

Lay and Professional Deputies

LAY DEPUTIES

A lay deputy is usually a family member of the person who lacks the ability to make decisions for themselves. People may lack mental capacity because, for example:

- they've had a serious brain injury or illness
- they have dementia
- they have severe learning disabilities or other mental health difficulties

A prospective lay deputy makes an application to the Court of Protection to become a deputy for the person in question and, if successful, is empowered to support them to make decisions or if they lack capacity, to make those decisions on their behalf. Sometimes a lay deputy may need to make one or two significant decisions, or to make global decisions on an ongoing basis which require a general widely drawn Order.

A lay deputy client may need advice regarding an application for one or two decisions such as may require one decision or a declaration from the Court, in which case a general Order may not be required, and a specific Order will be needed.

A lay deputy can request authorisation for property and affairs or health and welfare decisions to be made.

There are 2 types of deputy:

property and financial affairs:

- e.g. paying bills, buying or selling a house

personal welfare:

- e.g. making decisions about medical treatment; where it is in someone's best interests to live; and regarding contact with certain individuals such as parents.

PROFESSIONAL DEPUTIES

It is also possible for the Court of Protection to appoint a professional deputy. This is particularly important and more likely if for example, an attorney under a power of attorney has abused their role and has abused the person who gave them the power (the donor) financially and/or in relation to their care. A professional deputy has the skills and expertise to deal with the challenges of the role. The firm has a Trust Corporation which is a panel deputy. The team frequently acts where donors of Enduring or Lasting Powers of Attorney have been abused financially. Sometimes we are asked to act as health and welfare deputies as well. The team assists the Public Guardian in its investigation into wrongdoing regarding the vulnerable party's affairs.

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Where JE Bennett Law act as deputy, we will try to work with the person's family at all times, but it is important to note our obligations are first and foremost to the vulnerable person.

Duties as a professional deputy often include:

- Purchasing a property
- Arranging for a property to be purchased and/or adapted to meet the person's needs
- The purchase of an adapted vehicle; aids and equipment
- Ensuring that the person is receiving all benefits that they are entitled to
- Employing a case manager to oversee a care team
- Arranging holidays with support staff
- Preparation of a Will or a statutory Will (for people aged 18 and over)
- Submission of annual accounts to the Office of the Public Guardian and arranging for the completion of annual tax returns as appropriate
- Being alive to safeguarding concerns or risks around neglect or financial abuse and the need for best interests decisions or applications for aspects outside the deputy's authority such as for gifts or loans. The professional must also be aware of deprivation of liberty aspects and to advise where appropriate for necessary legal authorisations.

The team advises on all aspects of Court of Protection work and the role and duties of deputies. The team handles deprivation of liberty matters including advising lay deputies around these issues, and what amounts to a deprivation and in what circumstances.

The team also adhere to the regulatory guidance released by the Public Guardian, which requires proposed expenditure and prospective annual costs to be submitted to the Office of the Public Guardian a year in advance, and is alive to the need to review capacity in accordance with the Code of Practice which accompanies the Mental Capacity Act 2005. In particular, they consider on an ongoing basis whether deputyship is still required, or whether the person may or should be discharged from the auspices of the Court of Protection.

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JE Bennett Law is a law firm that specialises in helping clients in vulnerable circumstances. We are industry-recognised leaders in our field with a proven track record of delivering timely, efficient and professional service for our clients.



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