
How do I become a Deputy?:

What is a Deputy and how can they help elderly or vulnerable people?

You may have a friend or family member who lacks the mental capacity to look after their own affairs. If so, and you are managing these things for them, it may be necessary to apply to become a Deputy.

Deputies are appointed by the Court of Protection and are given legal authority to make decisions on behalf of a vulnerable person.

Perhaps your friend or family member has special needs, has had an accident or illness, or is living with Alzheimer's or a different kind of Dementia? Whatever the reason for your loved one's loss of mental capacity, becoming their Deputy may make their affairs easier for you to manage.

The Court of Protection and Deputies

The [Court of Protection](#) is responsible for making decisions on behalf of people who are legally unable to do so for themselves.

With many important decisions, it is critical that an individual can demonstrate they have the required mental capacity to make the decision at the time. If the individual does not have mental capacity, the decision cannot be made – unless there is someone else who has the legal authority to make the decision for them.

The Court of Protection has this authority, and can exercise it to make decisions in relation to many different aspects of a person's life, such as their health, welfare, or financial affairs.

It would be costly and time-consuming for the Court of Protection to decide all important decisions for vulnerable people, so the court also has the ability to appoint Deputies. As the name suggests, Deputies are given legal authority from the Court of Protection to use the court's decision-making power, making day-to-day decisions a lot more practical.

What about Powers of Attorney?

You may be aware that Powers of Attorney (such as [Lasting Powers of Attorney](#) or Enduring Powers of Attorney) also allow people to make decisions on behalf of someone else. With a Lasting Power of Attorney, the maker of the Power (known as 'the donor') appoints Attorneys who will make decisions for the donor if the latter loses mental capacity. Some Powers of Attorney may even be used whilst the donor still has mental capacity.

However, to create a Lasting Power of Attorney, the donor must have mental capacity **at the time they create it**. Therefore, if your loved one has already lost mental capacity (and a Lasting Power of Attorney does not already exist), using this method to give you legal authority for manage their affairs is not usually an option.

For more information on the differences between Powers of Attorney and Deputyships, have a look at our [factsheet](#) on the subject.

The two types of Deputy

There are two general types of Deputy:

- Property and Financial affairs, e.g. paying bills or organising investments
- Personal Welfare, e.g. making decisions about medical treatment and how someone is looked after

You can apply to be either type of Deputy, or both. If you're appointed, the court will make what's called a 'Deputyship Order'. This will set out the specific powers and responsibilities given to you as a Deputy.

Who can become a Deputy?

Anyone can make an application to become a Deputy, although usually it will be a friend or family member of the vulnerable person. However, no one has an 'automatic right' to be appointed as a Deputy, no matter how close of a relationship they have to the vulnerable person.

The only strict requirements to becoming a Deputy are:

- You must be over the age of 18; and

- You must be a person (i.e. not a legal entity like a company – although trust corporations can be appointed in some circumstances).

For an appointment to take place, an application must be made to the Court of Protection. If you make this application, you do not necessarily have to ask that you are appointed as the Deputy; you might want to nominate someone else whom you consider to be more suitable.

It should be noted, however, that the Court of Protection has the power to appoint any Deputy they consider to be best placed to carry out the role – whether you have nominated them or not – although a Deputy cannot be appointed without their own consent. The different criteria they use when deciding who to appoint as a Deputy are examined below.

Professional Deputies

Professional Deputies may also be appointed. This is often done by the court where the vulnerable person has a large estate, or where complex issues may arise.

You may choose, however, to request that a professional Deputy be appointed if you think it would be in the best interests of your loved one. If you would like information about appointing someone from Roche Legal as a Deputy, just ask.

How many Deputies can be appointed?

It is possible for more than one Deputy to be appointed to act on someone's behalf. Where multiple Deputies are appointed, it will introduce new questions of how those Deputies can use their powers.

The court will specify in the Deputyship Order how the Deputies are authorised to act. This could be:

- *Jointly* – meaning the Deputies can *only* take action when all Deputies agree to it.
- *Jointly and severally* – meaning the Deputies may act together or separately.
- *Jointly in respect of some matters, and jointly and severally in respect of other matters* – meaning there will be a mix of the two described above. The Order will make it clear which method is needed for each of the Deputies' powers.

