

A Guide to

Deputyship on the Loss of Mental Capacity

leonard
gray



- Understand when a Deputyship order will be required.
- Understand the role of a Deputy.
- Understand the paperwork which needs to be completed for the application.

This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to Deputyship on the loss of mental capacity. Legal advice should always be obtained from Leonard Gray in application to a particular case.

Section

1

Deputyship Orders

This Section of the Guide seeks to outline the basis for a Deputyship Order and when one will be necessary as well as outlining some of the basic responsibilities of a Deputy.

1. What is a Deputyship Order?

When someone has lost or is losing mental capacity through illness or an accident, it can be a very traumatic time for family members. At this stage it may well be that some thought will have to be given as to how their financial affairs will be managed in the future.

Unless an Enduring Power of Attorney (pre-2007) or a Lasting Power of Attorney (post-2007) is in place when someone loses mental capacity there will be no one empowered immediately to look after that person's financial affairs.

If there is no document in place, authority is needed to run that person's finances and the only option will be to apply for a Deputyship Order from the Court of Protection.

The individual who has lost or is deemed to be losing their mental capacity is known as the 'Client'.

2. Who Can Act as a Deputy?

A Deputy is a person appointed by the Court of Protection to manage the health and welfare or the property and financial affairs of another person, who lacks the mental capacity to manage their own affairs themselves.

A Deputy can only act under a court order from the Court of Protection. Such an order sets out the Deputy's powers and duties in acting for the individual and entitles the Deputy to act on behalf of the person lacking capacity.

Anybody can be considered as a Deputy as long as they are over 18 years of age. Normally they would be a relative, friend or a professional such as a Solicitor.

In cases where there is no obvious choice as to who will act but there is a need for a Deputy to be appointed, the Court will consider appointing a public Deputy.

3. Appointment of a Deputy

An appointment of a named individual to act as someone's Deputy will normally be made where:

- The Client has more than £10,000 in cash after settling their debts; or
- There is a property to be sold; or
- The Client has a level of income that the Court feels requires the appointment of a Deputy.

4. The Role of a Deputy

A Deputy deals with the Client's finances on a day to day basis and is entitled to receive on behalf of the Client all benefits, pensions and other income as well as being able to deal with expenses on their behalf.

The Court will normally make an Order appointing a Deputy authorising that person to collect all income on behalf of the Client. The Court can also require the Deputy to do a number of other things such as:

- Pay any Court fees, doctor's fees, care home fees and discharge any other outstanding bills;
- Sell the Client's house;
- Sell other items belonging to the Client (if they are unlikely to be used);
- Maintain assurance policies; or
- Provided for documents such as a Will or stock/share certificates to be retained safely.

The decisions you make as a Deputy can have a big impact on the Client's life. In your role as a Deputy, you should:

- Only make decisions in the Client's best interests;
- Only make the decisions the Court says you can make; and
- Apply a high standard of care when making decisions.

As a Deputy you will not be limited to only make decisions as directed under the Deputyship Order by the Court. Without specific authority to do so, the following decisions can never be made:

- Making a Will or any addition to a Will on behalf of the Client;
- Making large gifts out of the Client's money; and
- Holding any money or property on behalf of the Client.

Before you make a decision for someone else, you should consider if that person might

be able to make the decision on their own. As a Deputy you are not able to make a decision for the Client in certain circumstances, such as:

- When you believe the Client can make the decision themselves;
- When it conflicts with a decision made by an Attorney acting under an Enduring Power of Attorney or a Lasting Power of Attorney; and
- When you want to stop life-sustaining, for example turning off a life-support machine.

5. Short Deputyship Order

In some circumstances a full Order appointing a Deputy may not be necessary and in such circumstances the Court may decide to make a Short Order. Such circumstances are likely to be where the Client's estate is worth less than £10,000 and there is no property to be sold.

A short Order may authorise the Deputy to do the following:

- Receive any pensions/trust income;
- Receive all or part of funds the Client may have invested with a bank/building society;
- Pay care home fees, solicitor's fees and any other debts or liabilities; and
- Provide for the safe custody of important documents/valuables.

The next Section of this Guide seeks to outline the procedural requirements for obtaining a Deputyship Order.

Section 2

Applying for a Deputyship Order

This Section of the Guide deals with the procedure taken when applying for a Deputyship Order. It is carried out with the Court of Protection who are a Government department appointed to look after the interests of individuals who no longer have mental capacity.

1. The Documents for Completion

When it becomes obvious that an application for Deputyship must be made, there are a series of formalities to be dealt with. A number of documents have to be prepared which comprise as follows:

- Deputy Declaration

This document has to be completed by the Deputy and confirms that they are aware of their duties. It also asks questions of the Deputy to make sure that they are a suitable applicant.

- Medical Certificate

This document is completed by a Doctor (often the Client's GP) to give basic details of the Client's medical circumstances. There is usually a fee charged by the doctor for completion of this document.

- Statement of Client's Assets and Income

This document asks a wide ranging set of questions about the Client's finances and must be completed fully listing all assets and sources of income.

- Notification Letter

This document must be completed on behalf of the proposed Deputy and given to the Client and all relatives who are closer than the proposed Deputy to the Client.

2. Lodging the Application

Once all documents are completed they are sent together with the commencement fee to the Court of Protection. Leonard Gray acting on behalf of the Deputy normally lodge the application.

If it is necessary to obtain directions from the Court on urgent matters then these can be detailed in a covering letter and the Court can then deal with these on an Interim basis.

Once the application has been issued a letter is then issued by the Court of Protection stating when the application will be considered. This letter has to be given to the Client personally and a further document completed confirming details as to when the letter was given to the Client. This further document must then be sent back to the Court of Protection.

3. The Order

Once the Court has considered the application, they will if satisfied make a First General Order appointing a Deputy and detailing what initial steps the Deputy must take. The Deputy will then have a number of duties to be discharged over the course of time. These will include (but is not an exhaustive list):

- To act in the best interests of the Client;
- To open a Deputyship account at a local bank/building society;
- To prepare Deputyship accounts annually;
- To ensure that all income is collected and all bills paid on time; and
- To take out a form of insurance known as a security bond. This is to cover any loss to the Client's estate should a Deputy fail in their duties. This is usually be arranged by the Solicitor lodging the application through an insurance company/bank.



The next Section of this Guide will look at how to make an appointment.

Section 3

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact a member of our team: **Chris Kelly**, **Jenna James** or **Sigourney Rutkowski** who will be happy to do so.

T: 01245 504 904

E: ckelly@leonardgray.co.uk / jjames@leonardgray.co.uk
srutkowski@leonardgray.co.uk

A: Leonard Gray LLP 72 -74 Duke Street Chelmsford Essex CM1 1JY

We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9am to 5pm. Alternative times by arrangement.

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