



## DEPUTYSHIPS FOR VULNERABLE PERSONS

A Deputyship is a method of obtaining the legal authority to make decisions on someone's behalf if a person is unable to make any decisions for themselves in relation to their finances or care. A vulnerable person could of course be a child, a young adult or even an older adult so it is important to give consideration to the specific needs of the person in question.

There are two separate types, a Property & Financial Affairs Deputyship (**PFAD**) and a Personal Welfare Deputyship (**PWD**).

- A PFAD allows nominated deputies to manage finances (e.g. deal with benefits, manage bank accounts and sell or buy property)
- A PWD relates to making welfare decisions (e.g. where to live, manage care plans or consent to life sustaining treatment)

A Deputyship application is made to the Court of Protection (**COP**), with some key elements outlined below:

- Initial permission required for a PWD (no initial permission is required for a PFAD)
- The application involves a detailed form and dependent on the context of the application various different ancillary forms may be required
- Court fees will apply for each individual Deputyship application, if a hearing is necessary a supplemental fee would be required and an annual supervision fee is payable. Please note that you can apply for help with COP fees as part of the application process.

Ultimately, the COP decides who is appointed as a deputy (more than one person can be appointed), meaning that family members or even official Panel Deputies (i.e. professionals) may be named. Different deputies can be appointed for each type of Deputyship, although there may be overlaps. A PWD can begin when the COP order is given but a PFAD begins when a security bond has been paid.

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## RESPONSIBILITIES

The role of deputy can be extremely onerous, with various elements in play:

- A deputy has responsibility to account to the COP on behalf of 'P', the **person for whom a Deputyship is being sought**
- Supervision is delegated to the OPG (there may be visits on a regular or minimal basis, context dependent) and a security bond is taken out by the deputy to protect P from financial loss

- The deputy needs to keep accounts and records of actions taken in P's best interests
  - All decisions made by a deputy have to be made under the auspices of the Mental Capacity Act 2005 (the **2005 Act**) in conjunction with the specific requirements of the Deputyship order itself
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### **SPECIFIC DIFFICULTIES WITH PERSONAL WELFARE DEPUTYSHIPS**

PWD provide the COP with more difficulty due to the nature of the decisions involved. The COP needs to balance the obligation to protect P but also promoting P's autonomy where possible:

- There is a danger that a PWD application may be driven by a parental desire to extend parental responsibility past P's 18<sup>th</sup> birthday (it is important to balance this desire against the personal development of child/not allowing potential to develop)
- COP considers P's 'best interests' as a key element, so if the family (or family and medical team) disagree on best interests an independent deputy may be appointed
- P's wishes and feelings are vital but if they can't evidence these then this complicates matters

In many personal welfare matters, the COP does not need to appoint a welfare deputy (and is often reluctant to do so) because decision making in these circumstances is fundamentally a collaboration between family members, healthcare professionals, social workers, care staff and anyone else who has an interest in the welfare of the person concerned.

If a Deputy is appointed it is likely to be in the most difficult situations where key actions cannot be carried out without COP authority or there is no other way of settling the matter in P's best interests (for example where P has a progressive illness and a series of medical decisions is required to be made over time but a history of family disputes could have a harmful effect on P's future care).

Overall, it is impossible to predict how the COP would react to a PWD application hence why permission for this type of application must be sought (again, context is everything). If you cannot get a PWD then there is the possibility of making a legal challenge.

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### **CHILDREN & YOUNG PEOPLE**

Under the 2005 Act, the main considerations apply to 'children' (those under 16) and 'young people' (those aged 16-17):

#### **1. Children**

The 2005 Act in general doesn't apply to children, with the specific exception that the COP can make decisions for a child in relation to a PFAD if the child lacks capacity under the Act and is likely to still lack capacity to make financial decisions when they reach 18. If a PFAD is made under the 2005 Act **then this continues to apply once a child reaches 18.**

If this situation applies it is sensible to consider making an application as soon as possible to save time and emotional energy. If an application cannot be made, whilst the child is under 16 a parent can generally make decisions for the child if they have PR – context is key.

## 2. Young People

In general, most of the 2005 Act applies to those young people who lack capacity. This broadly relates to the care/treatment for young people – when assessing their best interests the person providing care/treatment must consult those involved in their care and anyone interested in their welfare. Again, family disagreements may result in Court action.

For the Act to apply, generally the young person must lack the capacity to make a particular decision, with some specific examples set out below:

- Managing financial compensation received after accident/operation
- COP may make welfare decisions if it decided the person interested in welfare of the young person (either the person with PR or someone such as a grandparent involved in care) is not acting in the young person's best interests
- If there is disagreement between a person interested in the welfare of the young person and the medical team

There is a presumed legal capacity of a young person to agree general dental/surgical/medical treatments but not rarer procedures (e.g. organ donation); in these rarer cases separate tests apply. Generally, if a young person is adjudged to have mental and legal capacity but refuses consent (but the person with PR wishes to give consent) then a Court decision is required.

If a young person lacks capacity to make treatment or care decisions, generally the person with PR for the young person is able to consent if they lack capacity under the 2005 Act – they must act in the best interests of the young person. If this is in doubt then Court action is needed.

In general, the law surrounding capacity and vulnerable persons is very complex with myriad factors applying. As such, it is important to take advice early **but also** to continually review the specific needs of the vulnerable person over their lifetime.

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**We hope that this general guidance assists you in identifying your individual needs. Rutters Solicitors have been established for longer than any other firm in North Dorset, with offices in Shaftesbury, Gillingham and Sturminster Newton. The longevity of the firm is evidence of its successful relationship and reputation within the local community and wider afield.**

**Please contact Matthew Billingsley on 01258 444483 or [m.billingsley@rutterslaw.co.uk](mailto:m.billingsley@rutterslaw.co.uk) (Head of Trusts and Sturminster Newton – Market Square House Sturminster Newton Dorset DT10 1FG) who would be happy to meet to discuss your requirements, either at his office or if more convenient at your home.**

*The general information contained within these notes is intended to stimulate discussion for you as a family. Legal and taxation principles can change over time and as such Rutters Solicitors can accept no responsibility or liability for any action or omission taken by you based on the information contained in these notes, both now and if relied upon in the future, as these notes do not constitute legal advice. We recommend that if you have specific needs or require legal help you seek expert legal assistance.*