What will the Court of Protection consider when appointing a Deputy?

Before you take steps to become a Deputy, it is useful to consider the criteria used by the Court of Protection to determine who is best placed to act. Running through these criteria yourself might give you a better idea of whether you *should* become your loved one's

Deputy or not. You might ask yourself whether there is anyone else more suitable to act or whether there any ways you could improve your own suitability for the benefit of your loved one. In some cases, appointing a professional such as a solicitor, makes sense.

In general, the Court of Protection will look at:

- Your relationship with the vulnerable person. The court generally prefers close friends or relatives and it will take into account how affectionate and devoted the relationship between you is.
- Your familiarity with the vulnerable person's circumstances, wishes and needs.
- The vulnerable person's wishes and, if possible, an assessment of who they would be likely to choose to be their Deputy if they could do so. This may include looking at who they have trusted in the past, or, if they have made a Will, who they have appointed as their Executors.
- Your character. In particular, focusing on your:
 - Reliability
 - Integrity
 - Competency, skills and any relevant experience
 - Financial good character – i.e. that you are not bankrupt or have criminal convictions
- Your location in relation to the vulnerable person. Deputies who live close to the vulnerable person are preferred, in general, due to reasons of practicality and the ability to assist the vulnerable person in an emergency. However, living far away from the vulnerable person will not automatically prevent you from becoming their Deputy.
- Your age and health. This may have a bearing on whether you can perform the duties of a Deputy.
- Any other responsibilities and demands on your time.
- Whether there are any potential 'conflicts of interest' between you and the vulnerable person.

The court will consider many of these different factors and also anything else which it considers to be relevant. The appointment of a Deputy should follow the same principles under which a Deputy performs their duty – namely that anything done must be in the best interests of the vulnerable person.

For more information on this, and how potential conflicts of interest may arise, read our [factsheet](#) on 'Acting as a Deputy'.

What are the responsibilities of a Deputy?

Our [factsheet](#) on 'Acting as a Deputy', mentioned above, provides much more detail on a Deputy's responsibilities.

However, one of the most important responsibilities as a Deputy is that you must assess the vulnerable person's level of mental capacity each time you make a decision for them. You cannot assume that they lack mental capacity for all decisions simply because they are unable to make one decision at a particular time. Also, in certain circumstances, a vulnerable person may lack mental capacity for a decision on one day, but have the required capacity for the same decision on another day.

Roche Legal can advise and guide you on your responsibilities and help you to act at all times in your loved one's best interests.

We can also help you to prepare the paperwork and annual accounts which come as part of a Deputy's responsibilities.

Do I really need to become a Deputy?

In some cases, it may not be necessary for a Deputy to be appointed.

For example, you may not need to be a Deputy if you are simply looking after someone's benefits. Instead, you can apply to become an Appointee.

Additionally, if the vulnerable person made a Lasting Power of Attorney before they lost mental capacity, the appointed Attorneys might have the necessary authority to make decisions for the vulnerable person. However, this will depend on the terms of the Lasting Power of Attorney itself.

For more information on the similarities and differences of Lasting Powers of Attorney and Deputyships, have a look at our [factsheet](#) on 'Powers of Attorney v Deputyship Orders'.

A lot will depend upon your circumstances, and those of the vulnerable person. If you would like advice on your specific situation, please [contact us](#).

Can a Deputy make a Will for someone who lacks capacity?

Yes, although it is not a decision a Deputy can make for the vulnerable person directly. Instead, the Deputy can apply to the Court of Protection for what is called a Statutory Will.

Statutory Wills are an important consideration where the vulnerable person has not made a Will or their existing Will needs to be changed. Ordinarily, a person who cannot understand the significance of a Will, or understand the scope of their estate, is legally unable to make a Will themselves.

For more information on Statutory Wills, have a look at our separate [factsheet](#) on the subject.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

Our reassuring legal experts specialise in:

- Wills
- Contentious probate and Will disputes
- Trusts and tax planning
- Estates and probate
- Powers of Attorney
- Court of Protection applications
- Missing persons law

If you need advice on any of the issues raised in this factsheet, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice. We're always on hand to help you.

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