

Brethertons BIG FAQs Series

Deputies

A Deputy is someone appointed by the Court of Protection to make decisions about a person's finances or their health and welfare if they do not have the mental capacity to make decisions themselves.

Who may need a Deputy?

A Deputy will be needed if a Claimant in a litigation case does not have mental capacity. That person is known as a 'protected party.' In this context mental capacity means that you can make decisions for yourself. Capacity can fluctuate, so if someone has a serious mental health condition or a condition such as dementia where they have good and bad days, then a Deputy can make decisions for them on their bad days, but not on their good days.

What is a Deputy?

A Deputy is a representative who is appointed by the Court of Protection to act on behalf of someone without mental capacity. The Court of Protection makes decisions as to whether someone needs a Deputy as well as authorising deputies to make decisions.

A Deputy has a responsibility to make sure that they act in the protected party's best interests and should always consider what the person without capacity would want, discussing it with the person without capacity if possible, and with anyone who is a carer, as well as friends or relatives who are involved.

Why is it necessary to have a Deputy?

It is necessary to have a Deputy to act on behalf of someone who lacks mental capacity in certain circumstances. If there is a personal injury claim for someone who lacks capacity a Deputy will be needed before any money can be paid to the Claimant in the case.

To decide if someone has mental capacity an assessment must be made as to whether the person has an impairment of their mind or brain, because of an illness, or an injury, or factors such as alcohol or drug use.

People can lack capacity to make some decisions but have capacity to make others. For example, they may be able to decide what they would like for lunch, but not decide about moving house or a court case. Mental capacity can also fluctuate.

Where appropriate, people should be allowed the time to decide themselves.

The Mental Capacity Act sets out the criteria for capacity and that says a person is unable to decide if they cannot:

- Understand the information relevant to the decision
- Retain that information
- Use or weigh up that information as part of the process of making the decision.

So, if someone can understand and decide one day, but not remember what has been discussed the following day, they may not have capacity.

Where can I read more?

You can read more about this on the government's website at Deputies: make decisions for someone who lacks capacity - GOV.UK (www.gov.uk) and Court of Protection - GOV.UK (www.gov.uk)

When would it be appropriate to have a Deputy?

It is appropriate to have a Deputy when someone who is involved in a court case (and in other situations) does not have mental capacity.

Without a Deputy in place there are limitations as to what can be done on behalf of a protected party. For example, it may not be possible to receive an interim or final payment on behalf of a protected party, and there would need to be a deputy appointed to deal with any compensation which may be paid at the end of the case.

How is a Deputy appointed?

A Deputy is appointed by making an application to the Court of Protection. The application process is complex, and there are several forms which need to be completed, and strict rules about what needs to be included, and who needs to be notified about the application process. An application to be a deputy can take a significant period, usually more than 6 months, and it is therefore important that an application is made promptly once it is clear a Deputy will be needed.

Deputies can be appointed to deal with property and financial affairs, or health and welfare. For the purposes of assisting with a compensation claim or settlement, it would normally be the case that only a property and financial affairs Deputy would be needed. The property and financial affairs Deputy will normally be authorised by the Court of Protection to carry out certain day to day tasks, but the Deputy will have to apply for authority for any large purchases or unusual expenditure.

A health and welfare Deputy would be appointed only if there was concern that there will be a problem in making decisions about someone's care, or there will be an ongoing issue with where someone will be living.

The Deputy can either be a lay Deputy, who would normally be a close friend or relative of the protected party, or a professional deputy, who is likely to be a lawyer or other professional who is experienced in dealing with the Court of Protection. In most circumstances where a considerable sum of compensation is anticipated it is recommended that a professional deputy is appointed, as it can be a complex and time-consuming task.

If a lay Deputy is to be considered, it is possible for the lay deputy to make the application to be appointed, but due to the complexities of the application process it is recommended that the application is made by a solicitor who is experienced in this area of law. Brethertons have a specialist team who can assist with the application.

If you would like any more information or have any questions, please contact:

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