

As a person's dementia progresses, there may come a time when they can no longer make decisions for themselves. In this situation, someone else – perhaps you – may need to make decisions for them. It is usually best for people with dementia to choose someone, while they can, using what is known as a Lasting power of attorney (LPA). However, if they haven't done this, then someone can take on this decision-making role by becoming a deputy.

This factsheet outlines what deputyship is, the responsibilities of a deputy, how to become one, and what to consider before deciding to do so. It is for people who want to become a deputy for someone living in England and Wales. For information about the laws relating to Northern Ireland, see factsheet NI472, **Enduring power of attorney and controllership**.

Contents

- Deputies
- Types of deputyship
- Duties of a deputy
- Limits to a deputy's powers
- How to apply
- Security bonds
- Who to tell
- Supervision
- Support from the Office of the Public Guardian
- Deputy annual report
- Emergency applications
- Frequently asked questions
- Other useful organisations

Deputyship

As dementia progresses, a person may lose the ability (known as 'mental capacity') to make decisions for themselves. They may become less able to make decisions such as where they will live or what medical treatment they want. They may also become unable to manage their financial affairs. In these cases, someone else can make these decisions for them, as long as they have the legal power to do so.

Some people with dementia will already have plans in place for a time in the future when they cannot make their own decisions. They may have put a Lasting power of attorney (LPA) or Enduring power of attorney (EPA) in place. However, if they haven't done this, and you need to make certain decisions on their behalf, you will need to apply to the Court of Protection to become their deputy.

Deputyship is a way of getting the legal authority to make decisions on someone's behalf, if that person no longer has the ability to grant an LPA or EPA. The application is only the beginning of a longer process. If you do become someone's deputy, there are continuing duties and responsibilities that you will be expected to carry out in the future. You should think carefully about what is involved, and get further advice if you need to, before going ahead.

Deputyship or LPA?

It is important to know the difference between deputyship and Lasting power of attorney (LPA). An LPA is a legal document that allows someone to choose who they would like to make decisions for them in the future, if they cannot make them themselves. Deputyship is used if the person has already lost the capacity to make an LPA, and someone has to request the ability to make decisions on their behalf.

If the person you care for still has capacity to grant an LPA, this is probably a better option for the following reasons:

- an LPA allows the person to choose who they want to make decisions
- it may be reassuring for the person to make an LPA and give them a feeling of control at a time when they might be worried about the future
- LPAs are cheaper than deputyship
- it can take a long time to arrange a deputyship which can cause problems for families in the meantime, for example if bills have to be paid
- deputyships for health and welfare decisions are rare, whereas it is possible to have an LPA for those.

However, if the person with dementia has already lost capacity to make an LPA, it will be too late to do that, and deputyship may be the only option.

Deputies

A deputy is a person appointed by the Court of Protection to manage the affairs of someone who lacks the mental capacity to manage their own affairs. There are two different types of deputyship for different types of decision: one for decisions about a person's property and financial affairs, and one for decisions about their personal welfare.

A deputy is usually a friend or relative of the person who lacks capacity, but in some circumstances it could be a professional such as a solicitor or accountant, or it could be another professional appointed by the court. Professional deputies will charge for their time, and their fees are normally paid out of the person's finances. To become a deputy you must be at least 18 years of age and agree to your appointment.

It is possible for a person to have two or more deputies. The Court of Protection will tell you how to make decisions if you are not the only deputy.

Types of deputyship

Property and affairs deputyship

A property and affairs deputyship is the most common form. It is used to manage a person's financial affairs, if they can no longer do this themselves.

Usually, the court will not appoint a deputy if the person has already appointed an attorney to manage their financial affairs. Similarly, if a person has no property or savings and their only income is from benefits, there will usually be no need for a deputy to be appointed. This is because the benefits can be managed by an 'appointee' – a person appointed by the Department for Work and Pensions (DWP). For more information see the GOV.UK website.

Personal welfare deputyship

If the person lacks capacity to make decisions about their care and treatment and has not appointed an attorney, you can apply to become their personal welfare deputy.

Deputies for personal welfare are rare as decisions regarding these issues can usually be made in the person's best interests by those providing care or treatment. However, if there is a disagreement as to what is in the person's best interests, or the decision relates to serious medical treatment, it may be necessary to ask the court to intervene.

