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Strengthening your role as a family carer

This section of the Family Carer Advocacy Pack is about the ways you can strengthen your role as a family carer.

As a family carer, you have certain rights and responsibilities in relation to your relative until they reach the age of 16 years old or over. In law this is known as parental responsibility. You can make decisions on their behalf on a wide range of issues. However, as soon as your relative turns 16 years old or over parental rights and responsibilities change, even if your relative lacks the mental capacity to make decisions themselves.

If you still want to be involved in key decisions about your relative and strengthen your role as a family carer there are several ways to do this.



Deputyship

A Deputy is legally responsible for someone who has been assessed as lacking the capacity to make decisions for themselves. A Deputyship Order will set out the Deputy's powers (and limits). They may relate to your relative's:

- Finances, property or accommodation, e.g. where they live, how they are supported
- Medical treatment and other health care issues
- Personal welfare

The powers given will depend on your relative's needs. A Code of Practice sets out how a Deputy should undertake their role.



Click here to read [the Code of Practice which sets out how to be a Health and Welfare Deputy](#).



Click here to read [the Code of Practice which sets out how to be a Property and Affairs Deputy](#).

There are two types of Deputyships:

Deputy for Property and Financial Affairs

Examples of when a Deputy for property and financial 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

If your relative's only income is from social security benefits and they have no property or savings you are unlikely to need to apply to be a Deputy, instead you can become an "Appointee". The application process for this is quicker and easier.

Deputy for Personal Welfare

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

- A series of linked decisions over time is required e.g. a series of decisions relating to a
- Medical condition
- There is a history of serious family disagreements over welfare issues
Your relative is living in supported living accommodation and there is a need to be clear about their capacity to refuse or invite people into their home

Mental Capacity Act Code of Practice

If the [Mental Capacity Act Code of Practice](#) is followed then Deputies for personal welfare should only be required in the most difficult of cases. The expectation is that health and social care professionals and family carers should be able to work in partnership to settle matters between them using the best interest process. If not, then a stand-alone application can be made to the Court of Protection.

Best interests is a way of considering the views of a person who has been assessed as lacking capacity and considering what the best option is for them. When making a decision on behalf of someone else consideration should be given to their likes, dislikes, wishes, feelings, values and beliefs, how they can be supported to be involved and the views of others e.g. family carers, other family members and friends.

Does a Deputy make all decisions?

No. Under the Mental Capacity Act your relative is assumed to have mental capacity to make decisions (even unwise ones). However a Deputy can make the more difficult decisions where your relative has been assessed as lacking capacity such as agreeing to medical treatment, medication changes, or where your relative lives. The most important thing is that any decisions are made in your relative's best interests.

Who can be my relative's Deputy?

Any adult aged 18 years old or over can be appointed as a Deputy if they meet a number of conditions such as not having a criminal record or not being declared bankrupt.

There are two types of Deputies:

- Lay/non professional, e.g. a family carer or friend or
- Professional/panel e.g. a solicitor who is chosen by the Court from a list of approved people

How to become your relative's Deputy for either Property and Financial Affairs, Personal Welfare or both

You need to make an application to the Court of Protection and pay a fee. The Court's role is to make decisions regarding the property, financial affairs and personal welfare of people who have been assessed as lacking the mental capacity to make those decisions for themselves. The Court appoints Deputies to make day-to-day decisions on behalf of someone who has been assessed as lacking capacity and considers one-off applications regarding complex or contentious (because someone disagrees) decisions.

['Deputies: make decisions for someone who lacks capacity'](#) provides information about the application process



Do I need a solicitor?

You do not need to 'instruct' a solicitor to make an application for Deputyship, but some family carers find the process complicated and long-winded. A specialist solicitor will be able to provide legal advice and guidance. They will ensure that the application is completed properly and that the people who must be notified about the application are told in good time. If the application is contentious (because someone disagrees) and you have to go to Court, then you will benefit from legal representation at any hearings. Instructing a solicitor will involve a fee.

The whole process can take up to 16 weeks and if you are approved the court order will inform you what your role involves.

This will include:

Making regular reports to the Office of the Public Guardian, to show that you are acting in your relative's best interest. You should keep records of decisions such as:

- Making a major investment
- Changing the care your relative is getting
- Deciding where your relative should live

You will be expected to keep and provide copies of any documents relating to decisions you've made, for example:

- Receipts
- Bank statements
- The court order will also provide details of the types of decisions you're allowed to make and you will be required to report on all decisions made

Involving your relative in decision-making

As your relative's Deputy you should always consider what decisions your relative can make, when well supported.

For example, if your relative is able to make day-to-day financial decisions about what to buy on a shopping trip, then they could possibly make other small spending decisions. If they are more alert in the morning then this may be the best time to involve them in decision-making, rather than later in the day.

