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Understanding Deputyship

February 2026

What is a Deputy?

A Deputy is someone who is legally responsible for a person who lacks the mental capacity to make decisions for themselves. A Deputyship Order will set out the Deputy's powers (and limits). They may relate to, for example:

- the person's finances, property or accommodation (including where they live or whether they go into care)
- their medical treatment and other healthcare issues
- their personal welfare, e.g. what clothes they wear, and anything needed for their general care and well-being

The powers given will depend on the person's needs. A Code of Practice sets out how a Deputy should undertake their role.

Why is Deputyship Important?

- As a parent or guardian, you have certain rights and responsibilities in relation to your child/young person
- In law, this is known as parental responsibility. You are able to make decisions on their behalf on a wide range of topics
- What many people don't realise is that when the young person turns 18 years of age (earlier in some circumstances*), parental rights and responsibilities come to an end, even if your young person lacks the mental capacity to make decisions for themselves

*Parental Responsibility can end earlier in specific circumstances, including if the child is adopted or a young person between 16 and 18 gets married.



Mental Capacity Act

- The Mental Capacity Act in England and Wales presumes that young people aged 16 and over have mental capacity to make decisions for themselves
- What this means is that even if your young person lacks mental capacity, you as a parent or guardian cannot continue (according to law) to make decisions on their behalf once they are 18
- However, there is a way to address this potentially difficult situation if you wish to continue to be able to make key decisions for your young person once they are 18
- As a Deputy, you can be authorised by the Court of Protection* to make decisions on your young person's behalf

***The Court of Protection is a court that deals with decisions or actions taken under the Mental Capacity Act**



How do you determine if someone lacks mental capacity?

A person is unable to make a decision for themselves if they are unable to:

- Understand the information relevant to the decision
- Retain that information
- Use or weigh that information as part of the process of making the decision, or
- Communicate the decision (e.g. talking, signing, any other means)

BUT

- Need to consider if they could understand the information if explained in a different way
- Only being able to retain information for a short time doesn't prevent them from being able to make a decision
- The information relevant to a decision includes reasonably foreseeable consequences of deciding one way or another or not making a decision at all



Who can determine if someone lacks mental capacity?

- In the codes of practice, the people who decide whether or not a person has the capacity to make a particular decision are referred to as 'assessors'. This is not a formal legal title
- Assessors can be anyone – for example, family members, a care worker, a care service manager, a nurse, a doctor or a social worker
- You can ask your young person's doctor or another medical professional to assess their mental capacity



Deputyship v Power of Attorney

- Power of Attorney is when a person gives their consent to someone else to make decisions on their behalf, for example if they get ill or have an accident
- This is most commonly used by older people to plan for their future when they might not be able to make difficult decisions for themselves
- When a person has always lacked mental capacity, they cannot give consent and so a person wishing to manage their affairs can apply to the Court of Protection to be appointed as their Deputy

Types of Deputyship

There are two types of Deputyship:

- **Property and Financial Affairs Deputy** – you will be able to do things like pay your young person's bills or organise other aspects of their finances
- **Personal Welfare Deputy** – you will be able to make decisions about medical treatment and how the young person is looked after

Finance Deputy v Appointee

- At age 16, young people move from DLA to PIP and are required to manage their own benefit claims. If they lack mental capacity, you can apply to be their Appointee (from age 16) which will give you the right to deal with their benefits
- If your young person has no assets or savings and only receives benefits, this should be sufficient and Property and Financial Affairs Deputyship may not be necessary
- Only 1 appointee can act on behalf of someone who is entitled to benefits (the claimant) from the Department for Work and Pensions (DWP)

An appointee can be:

- an individual, for example a friend or relative
- an organisation or representative of an organisation, for example a solicitor or local council

Appointee Responsibilities

As an appointee you're responsible for making and maintaining any benefit claims and so you must:

- sign the benefit claim form
- tell the benefit office about any changes which affect how much the claimant gets
- spend the benefit (which is paid directly to you) in the claimant's best interests
- tell the benefit office if you stop being the appointee, for example the claimant can now manage their own affairs

