

# HEWITSONS

## THE COURT OF PROTECTION



The Court of Protection is a specialist Court set up to deal with issues relating to people who lack the capacity to make decisions themselves. It has the power to appoint a Deputy on their behalf. The Deputy can then take the decisions the person who lacks capacity is unable to make. The Court also makes decisions regarding Lasting or Enduring Powers of Attorney. We have produced a separate Guidance Note on Lasting Powers of Attorney should you wish to know more.

### **Mental Capacity Act**

The Court's power derives from the Mental Capacity Act 2005. The Act only applies in England and Wales. It introduced the new Court of Protection following its implementation in October 2007.

Whilst it is impossible to cover the Act in any detail here, it is important to note that the Act works on the basis that a person is presumed to have capacity to make a decision unless shown otherwise. A lack of capacity can only be shown once that person has been given all appropriate help and assistance to try and take a decision themselves. Furthermore, if a person is shown to lack capacity then any decision taken on their behalf must be in their best interests. The Act gives the Court power to make decisions about both the personal welfare and the property and affairs of an individual who lacks the capacity to make such decisions themselves.

### **Appointment of a Deputy**

The most common reason for seeking the assistance of the Court is in relation to a person's property and affairs. If a person lacking capacity has not made either a Lasting or Enduring Power of Attorney then it will be necessary to apply for the appointment of a Deputy. The appointment of a Deputy is a significant step to take. The Court must be sure that this is the right decision. When making an application the Court must be supplied with a substantial amount of information, including medical evidence of lack of capacity. Anyone who has concerns about an individual's ability to manage their affairs can apply to be appointed as the Deputy. However, it is normally either a close family member or a professional who does so.

We can guide you through the application process and prepare all the necessary application papers. We can also assist in obtaining the appropriate medical evidence. If a family member does not wish to take on such a responsible position then we would be happy to act as a professional Deputy. Once the application is made, certain family members and the person about whom the application is being made must be notified.

They then have the right to raise objections or concerns. If these are sufficiently serious then it may be necessary for a full Court hearing to take place. If no objections are received then you should expect the process to take somewhere between 4 and 6 months to complete. This may take longer if a Court hearing is required. If urgent decisions are needed then the Court can authorise these separately. When the application is complete the Deputy will receive a Court Order confirming their appointment and setting out in detail the extent of their powers.



## Role of the deputy

Once the Deputy is appointed then he will be responsible for taking most day to day decisions on behalf of the person who lacks capacity. These can range from collecting benefits, paying regular bills or even submitting a tax return.

The Deputy will also need to open a bank account in his name and that of the person he is acting for. If the Deputy has to decide on a more substantial issue, for example in relation to the sale of a house, Then the terms of the Order should be checked closely.

If what you wish to do is not specifically authorised then the authority of the Court must be sought. This would be dealt with by way of a separate application. There are certain things that a Deputy cannot do, and these include making a will on behalf of the person they are acting for. However, there may be circumstances where the person needs to make a will and an application for a statutory will should be considered. Please see our separate Guidance Note for further information on this issue. As a Deputy you will be supervised by the Office of the Public Guardian, which works alongside the Court of Protection.

The level of supervision depends on the type of decisions that need to be taken, the complexity of the affairs of the person you are acting for, the nature of the assets under your control and the relationship between you and the person you act for. You will also be required to submit an annual report detailing what decisions you have taken.

Your role as Deputy ends when the person who lacks capacity either dies or recovers capacity. The Order may also only last for a set period. If you wish to retire then you should apply to the Court for your Order to be discharged.

## Code of practice

All Deputies must comply at all times with the provisions of the Mental Capacity Act 2005. The government have published a Code of Practice which provides guidance and information to everyone affected by the Act and explains how it works in practice. We would strongly recommend you purchase a copy of the Code of Practice which is available from HM Stationery Office. You may view the Code online at the government website ([www.gov.uk](http://www.gov.uk) and search for Mental Capacity Act Code of Practice) .

## How Hewitsons can help

We have experience of dealing with many types of Court of Protection application. We can guide you through the process or prepare the application for you. We can also act as Deputy if no one else is willing to do so. We can also provide ongoing advice to a Deputy or advice on one off issues. The cost of our advice would normally be met from the funds of the person subject to the jurisdiction of the Court of Protection and to whom the advice relates (subject to the approval of the Court).

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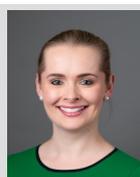
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This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

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