

**RUSSELL-COOKE** | SOLICITORS

**PRIVATE CLIENT  
DEPARTMENT  
DEPUTYSHIP  
APPLICATION  
WHAT TO DO WHEN  
SOMEONE LOSES  
CAPACITY**

**RUSSELL-COOKE LLP** is a top 100, London based law firm with around 150 highly-regarded specialist solicitors, working in departmental teams. We advise a mix of commercial, not-for-profit, regulatory and individual clients.

## DEPUTYSHIP APPLICATION

### WHAT TO DO WHEN SOMEONE LOSES CAPACITY

When a person lacks capacity to manage their financial affairs and they have not done an Enduring Power of Attorney or a Lasting Power of Attorney, then it is necessary to appoint a Deputy.

### WHO CAN BE A DEPUTY?

A Deputy can be a family member or even a friend of the person who has lost or is losing capacity. The Deputy must have capacity, be over 18 years of age and not bankrupt.

If there are no relatives willing to act or friends who are suitable to act, then you can appoint a solicitor to be a professional Deputy.

### WHAT FORMS DO YOU NEED TO APPOINT A DEPUTY?

Before a Deputy can be appointed there are various forms that need to be completed and sent to the Court of Protection, which is a distinct Court created by the Mental Capacity Act and makes decisions on behalf of people who lack capacity.

The following Court of Protection (COP) forms will need to be completed to appoint a Deputy:

#### ■ Form COP1

This form asks for information about the person who has lost capacity, for example their family tree, age, address and details about the proposed Deputy.

#### ■ Form COP1a

This asks for financial information about the person who lacks capacity and what Order you are seeking from the Court.

#### ■ Form COP3

This form will need to be completed by a doctor confirming that the person has lost capacity and cannot deal with their financial affairs anymore.

#### ■ Form COP4

This form will need to be completed by the proposed Deputy and asks them to confirm various details about themselves including that they are not bankrupt and are willing to act as Deputy.

#### ■ Court Fee

This is currently £400 and is payable on submitting the application to the Court of Protection.

### WHAT HAPPENS WHEN YOU SEND THE PAPERS TO THE COURT OF PROTECTION?

Within one to two months you should receive a letter from the Court acknowledging the documents and requesting the Deputy to serve the application form on the person who has lost capacity and, any respondents (these are people who will be affected by the application and may object to it).

Anyone who has been served with the application form has 21 days to respond to the Court and, providing during this time no one has objected to the application, the Order is then granted and dispatched within ten working days.

Realistically, from the moment the papers are submitted to the Court, it normally takes between four to six months before an Order is obtained. During the period when the Deputy is waiting for the Order, they have no power or authority to deal with the person's money or make any financial decisions for them. Sadly, during this time, no one can make decisions for the person who lacks capacity and no one can access their money.

### WHAT HAPPENS ONCE YOU GET THE ORDER?

Once the Order comes through, the Deputy has to pay an insurance premium (this normally takes five to ten working days to clear). The person's funds can then be accessed by the Deputy and invested or spent in accordance with the powers the Deputy has under the Order. The Deputy is accountable to the Court and must always be guided by the principles as "what is in the best interests of the person".

### RESPONSIBILITIES OF THE DEPUTY

- The Deputy needs to complete annual accounts for the Court to show how the person's money has been spent.
- There is a supervision fee charged by the Court of approximately £90 per year.
- Tax Returns may need to be completed.
- The Deputy should be taking independent investment advice as to how best to invest the person's money.
- The Deputy should be discussing matters with the person as far as possible and keep them informed if appropriate.

### HOW LONG CAN A DEPUTY ACT?

Sometimes the Order appointing the Deputy will be for a limited period, otherwise it will continue whilst the person does not have capacity. If the person gains capacity, an application can be made to remove the Deputy. Equally, if the Deputy dies or is unsuitable, an application can be made to remove them and appoint another Deputy.

### EMERGENCY ORDERS?

Very few of these are granted by the Court. If you believe an application is urgent it is best to discuss that with us as the Court will require evidence of this.

If you would like further information about Deputy applications or assistance once you have been appointed as a Deputy, please do not hesitate to contact us.



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*This article is intended to provide general information about Deputyships. It is not intended to be comprehensive or to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to a specific situation should always be obtained. © Russell-Cooke LLP March 2013.*

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