest. His health is now better managed and his finances are safely managed by us.

Since we have been acting as Deputy we have used our power for other purposes including discussing issues with water and energy providers, ascertaining any new needs, however minor, and purchasing a home on behalf of Ben after having the Deputyship adapted to extend our powers. One piece of advice to other families would be to get support to ensure that your Deputyship is right for the circumstances from the start to avoid additional delays and costs. We had to pay an extra £1000 to amend our Deputyship to enable us to purchase a home for my brother.

Our advice to other family carers would be to apply for Deputyship if all other options of securing the needed voice have been exhausted, though in most circumstances it should not be needed. Families should be aware of the time and financial commitments involved. There are times when a Deputyship might feel quite stressful; it is an additional ongoing responsibility. Also, families should note that Health and Welfare Deputyship is hard to acquire. Lastly, you should always be prepared to assert your Deputy power, something I found difficult to do earlier on because I was so young when the Deputyship was awarded and am a sibling, not a parent.

We have gone from having no voice whatsoever, with him afforded the same lack of voice, to being listened to in all and every decision made by a good provider and a local authority that recognise us as Deputies.

Emma, sister and joint Deputy

3. Responsibilities

The Court of Protection will tell the Deputy about:

- Their powers and responsibilities.
- What decisions they can and cannot make (e.g. about money or healthcare).

Deputies must:

- Only make decisions in the person's best interests.
- Only make the decisions the court says you can make.
- Apply a high standard of care when making decisions.

Decisions a Deputy Cannot Make

Deputies cannot make a decision for someone if the person can make the decision by themselves. For example, has the person been able to make day-to-day financial decisions, such as what to buy on a shopping trip, in the past? If so, then they may be able to help with other small spending decisions too without the Deputy's involvement. If they are more alert in the mornings for example, that may be the best time to involve them in decision-making, rather than later in the day. In these kinds of situations, a Deputy can still help the person reach a decision.

Deputies cannot:

- Restrain the person, unless it is 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 do not, 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 Financial Affairs. (The process is the same for when you are applying for Personal Welfare Deputyship)

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 Public Guardian publication "*Deputy guidance: how to carry out your duties*" (Reference: SD3 and SD4). This guide can be found at: <https://www.gov.uk/government/publications/deputy-guidance-how-to-carry-out-your-duties>

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**.

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 to be a Deputy: Property and financial decisions*' provides a section on how you will be supervised as a Deputy and can be downloaded at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/497266/SD3-How-to-be-a-deputy-property-and-financial-decisions.pdf

Application, Supervision and Other Fees

| <i>Fee</i> | <i>Cost</i> | <i>Are there any possible exemptions/remissions?</i> |
|--|---|---|
| Application Fee | £400 per application | Yes, depending on applicant's financial circumstances (you need to complete the exemption form EX160 if you qualify) More info in booklet " <i>Court and Tribunal Fees- Do I have to pay them?</i> " (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 " <i>Office of the Public Guardian-How you will be supervised as a Deputy</i> "(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 " <i>Office of the Public Guardian- How you will be supervised as a Deputy</i> " (Reference: FS06) |
| Insurance Premium/ Security Bonds | 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. |

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 has not 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.

Appendix A: The Application Process

You can apply to become a Deputy for:

- 1) Property & financial 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*” (Ref: COP42), see page 11 for details of where to get the forms.

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" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #e0e0e0;">Issue</th> <th style="background-color: #e0e0e0;">Wording</th> </tr> </thead> <tbody> <tr> <td>• Banking & managing property</td> <td>• To oversee all matters relating to the property and financial affairs of (insert name of your relative)</td> </tr> <tr> <td>• To sign mortgage forms</td> <td>• To enter into a mortgage agreement to purchase a property on behalf of (insert name of your relative) to enable better living conditions.</td> </tr> <tr> <td>• To sign tenancy & or mortgage forms</td> <td>• To sign any necessary deeds or documents on behalf of (insert name of your relative) to enable better living conditions.</td> </tr> <tr> <td>• Making decisions about a direct payment/personal budget</td> <td>• Having the authority to make the decisions about securing the provision of a 24 hour community care service</td> </tr> </tbody> </table> | Issue | Wording | • Banking & managing property | • To oversee all matters relating to the property and financial affairs of (insert name of your relative) | • To sign mortgage forms | • To enter into a mortgage agreement to purchase a property on behalf of (insert name of your relative) to enable better living conditions. | • To sign tenancy & or mortgage forms | • To sign any necessary deeds or documents on behalf of (insert name of your relative) to enable better living conditions. | • Making decisions about a direct payment/personal budget | • Having the authority to make the decisions about securing the provision of a 24 hour community care service |
| Issue | Wording | | | | | | | | | | |
| • Banking & managing property | • To oversee all matters relating to the property and financial affairs of (insert name of your relative) | | | | | | | | | | |
| • To sign mortgage forms | • To enter into a mortgage agreement to purchase a property on behalf of (insert name of your relative) to enable better living conditions. | | | | | | | | | | |
| • To sign tenancy & or mortgage forms | • To sign any necessary deeds or documents on behalf of (insert name of your relative) to enable better living conditions. | | | | | | | | | | |
| • Making decisions about a direct payment/personal budget | • Having the authority to make the decisions about securing the provision of a 24 hour community care service | | | | | | | | | | |
| 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 or psychiatrists 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 cannot 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. 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 yourself. The maximum fee for processing these forms is: £825 plus VAT (double check fee with your lawyer).

