

## Acting for people who lack mental capacity



### Our experienced team have regular dealings with the Office of the Public Guardian

#### What is the Office of the Public Guardian?

It is a court office in London which supervises court appointed deputies in their management and administration of the property and affairs and/or personal welfare of people who are incapable of managing their own financial affairs and making their own decisions.

#### What is a deputy?

Deputies are appointed by the court to manage the property and affairs and/or personal welfare of someone who lacks capacity to make certain decisions for himself.

#### Why would a deputy need to be appointed?

Where a person:

- lacks capacity to make certain decisions for himself and
- has not made an Enduring Power of Attorney or a Lasting Power of Attorney and
- has assets which need to be used or dealt with for his benefit.

#### How is a deputy appointed?

An application is made in writing to the Office of the Public Guardian.

Medical evidence must be provided, confirming the person's inability to manage his own affairs. If the court office is satisfied with all the evidence submitted it will make the order appointing the deputy. The order will give details of the deputy's powers. The deputy may act only within the scope of the powers given to him by the

order. If he needs to do anything which is outside the scope of the order he must obtain an additional order from the court office.

### **What is a deputyship order?**

A deputyship order is the document you are given by the court, which sets out your powers as a deputy. If you have been appointed as a deputy for property and affairs, your powers may include receiving income such as benefit payments, retirement pension, occupational pension or interest and dividends earned on investments. The order may also authorise you to receive capital such as money from banks, building societies or other financial institutions held on behalf of the person lacking capacity, and to spend this money appropriately on his behalf.

If you have been appointed as a deputy for personal welfare, the order may authorise you to make decisions about the care or medical treatment that the person receives.

The deputy must submit an annual report to the court office showing what decisions have been made on behalf of the person who lacks capacity to include a record of money received and payments made during the year on behalf of that person.

### **Statutory Wills**

The deputy should find out if the person who lacks capacity has made a Will, and if so, if it needs to be updated. If the person is no longer capable of making a Will, an application can be made to the Office of the Public Guardian for a statutory Will to be drawn on his behalf.

### **How long will the deputyship order last?**

Until the court office is satisfied that the person has recovered and can manage his own financial affairs, or until his death. If the deputy wants to retire at any time, the Office of the Public Guardian can make a fresh order appointing a new deputy.



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