Bexley Voice

MY GUIDE TO...

Understanding Deputyships

Introduction
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.

What Does the Law say about Mental Capacity?
The Mental Capacity Act in England and Wales presumes that young people aged 16 and over have mental capacity to make decisions for themselves. Whilst parents still retain parental responsibility up until age 18, 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 reach 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. As a Deputy, you can be authorised by the Court of Protection to make decisions on your young person's behalf.

What is a Deputy?
A Deputy is legally responsible for someone who lacks capacity to make decisions for themselves and 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
- 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 (including where they live or whether they go into care).

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

https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice

What types of Deputyship are there?
There are two types of Deputyship:

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

I am an Appointee to deal with benefits, do I also need to be a Finance Deputy?
No. If the young person has no assets or savings and only receives benefits, Property and Financial Affairs Deputyship may not be necessary. In such circumstances you can apply to be their Appointee which will give you the right to deal with their benefits.

- **Becoming an Appointee -** https://www.gov.uk/become-appointee-for-someone-claiming-benefits

What is the difference between Deputyship and 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.

When a person lacks 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.

Does a Deputy make all decisions?
No. Under the Mental Capacity Act a person is assumed to have mental capacity to make decisions (even unwise ones), with support where necessary. For example, deciding what clothes to wear, what they want to eat etc. However, a Deputy can make the more difficult and complex decisions on their behalf such as agreeing to medical treatment, medication changes, where they live etc. as long as such decisions are made in the Best Interests of the person.

How do I become a Deputy?
You will need to make an application to the Court of Protection to be a Deputy for Property and Financial Affairs and for Personal Welfare.

- **Becoming A Deputy** - https://www.gov.uk/become-deputy

What is the cost of becoming a Deputy?
The Court of Protection charges a fee for each application. Details of current fees, use the following link: https://www.gov.uk/become-deputy/fees

Do I need to instruct a Solicitor to apply for Deputyship?
No, you do not need to instruct a solicitor to make an application to the Court of Protection. If you do, then the solicitor will charge a fee for their services in addition to the Court of Protection fee.
If you decide that you would like to instruct a solicitor, there are many on the internet and they should explain their fee structure on their web pages.

How long does the Deputyship Order last?
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.

Are there any ongoing costs of being a Deputy?
Yes. The Office of the Public Guardian charges an annual supervision fee. See the following link:
https://www.gov.uk/become-deputy/fees

There is also an annual security bond premium for a Court of Protection property and financial affairs deputyship. Costs vary, depending on the value of the assets managed and the specific bond level set by the court.

Sources of Further Information
For further information, please use the following links:

- **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/