The Court of Protection does not usually appoint deputies to make ongoing decisions about someone's health and welfare unless they need regular treatment or supervision.

Duties of a deputy

If you are thinking of becoming a deputy for a person with dementia, it is important to consider the responsibilities involved. There are many duties that you will be taking on, outlined below. Support, guidance and information for deputies are available from the Office of the Public Guardian (see 'Support from the Office of the Public Guardian' for more details).

When acting as a deputy and making decisions on behalf of another person, you have a duty to:

- act in the person's best interests
- act with due care and skill (known as 'duty of care')
- not take advantage of the situation of the person with dementia (known as 'fiduciary duty')
- not delegate your duties unless authorised to do so in the deputyship order
- act in good faith
- respect the person's confidentiality
- comply with the directions of the Court of Protection.

If you are a deputy for property and affairs, you also have a duty to:

- keep accounts
- keep the person's money and property separate from your own, for example by using separate bank accounts.

For more information about what it means to act in a person's best interests see factsheet 460, **Mental Capacity Act 2005**.

Limits to a deputy's powers

A deputy's powers should be as limited as reasonably possible, both in terms of what they can do and how long they last. This means that the deputy should only have the powers that they really need to have and no more.

There are also some specific restrictions on a deputy's powers. A deputy cannot:

- make a decision for the person if they can make the decision themselves
- restrain the person with dementia, except in very particular circumstances to prevent harm to the person
- go against a decision made under an existing power of attorney
- refuse life-sustaining treatment for a person who lacks capacity to consent to this.

Every deputyship order is different, and it may contain further limits to the deputy's powers. For example, the court may place a limit on how much can be spent in a single transaction, or a cap on how much can be spent in a certain period of time.

The court can cancel a deputy's appointment at any time if it decides the appointment is no longer in the best interests of the person who lacks capacity.

As a deputy you should consider the person's level of mental capacity every time a decision needs to be made, as it can change. A person may be able to make a certain decision at one time but not another, or at a certain time be able to make some decisions but not others. You should not assume that it is the same for all decisions and at all times, and you should do what you can to support the person to make the decision for themselves.

For more information about mental capacity see factsheet 460, **Mental Capacity Act 2005**.

How to apply

To apply to become a deputy, you will need to submit an application to the Court of Protection. The application process involves providing the court with detailed information about the circumstances and finances of the person with dementia.

To apply to be appointed as deputy, you will need to complete the following forms:

- main application form (COP1)
- Annex A: supporting information for property and affairs (COP1A)
- Annex B: supporting information for personal welfare applications (COP1B) – for personal welfare deputyship only
- assessment of capacity (COP3)
- deputy's declaration (COP4).

The COP4 declaration will outline your circumstances and include details of the responsibilities and duties you as a deputy must carry out. You must be able to assure the court that you have the skills, knowledge and commitment to carry them out. You must also assure them that there is nothing that might make your appointment inappropriate – for example, if you have severe financial or health problems yourself, or are bankrupt.

In some cases you may also need to complete the following:

- permission of the court to apply (COP2) – this is usual for personal welfare but not property and affairs
- a witness statement (COP24) – this may be required if you are unable to submit an assessment of capacity form (COP3). The COP24 can be used to explain why you are unable to do so and why you think the person you are applying to be a deputy for lacks capacity.

These forms and further guidance can be obtained from the Court of Protection (see 'Other useful organisations'). The court may also be able to help you with your application forms, although they are unable to provide legal advice. Alternatively, you can ask a solicitor to make an application on your behalf.

The cost of using a solicitor will usually be paid using the person's money, although you will need the court's permission to do this. The amount the court will authorise for fees is usually fixed or limited. It is important that you discuss fees with the solicitor at the outset so that you know whether the court will authorise paying them. If not, you will have to make up the difference yourself.

Once the forms have been completed and submitted, the Court of Protection will then assess your suitability as a deputy from the information provided. There is also a process for notifying the person you are applying to be a deputy for, and others such as family members or friends of the person.

The application process can be quite long. After applying, you should allow several weeks or even months for a decision. You will also need to pay a court fee. In most cases this money can come from the finances of the person with dementia, but you should check with the court. If you pay this up front and the court decides it is payable by the person with dementia, you can claim it back from them once you have been made their deputy.

