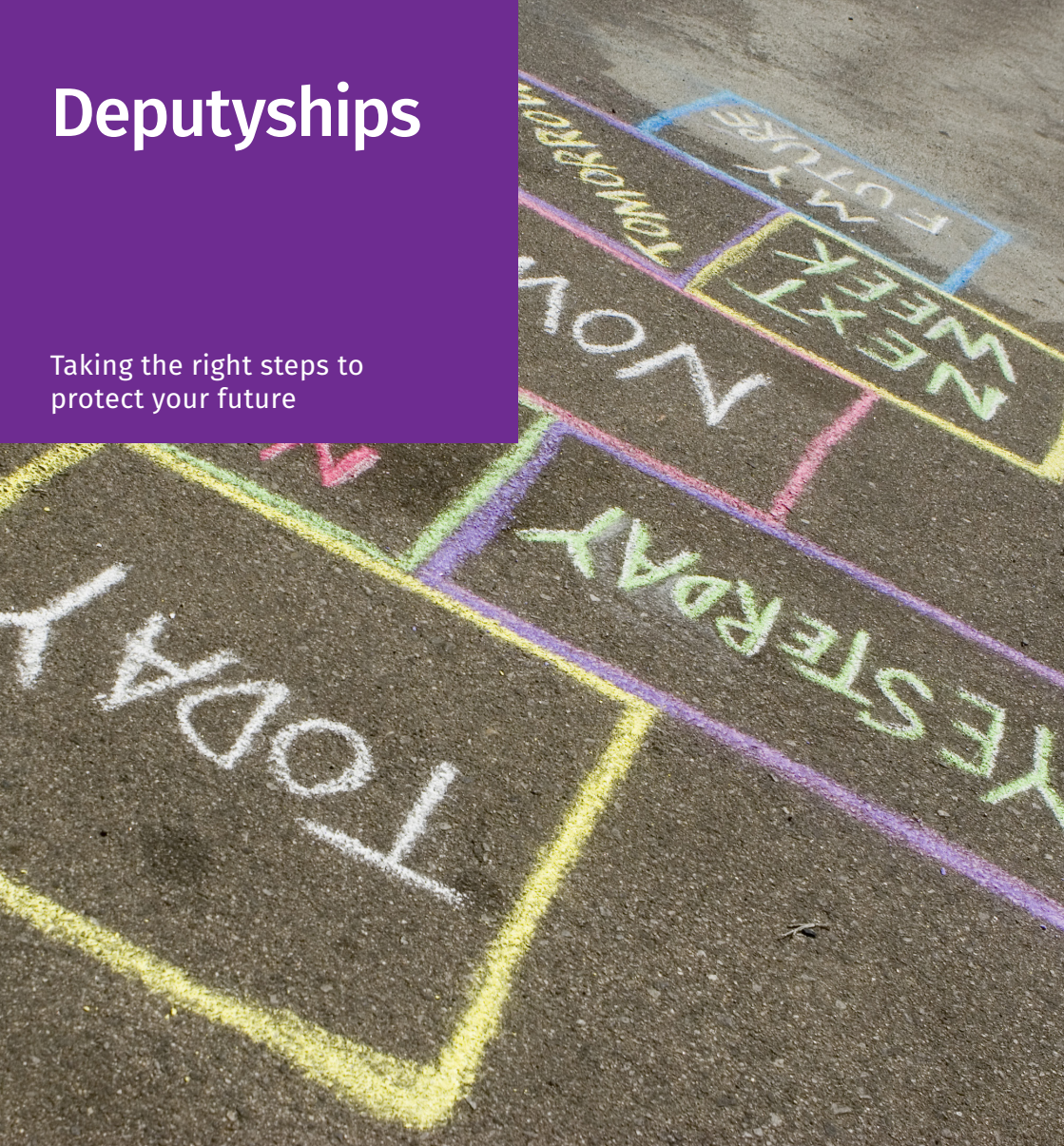


Deputyships

Taking the right steps to
protect your future



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What is a deputy?

A deputy is a person who makes decisions for, and manages the affairs of, someone who does not have the mental capacity to do so for themselves.

The person who lacks mental capacity may have been involved in a life-changing event in which they sustained a serious brain injury, or may be an elderly person who has dementia and did not put a Lasting Power of Attorney in place when they had the ability to do so.

In these circumstances and others, a friend or family member may choose to apply to the Court of Protection for an order which entitles them to act on behalf of the person who no longer has mental capacity. This order is generally known as a 'Deputyship Order' and will state what you, as the deputy, can and can't do.

Types of deputy

There are two types of deputy. One type deals with property and financial affairs, and the other with personal welfare.

Although you can apply to become both types of deputy, usually, the Court of Protection will only appoint a personal welfare deputy in limited circumstances, such as if there's doubt, at a particular time, over a decision on medical treatment being made in the best interests of the person who lacks mental capacity.



What happens after a deputy is appointed?

Personal welfare deputies can act as soon as a Deputyship Order is made. Property and financial affairs deputies can only act under a Deputyship Order after they have paid a security bond. The security bond is payable each year but can be claimed back from the funds of the person who lacks mental capacity.

Throughout the deputyship, the person appointed as deputy will be supervised by the Office of the Public Guardian ('OPG'), a Government body that supports and monitors all deputies. So that it can carry out its duties, a yearly supervision fee is paid to the OPG from the funds of the person who lacks mental capacity.

A Deputyship Order comes to an end on the death of the person who lacks mental capacity, or earlier if they regain mental capacity or the deputy who is appointed decides they no longer wish to act. In any event, the deputy must formally update the Court of Protection and the OPG.

How deputies must act

Deputies are under a strict legal duty to make decisions, and act in a way that's in the best interests of the person who lacks mental capacity. They should keep a record of their decisions, and property and financial affairs deputies should record all financial transactions they make. This should include retaining receipts, bank statements and any other invoices relating to the person they act for.

Deputies must submit a yearly report to the OPG which will check that property and financial affairs deputies are using the funds of the person who lacks mental capacity in that person's best interests.

Unless the Deputyship Order permits it, a deputy will not normally be entitled to sell the house of the person they act for. The Court of Protection will normally require the deputy to make a further application for this particular issue, and explain why they consider this action necessary.

Frequently asked questions

Q. Who can be a deputy?

Someone who is 18 or over and meets certain requirements, such as having sufficient skills to manage money. A deputy will usually be a close friend or family member of the person who lacks mental capacity. In some cases, solicitors or accountants are paid to be deputies, and the Court of Protection has a panel of specialist deputies who can be appointed if no one else wishes to act.

Q. How do I apply to become a deputy?

By applying to the Court of Protection. This application will contain information about yourself as well as detailed evidence about the person who is alleged to lack mental capacity, including details of their assets and a medical report.

Q. Will I be appointed alone?

Not necessarily. It will depend on the number of people who wish to act, as the Court can appoint two or more people to act as a deputy for the same person.

Q. How long can it take for the Court of Protection to issue a Deputyship Order?

Once an application is submitted, it can take around six months for the Court of Protection to make a decision.

Q. Will I need to attend a Court hearing?

The application is paper based which means it is not normally necessary to attend Court. However, a Court hearing may be held if someone objects to you being appointed, or to a particular decision you are applying to make.

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