

Deputyship

The appointment of a Deputy would normally be unnecessary if the incapacitated person (the person who has lost mental capacity) had created a valid Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA).

However, in circumstances when the incapacitated person has not created a valid EPA or LPA the application to be appointed as a Deputy must be made to the Court of Protection. The Court of Protection's jurisdiction is exercisable where, after considering medical evidence, it is satisfied that a person is incapable by reason of mental disorder, of managing and administering his or her property and affairs.

Who should be appointed as a Deputy is ultimately a matter for the Court of Protection to decide when the application and all the relevant factors are before it.

It is normal that the incapacitated person's nearest relative is proposed as Deputy.

To enable the application to proceed, it would be necessary to obtain a medical certificate regarding the incapacitated person's mental capacity stating that they are incapable, by reason of mental disorder, of managing and administering his or her property and affairs, and this must be registered and completed by a Medical Practitioner.

The Deputy Order will set out what specific powers the Deputy has in relation to the incapacitated person. It will depend on the needs of the incapacitated person and ultimately will be the Courts decision.

The powers of a Deputy may apply to any aspect of the incapacitated person's life, including their finances, personal welfare and consent as to medical treatment and social care interventions.

Once somebody has been appointed as a Deputy and they are appointed to be responsible for property and affairs, the Court is likely to require the Deputy to provide some sort of security. The Court will determine the level of security required which will be proportionate to the amount of funds the Deputy is handling. This security will normally be provided by way of an insurance bond. It is quite likely that the Court will ask the Deputy to provide regular reports and accounts to the Office of the Public Guardian.

If you wish to discuss this matter further, please contact our Private Client Department.



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