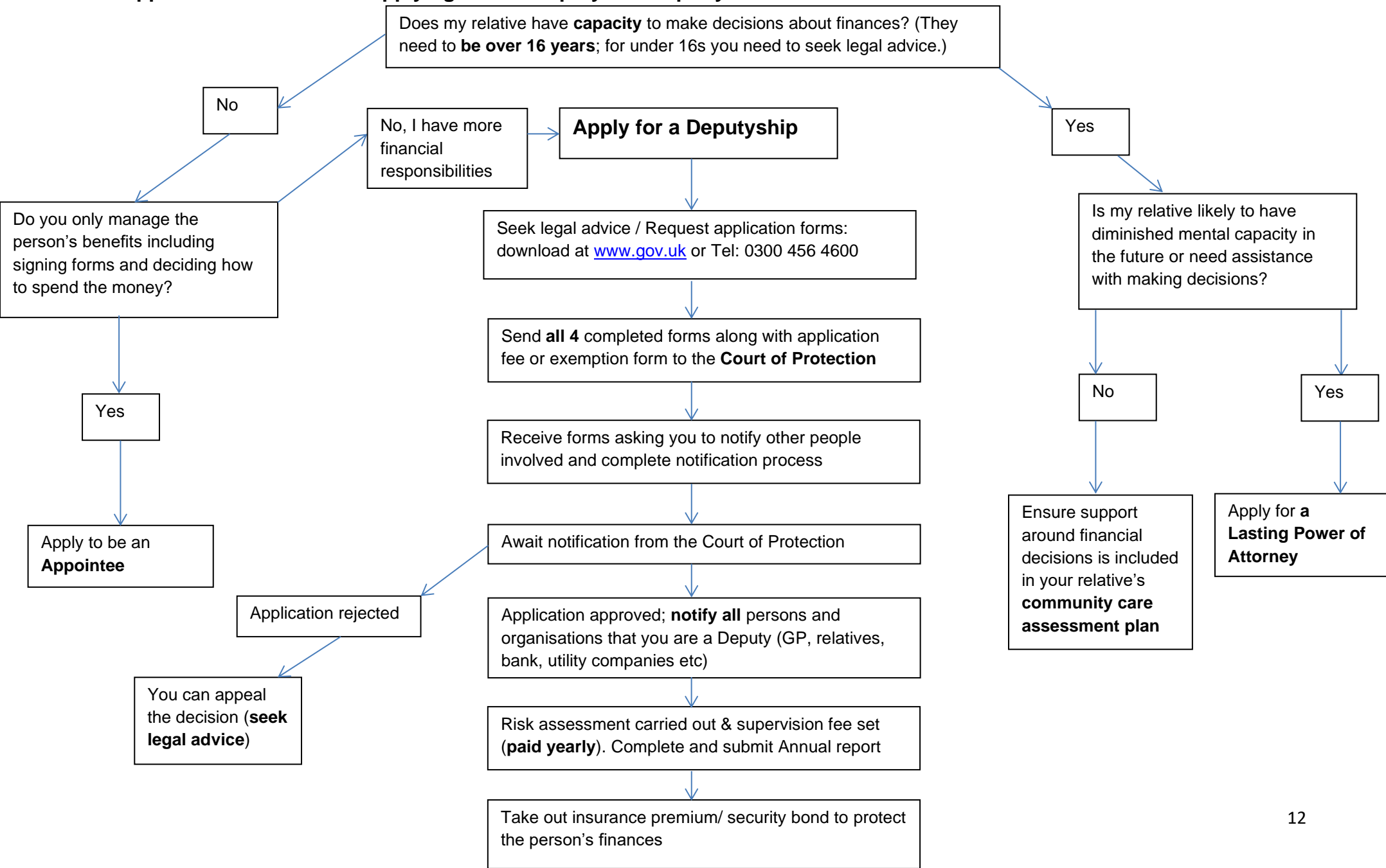
Where Do I Send the Forms When I Have Filled Them In?

Once you have completed the relevant forms you need to send **two** copies of the application form, one copy of the other forms 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 other people involved, **within 14 days** about your application. Once your application has been approved you need to send all persons concerned a notification that it has been approved using COP15 form. 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 and Financial Affairs



The Challenging Behaviour Foundation

We are the charity for people with severe learning disabilities who display challenging behaviour. We make a difference to the lives of children and adults across the UK by:

- Providing information about challenging behaviour
- Organising peer support for family carers and professionals
- Giving information and support by phone or email
- Running workshops which reduce challenging behaviour

To access our information and support, call 01634 838739, email info@thecbf.org.uk, or visit our website: www.challengingbehaviour.org.uk

If you have found this information useful, please consider making a donation.

You can show your support at www.challengingbehaviour.org.uk/support-us.

Make a £5 donation by texting CBF DN05 to 70085

Or email us to get involved at support_us@thecbf.org.uk