Some people can get exemptions or reductions on the fees, depending on the financial position of the person with dementia (or in some cases yourself). For more information about the current fees, exemptions and reductions, contact the Court of Protection or look at their website (see 'Other useful organisations').

Security bonds

Often a deputy's first duty is to arrange a 'security bond' with an insurer. This is a type of insurance policy designed to financially protect the person with dementia in the unlikely event that you mismanage their finances. The court requires that all deputies for property and financial affairs do this. The size of the security bond will depend on the amount of money (including assets, such as property) that you will have control of.

The court will send guidance on arranging a security bond once they have made the deputyship order. However, you will need to arrange the bond before they will send the order to you.

You may pay the bond from any money you hold for the person, or pay from your own money and be reimbursed when you have access to their bank account. It is important to note that you will have to pay a yearly fee or premium for the bond, which can be paid from the person's money. This obligation will continue for as long as a deputyship order is in place.

Who to tell

As a deputy, you will need to tell various organisations about your deputyship before they will agree to deal with you on behalf of the person with dementia. You will need to provide evidence of the deputyship order. Organisations that you should think about include:

- the Department for Work and Pensions (DWP) – for pensions or benefits
- the local authority – for housing benefit, needs assessments or assistance with care fees
- banks or building societies
- the person's accountant
- the payer of any private pensions
- the solicitor who holds the person's will and/or property deeds
- the residential or nursing home where the person lives.

It is also a good idea to inform other people involved in the person's care, such as carers, relatives and friends.

Supervision

The Office of the Public Guardian (OPG) is there to protect anyone who lacks the mental capacity to make decisions for themselves. The Court of Protection and the OPG are essentially the same institution but with different functions. The court makes the decisions about things like deputyship, and the OPG takes care of the administration.

The OPG supervises deputies, provides evidence to the court and offers information to the public. The OPG has a responsibility to check that you are doing everything you should be doing. This involves making sure that you keep to the terms of the deputyship order, and that the decisions you make on behalf of the person follow the Mental Capacity Act and are in the person's best interests. They can telephone you or visit you to check that you are doing what you should.

There are two different levels of supervision:

- **General** – all new deputies are placed under general supervision in the first year because they may need more support and guidance. If there are concerns about a deputy, they will also be placed under general supervision
- **Minimal** – if the assets of the person with dementia are below a set limit and there are no concerns about the deputy, they will be placed under minimal supervision.

For further information on supervision levels, including the financial threshold, contact the OPG (see 'Other useful organisations').

Supervision fees

You must pay a supervision fee every year. The amount will depend upon the type of supervision (see above). The more supervision you require, the higher the fee. There are some exemptions and reductions, as in the case of the application fee. For more information and current rates contact the OPG (see 'Other useful organisations').

Support from the Office of the Public Guardian

As well as protecting the person with dementia, the OPG is also there to support people in their role as a deputy. There are various ways that the OPG can do this – both by telephone and through home visits. This support is included in the annual supervision fee.

To be sure that you are acting within the powers you are given, it can be helpful to ask the OPG any questions you have. Often a quick phone call can resolve any issues and can be a good way of getting support if you are experiencing problems.

Deputy annual report

As a deputy you will have to provide an annual deputyship report to the court. This gives the court information about the decisions that you have made on behalf of the person with dementia. It should also provide summary accounts for the court to approve, if you are a property and affairs deputy.

You must provide information about financial transactions in the previous year, including any gifts the person has made, their care arrangements and any property that they have bought or sold. You may be asked to provide evidence, such as bank statements.

The OPG will offer you guidance on how to do this and can provide copies of the forms that you will need to complete. They can also provide details of their online reporting service which can help with record keeping throughout the year. If you have any queries, contact them for support.

Emergency applications

If there is a clear risk that someone may suffer serious loss or harm, you can make an emergency application to the Court of Protection. Situations when this might be appropriate include:

- if the person needs urgent medical treatment
- to prevent someone being removed from the place where they live
- to execute a statutory will or important financial transaction where the person's life expectancy is very short.

To make your emergency application, phone the court on 0300 456 4600 and ask to speak to an urgent business officer. They will discuss the case with you and make arrangements to receive your application and present it to a judge. There is also a specific emergency applications phone number which is 0207 421 8824 (or 0207 947 6000 out of hours).