As your relative's Deputy you cannot:

- Restrain your relative, 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 your relative, or change their existing will

- Make large gifts from your relative's money
- Hold any money or property in your name on your relative's behalf. However, a Deputy can use the Court Funds Office, or a bank or building society account to help someone with their finance

How long does my role as Deputy last

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

- Deputyship orders are granted according to the specific needs of your relative and do not usually have an expiry date. If a time limit is considered appropriate this will be set out in the order and when it expires a reapplication can be made. At this point a new Deputy can also apply for the role.
- The Court of Protection ends the Deputy's role because it feels the Deputy has not been acting in the person's best interests. In this instance the Court of Protection will appoint a new Deputy.
- Your relative no longer needs a Deputy's help, e.g. the status of their mental capacity has changed.
- Your relative dies. The Deputy must provide this information to the Office of the Public Guardian as soon as possible. The Deputy may have to provide a final report about their decisions and financial transactions.
- The Deputy Dies. In this instance the Court of Protection will only appoint a new Deputy:
 - If your relative still needs a Deputy
 - Someone else applies to be the Deputy
 - The court can appoint a Panel Deputy or a local authority Deputy if no one else applies for the role

The cost of becoming your relative's Deputy will depend on individual circumstances.



Read this [information from the Office of the Public Guardian \(OPG\)](#) about how to get help with paying fees



This [CBF information sheet, including a case study, is about a family's experience of applying for deputyship and the positive difference it made](#)



The OPG publication ['Making decisions... about your health, welfare or finances. Who decides when you can't'](#), provides further information

Appointeeship

If your relative has been assessed as not having the mental capacity to manage their own benefits or finds it difficult, for example because they find it hard to fill in forms or manage financial information, then you can apply to the Department of Work and Pensions (DWP) to become their appointee. As your relative's appointee you can claim and manage their benefits and access information from the DWP in relation to their benefits.

To become your relative's appointee you must contact the DWP. They will arrange to visit your relative to assess if an appointee is needed, and whether you are a suitable appointee. If your application to become your relative's appointee is successful, the DWP will send you documentation to confirm that you are formally your relative's appointee. You are not the appointee until you have received this form. It is important to note that appointeeship only relates to managing your relative's benefits.

[This link provides information about how to become an appointee](#)



There is a different process for tax credits.

Read '[Claiming and dealing with tax credits for someone else](#)' for further information



Litigation Friend

A 'litigation friend' is someone who acts on behalf of someone else to enable them to access the justice system on an equal basis, for example a court case relating to:

- A civil case, except a tribunal
- A family case
- A Court of Protection case

Appointeeship v Deputyship - a family carer's story

I am my daughter's appointee but found it increasingly difficult to get people to accept this when it comes to discussing utility bills, accessing online banking, even sorting out a bus pass. Each organisation wanted proof of Deputyship.

The ex-manager of my daughter's service decided to remove personal money from individual flats and keep it in the main office where only 3 staff had access to it. This meant my daughter was restricted in what she could do, e.g. if the manager or 3 members of staff were not around, she didn't have access to her money so couldn't decide on the spur of the moment to go shopping, for a coffee, to the cinema. This could result in behaviour described as challenging.

It wasn't fair on my daughter or her support staff. When I queried this, I was told I could not alter this as it was CQC approved - this is not true - and I had no say over her accounts because I did not have Deputyship and being her Appointee did not count. A couple of safeguarding queries sorted this, and the manager moved on. I decided that to avoid this type of thing happening again I would apply for (and was successful) for Deputyship and have found things much easier.

Who can be appointed a litigation friend There are two groups of people who can be appointed as a litigation friend. The first is a person with authority as a Deputy to conduct the proceedings on behalf of the protected party (your relative). If there is no appointed Deputy, then an appropriate adult (this could be you) can put themselves forward as a litigation friend. You will need to meet certain criteria:

- You can fairly and efficiently conduct proceedings on behalf of the protected party (your relative)
- You have no interest adverse to that of the protected party (your relative) and
- You undertake to pay any costs which the protected party (your relative) may be ordered to pay in relation to the proceedings subject to any repayment they might be entitled to



[More information about litigation friends](#)

Lasting Power of Attorney

Lasting Power of Attorney is when a person gives their consent to someone else to make decisions on their behalf, for example if they become ill or have an accident that temporarily or permanently impacts on their ability to make decisions for themselves. This could apply to your relative if they are able to make decisions independently now but have concerns about the future, e.g. if your relative has Down's Syndrome and is worried about developing early onset dementia.



Read this [information from Mencap](#) for people with a learning disability, autism or both and their family carers about applying for lasting power of attorney



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

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