



NOVUM LAW

NOVUMLAW.COM

A large, solid teal wavy graphic that curves from the bottom left towards the top right, occupying the right half of the page.

GUIDE TO COURT OF PROTECTION

What does the Court of Protection do?

No-one chooses to have an accident or suffer ill health with long term consequences, but if this happens, the management of personal matters may become more difficult. That is where the Court of Protection steps in as a safeguard, allowing a Deputy to be appointed on your behalf to manage your property and affairs.

The Court of Protection is a specialist court that is responsible for overseeing the financial affairs and welfare of people that have difficulty making these decisions due to impairment of their mental capacity.

If an individual has capacity, they can make a Power of Attorney. If this is not possible, or has not been done and support is required to make important decisions, then the Court can provide the necessary powers.

When would I need to make an Application for a Property and Affairs Deputy for someone?

You would need to make an application for a Deputy if someone lacks capacity because of an impairment or disturbance of the function of the mind or brain. This may arise from a brain injury.

You need to consider carefully what might be the best option for the individual concerned – we often liaise with medical teams and privately commissioned experts to ensure the least restrictive option is pursued.

If the application relates to a personal injury claim, then the costs of both the application and running the Deputyship (including a Professional Deputy) can be reclaimed.

What is the difference between an Attorney and a Deputy?

An Attorney is appointed by an individual under a legal document called a Power of Attorney. A Deputy is appointed on an Application to the Court where a Power of Attorney is not available and/or no Attorney is validly appointed.

What guidance does the Attorney or Deputy have?

Appointments under Lasting Powers of Attorney or made by the Court of Protection are governed by the Mental Capacity Act 2005 which has five guiding principals. These are:

- 1 An assumption of capacity;
- 2 Supporting people to make their own decisions;
- 3 People have the right to make eccentric or unwise decisions;
- 4 Where someone lacks capacity, an Attorney or a Deputy must act in the person's best interest;
- 5 Where a person lacks capacity, any action taken on their behalf must generally be the least restrictive option.

Where possible, clients are encouraged to make decisions or at least be involved in the decision-making process. If this is not possible then the appointed person may make a decision on their behalf.

A court appointed Deputy is closely monitored and can provide greater security. Attorneys are less heavily regulated.

Who can be a Deputy?

The partners at Novum Law are often asked to become Deputies for clients that lack capacity and are pursuing claims.

Anyone can apply to be a Deputy and notice should be given to the individuals concerned and their close family and friends. In the majority of our cases, professional Deputies are appointed to assist with reaching difficult decisions and advising on and managing the investment of significant sums of money arising from a personal injury claim.

What can a Deputy do?

A Deputy's powers are granted by the court and the court will advise on what actions they can take without further court approval. For example, one of the duties commonly undertaken by a Professional Deputy is to purchase a property on behalf of a client and arrange the recruitment of care teams and case managers.

When does the appointment come to an end?

A Deputy is appointed by the court in respect of property and financial affairs until the court is asked to end the order. This may be because the person has regained capacity, in which case a medical expert is asked to confirm this. Or, sadly, it could be because the person has died. The appointment of an Attorney will end when the person appointing them dies.

“Their support has been a godsend. They've helped me so much, financially with the settlement, but it's much more than that. Because they understand brain injury so well they've given me so much support that helps me care for my son.”

Client

For more information visit www.novumlaw.com or call us on 0800 884 0777