Frequently asked questions

As a deputy, can I give gifts on behalf of my relative?

It is normally possible for a deputy to make limited gifts on the person's behalf, but this will depend upon the details of the deputyship order, so it's always best to check the order first. Some things that might be relevant are:

- The finances of the person with dementia – a deputy would not be able to make a gift that would adversely affect the person's finances. For example, if the person had £50,000 in savings and this was being used to pay for their care, a gift worth £30,000 would hugely affect their savings and ability to pay for their own care.
- What the person has done in the past – for example, if they have always given gifts to family members or friends for their birthdays, celebrations or holidays, then generally a deputy can continue to do this for the person. You would still need to consider the amount of the gift and make sure it is reasonable. The court may refer back to the deputyship application. This might show what kinds of gifts the person with dementia has previously given. This can provide guidance for the deputy and the court when deciding about giving gifts.
- A deputy should involve the person with dementia (where possible) in decisions such as giving a gift. They should also take into account the past wishes and feelings of the person.

If you are unsure whether you can make a gift, you can refer to the OPG for guidance. You should do this if you are thinking of making anything more than a small gift, or if you are unsure whether even a small gift is appropriate. In some circumstances, especially if involving a large gift, the Court of Protection may need to make the final decision.

When acting as a deputy can I claim for any out-of-pocket expenses?

Yes. When acting as someone's deputy you can claim for certain expenses, as long as they are reasonable. People often don't claim back expenses for a variety of reasons, but no one should be left out of pocket for acting as a deputy. If you are acting on behalf of a friend or relative, they probably wouldn't want you to pay these expenses yourself.

You can only claim for certain expenses when they are for the purposes of performing your role as a deputy – for example, postage costs, car parking tickets and travel expenses incurred through carrying out your duties. You cannot charge for travel costs for a general family visit. Non-professional deputies, such as relatives or friends, cannot charge for their time.

Other useful organisations

Court of Protection

PO Box 70185
First Avenue House
42–49 High Holborn
London WC1A 9JA

0300 456 4600
courtofprotectionenquiries@hmcts.gsi.gov.uk
www.gov.uk/apply-to-the-court-of-protection

The Court of Protection makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare.

GOV.UK

www.gov.uk
www.gov.uk/become-deputy

Website of lots of government agencies and departments, including information on deputyship at the address above.

Office of the Public Guardian

PO Box 16185
Birmingham B2 2WH

0300 456 0300
customerservices@publicguardian.gsi.gov.uk
www.gov.uk/opg

The OPG supervises deputies, and is able to provide deputies with guidance and support.

Solicitors for the Elderly

Mill Studio Business Centre
Crane Mead
Ware
Hertfordshire SG12 9PY

0844 800 9710
admin@sfe.legal
www.sfe.legal

Solicitors for the Elderly is an independent, national organisation of lawyers, such as solicitors, barristers and legal executives, who provide specialist legal advice for older and vulnerable people, their families and carers.

Factsheet 530

Last reviewed: January 2018

Next review due: January 2021

Reviewed by: Holly Chantler, Partner,
Morrison Solicitors and Director, Solicitors
for the Elderly

This factsheet has also been reviewed by
people affected by dementia.

To give feedback on this factsheet,
or for a list of sources, email
publications@alzheimers.org.uk

Alzheimer's Society National Dementia Helpline England, Wales and Northern Ireland:

0300 222 1122

9am–8pm Monday–Wednesday

9am–5pm Thursday–Friday

10am–4pm Saturday–Sunday

alzheimers.org.uk

Alzheimer's Society is the UK's leading dementia charity. We provide information and support, improve care, fund research, and create lasting change for people affected by dementia.

This publication contains information and general advice. It should not be used as a substitute for personalised advice from a qualified professional. Alzheimer's Society does not accept any liability arising from its use. We strive to ensure that the content is accurate and up to date, but information can change over time. Please refer to our website for the latest version and for full terms and conditions.

© Alzheimer's Society, 2018. All rights reserved. Except for personal use, no part of this work may be distributed, reproduced, downloaded, transmitted or stored in any form without the written permission of Alzheimer's Society.



Alzheimer's Society operates in England, Wales and Northern Ireland.
Registered charity number 296645.

