

GETTING STARTED... AS AN ATTORNEY OR DEPUTY



Getting started as an Attorney or Deputy

Brethertons has been pleased to provide the support in creating the legal document appointing you as an Attorney or the Court Order enabling you to become a Deputy.

Now we are here to help you in your new role as Attorney or Deputy.

An Attorney is appointed by being chosen by their loved one or friend (known as the donor) to support them when they need help either under a Lasting Power of Attorney or an Enduring Power of Attorney. If you are a Deputy the Court of Protection has appointed you as the Deputy, normally to manage the property and financial affairs of your loved one or friend (known as the protected party).

When you agree to be appointed as an Attorney or a Deputy you have done this in order to support a family member or friend either to support them with managing their finances or taking over managing their finances when they can no longer deal with them.

You may be appointed as a Health and Welfare Attorney which enables you to put forward their views but only if they have not got capacity to do so themselves.

You are taking on a big commitment so it is important you understand your duties and obligations.

When you act as an Attorney or Deputy you must:

- **Respect the principles of the Mental Capacity Act 2005 and the Code of Practice. This gives guidance on how you are to make decisions as the Attorney or Deputy.**

1) You should assume the person you are Attorney or Deputy for has the capacity to make the decision until there is evidence otherwise.

2) All reasonable steps need to have been taken to support them to make the decision but these have been unsuccessful.

3) Just because they are making an “unwise decision” it does not mean they do not have the capacity to make that decision.

4) If they do not have capacity to make the decision the Attorney or Deputy must make the decision taken in their “best interests”.

5) This “best interests” decision must have the least impact on their freedoms.

- Make decisions in the donor or protected party’s best interests
- Act within the scope of your appointment
- If you are a Financial Attorney or Deputy you need to hold the donor or protected party’s finances and property separately from your own
- Neither you, nor your friends or relatives, can benefit from your appointment

It is important that you check the document appointing you so you know what you are permitted to do as an Attorney or Deputy.

The Office of the Public Guardian

All Attorneys and Deputies are overseen by the Office of the Public Guardian (OPG). If you have been appointed as a Deputy the OPG will contact you soon after your appointment to make sure you understand your role.

The OPG regularly publishes new guidance on their website, which can change, so it is important for you to check the website regularly.

The OPG has published two guides to help you start acting as an Attorney or Deputy:

The guidance for an attorney

<https://www.gov.uk/lasting-power-attorney-duties/start-using-power>

The guidance for a deputy

<https://www.gov.uk/government/publications/deputy-guidance-how-to-carry-out-your-duties/sd3-how-to-be-a-property-and-affairs-deputy-web-version>

Court of Protection

The Court of Protection (also known as “COP”) is a Court which deals specifically with issues relating to people who lack the mental capacity to deal with their own affairs (known as “the donor” under a Power of Attorney or “the protected party” under a Deputyship Order).

If you are a Deputy then you will have already been involved with the COP, as you have to submit an application to the COP to be appointed as a Deputy.

The COP does not only deal with Deputyships – once a Deputy or Attorney is appointed, the COP is there to assess and approve (or refuse) certain decisions when the Deputy or Attorney does not have the authority to do this themselves. Examples of this can include making payment to family or friends for providing care to the donor or protected party, or selling the protected party’s home.

The COP also has the power to remove a Deputy or Attorney if they act improperly, even if they thought they were doing the right thing. It is therefore really important that you adhere to your duties and don’t do anything that you are not authorised to do without getting permission from the COP first. If you aren’t sure whether or not you are able to make a certain decision on behalf of the donor or protected party, the team at Brethertons would be happy to discuss this with you.

For more information about the COP, you can visit the website on <https://www.gov.uk/courts-tribunals/court-of-protection>

Seeking Specialist Advice

If you are a financial Attorney or Deputy the issues you should seek specialist advice on are:

- Investment Advice
- Renting out the donor or protected party's home
- Any building or home improvements to the donor or protected party's home
- Making gifts
- You, family members or friends being paid to provide care
- Employing someone to provide care
- Selling or buying a property for the donor or protected party's home.

If the Office of the Public Guardian considers you have not acted in the donor or protected party's best interests they could remove you and require you to pay funds back.

We are here to support you in your role as the Attorney or Deputy and we offer a fixed fee advice service of £500.00 plus Vat for one hour's appointment, followed up by written advice.

Alternatively we can be placed on a retainer to provide advice on a continuing matter or make the appropriate application to the Court of Protection.



Our Specialist Advisors



Laura Stuart, Partner

As a Partner in the Wills, Trusts, Capacity and Estate team Laura assists clients with matters surrounding their personal affairs. This includes dealing with the preparation of applications for the appointment of Deputies and Trustees and acting as a Professional Deputy and Attorney. Laura also deals with Will drafting, Grant applications, the administration of estates and the preparation of Lasting Powers of Attorney.

Sarah Horton, Partner

As a partner in the Wills, Trusts, Capacity and Estate team, Sarah assists clients with Wills, Trusts, Probate and Estates, Powers of Attorney and Deputyships, from the straightforward to the more complex. This includes Will drafting, Trust creation, acting as a professional Trustee, Estate administration, acting as a professional Executor, Lasting Powers of Attorney drafting, acting as a professional Attorney, and Court of Protection Deputy applications.



Holly Waddelow, Associate

Holly helps guide clients on any and all matters surrounding their personal affairs; from Will drafting and estate administration, to obtaining grants of Probate and Letters of Administration. Holly helps people with their life planning to protect their future and the future of their loved ones. Holly specialises particularly in Court of Protection and is able to help with applications and advice in respect of Deputies and Attorneys. She particularly administers the Deputyship files where a member of Brethertons is appointed as Deputy or Attorney. Holly also specialises in Trust creation and administration.

Brethertons

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