Role of a Deputy

- As a deputy, you're responsible for helping someone make decisions or for making decisions on their behalf
- You must consider someone's level of mental capacity every time you make a decision for them - you cannot assume it's the same at all times and for all kinds of things

When making a decision, you must:

- make sure it's in the young person's best interests
- consider what they've done in the past
- apply a high standard of care - this might mean involving other people, for example getting advice from relatives and professionals like doctors
- do everything you can to help the young person understand the decision, for example explain what's going to happen with the help of pictures or sign language
- add the decisions to your annual report*

*Deputies are required to submit an annual report to the Office of the Public Guardian

Role of a Deputy

When making a decision you must not:

- restrain the person, unless it's to stop them coming to harm
- stop life-sustaining medical treatment
- take advantage of the person's situation, for example abuse them or profit from a decision you've taken on their behalf
- make a will for the person, or change their existing will
- make gifts - unless the court order says you can

Property and Financial Affairs Deputies must make sure:

- your own property and money is separate from the young person's
- you keep records of the finances you manage on their behalf in your annual report

Becoming a Deputy

- To become a Deputy, you will need to make an application to the Court of Protection for each type of Deputyship (Finance and Welfare)
See: <https://www.gov.uk/become-deputy>
- The Court of Protection charges a fee upon application
 - £421 per application
 - £259 per application if a court hearing is necessary
- You do not need to instruct a solicitor to make an application
- However, applications for welfare deputyship are more complex and a solicitor may help in particular with the drafting of witness statements
- If you do instruct a solicitor, they will charge a fee for their services and this is in addition to the COP fee – this can be paid from YPs money
- You may be able to claim a refund of your fees in certain situations.

<https://www.gov.uk/government/publications/apply-for-help-with-court-of-protection-fees-form-cop44a>

Deputyship Orders

- Deputyship Orders are granted according to the specific needs of the person who lacks mental capacity
- Orders do not usually have an expiry date, but if a time limit is considered appropriate, the expiry date will be set out in the Order
- If there are any changes in the circumstances of the Deputies or of the person who lacks mental capacity, then this may require a review of the Deputyship Order

Joint Deputyship v Jointly and Severally Deputyship

- When there is to be more than one Deputy (e.g. both parents or parent and sibling), consider which type of Deputyship is best for you
 - **Joint Deputyship** - means all the deputies have to agree on the decision
 - **Jointly and Severally Deputyship** - means deputies can make decisions on their own or with other deputies

Role of Office of the Public Guardian (OPG)

- The Office of the Public Guardian (OPG) helps people in England and Wales to stay in control of decisions about their health and finance and make important decisions for others who cannot decide for themselves
- Deputies are required to complete an annual report for the OPG, one for each Deputyship held (Finance and/or Welfare)
- The OPG will also conduct an annual supervision meeting with Deputies, checking on how things are going, discussing challenges and offering advice and guidance
- The OPG charges an annual supervision fee:
 - £320 for General Supervision
 - £35 for Minimal Supervision (property and affairs Deputies managing less than £21K)

Reports, Record Keeping and Expenses

- A Deputy must submit a report to the Office of the Public Guardian (OPG) on an annual basis. The report allows the Deputy to account for their actions/any key decisions made on the person's behalf during that reporting period
- The reports can be completed on-line and it is possible to add key decisions to the on-line report during the year
- It is important that Finance Deputies keep a record of expenditure and receipts as they may be audited
- Reasonable expenses can be charged for Deputyship duties e.g. mileage to attend appointments and meetings, OPG Supervision Fees, annual insurance premium (c£35 pa)

Sources of Further Information

- **Mental Capacity Act 2005** - <https://www.nhs.uk/conditions/social-care-and-support-guide/making-decisions-for-someone-else/mental-capacity-act/>
- **Code of Practice** - <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>
- **Contact** - <https://contact.org.uk/advice-and-support/preparing-for-adult-life/making-decisions/>
- **Bexley Voice 'My Guide to Understanding Deputyships'** - <https://bexleyvoice.org.uk/assets/documents/deputyship>

Questions?