
Acting as a Deputy: Your Powers and Duties Explained – Property & Finance

If you are named as a Deputy in an Order from the Court of Protection, then you will be required to make decisions about the affairs of a friend or family member.

This will be because they now lack capacity to manage their own affairs. The person who you are making decisions for is called the Patient and you are called the Deputy.

Perhaps your friend or relation has special needs, has had an accident or illness, or is suffering from Alzheimer's or Dementia.

As a deputy, you'll be authorised by the Court to make certain decisions on their behalf, but you need to be mindful of the legal framework within which you are authorised to do so.

The Deputy Order

The scope of your authority is as set out in the Order and you will need to read this carefully to make sure you understand it, and that it covers all of the decision-making and actions that you feel you'll need to make on behalf of your loved one.

There will be some restrictions on your powers that will be set out in the Order. In addition to these, all deputies must act within the following five statutory principles:

- A person must be assumed to have capacity unless it is established that he or she lacks capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so are taken without success
- A person is not to be treated as unable to make a decision merely because he or she makes an unwise decision
- An act done, or decision made, under the MCA 2005 for or on behalf of a person who lacks capacity must be done, or made, in his or her best interests
- Before the act is done, or the decision is made, the deputy must consider whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Code of Practice

As a deputy, you need to know about the Code of Practice for Mental Capacity 2005. This Code of Practice provides guidance for anyone who works with, or cares for, a person who lacks capacity.

The section of the Code that applies to deputies says that deputies must:

- Act with due care and skill
- Not profit from their position as deputy
- Not delegate, unless authorised to do so (although you can work with a solicitor or other professional to help you)
- Act in good faith
- Respect the confidentiality of your loved one's information
- Comply with the directions of the Court of Protection
- Keep accounts and good records
- Keep your loved one's money and property separate from your own

Conflicts of Interest

During your role as deputy you must also look out for any conflicts of interest that may arise. A conflict of interest is where your interests may not be aligned with those of your loved one. For example, where you might derive a personal benefit from making a certain decision.

In order to avoid this, we recommend the following:

- Funds belonging to you and your loved one must be kept separate
- Investments should be made in your loved one's name, where possible
- An application must be made to the Court of Protection for any financial transaction where there is a potential conflict of interest (for example, a loan to the deputy or member of their family or an investment in the deputy's business).

Guidance has recently been published by the Office of the Public Guardian about making investments for someone who does not have mental capacity and you can view this guidance by following this link: <https://www.gov.uk/guidance/investing-for-someone-as-their-attorney-or-deputy>

If you are ever unsure about conflicts of interests, please do not hesitate to contact us and we can advise you.

Gifts

As a deputy, you have no statutory duty to make gifts, although the Order appointing you as a deputy will usually specify that you have the same authority to make gifts as if

you were an Attorney acting under a registered Lasting Power of Attorney, that is:

- Gifts must be reasonable with regard to all the circumstances and the size of your loved one's estate
- Gifts can be made:
 - to any charity that your loved one made, or might be expected to make, gifts to; or
 - on customary occasions to persons that are related or connected to your loved one (e.g. Christmas and birthday presents, gifts of anniversaries etc.).

It is not generally allowed for a deputy to make gifts for inheritance tax planning purposes without approval from the Court of Protection. This is the position even if the deputy is trying to make lifetime gifts that reflect the beneficial provisions in a will.

However, case law has established a sensible *de minimis* exemption for gifts made by deputies. The exemption covers the use of the annual exemption of £3,000 a year and the use of the small gifts exemption of £250, up to a certain number of people, depending on the circumstances.

If you need more information or assistance about making gifts, please contact us.

Reports and Record Keeping

As a deputy, you must submit an annual report to the Office of the Public Guardian and you will be reminded about this nearer the time, if it applies to you. The forms will be sent to you automatically a few weeks before the end of the accounting period and if you need any help with these, please do not hesitate to contact us.

When your appointment as a deputy comes to an end, for example, because you no longer wish to act, or the person you are making decisions for has died, the Office of the Public Guardian may require a final report to be submitted, but again you'll be asked about this at the time, if it applies to you.

Accounts

You must keep a record of accounts, dealings and transactions made on your loved one's behalf. Some of the detail from these accounts is used to complete the annual report, if required.

The Office of the Public Guardian may also request that you submit accounts from time to time, a part of their overall supervision of deputies.

Visits

The Court of Protection is allowed to carry out visits to deputies. These visits are often routine and simply to check that everything is going Ok. More rarely, visits may be triggered by a complaint or concern that has been raised with the Office of the Public

Guardian.

How we can help

We are here to help during your appointment as deputy and so please do not hesitate to contact us at any time, if you need further guidance or assistance in your role. We can also act for you in any of the reporting or accounting requirements that you may need to deal with during your appointment – just ask.

If you'd like more information call **01904 866139**
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