

Our Ref: BK/KEL0001/13

Your Ref:

30 September 2021

Mr F Applicant
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TESDT,
TE57 1NG

Dear Mr Applicant

Re: Focused Workflow Deputyship Application

I am Ben Kellett, a Supervisor, in the Private Client Department. I will have conduct of your matter throughout. I am supervised by Ben Kellett who will also be aware of your matter.

Your Instructions

You have instructed me to prepare an application to the Court of Protection for the appointment of yourself as the Deputy for property and affairs of Mr Ben Mark Kellett so that you can make decisions on their behalf on the grounds that they lack capacity to make those decisions.

Our Advice

A deputy is an individual appointed by the Court of Protection to make decisions on behalf of an individual who lacks capacity to take the decisions themselves. A deputy may be appointed to make decisions about a person's property and finances or about a person's health and welfare.

A property and financial affairs deputy is typically authorised to make decisions about things such as operating bank and building society accounts, the buying and selling of the person's house and other assets, dealing with their tax affairs, claiming and receiving benefits and pension payments, and paying household, care and other bills.

A health and welfare deputy is typically authorised to make decisions relating to things such as where the person should live and what care they should receive, consenting to or refusing medical treatment on their behalf, and day-to-day matters such as the person's diet, clothes and daily routine.

When is a deputyship application appropriate?

When an individual loses capacity to manage their property and financial affairs or to make decisions about their health and welfare, there are several different options for making decisions on their behalf.

The individual may have planned ahead for this situation and made a valid enduring power of attorney (EPA) or lasting power of attorney (LPA) whilst they still had mental capacity to do so. In this case, the attorney(s) appointed under this power should be able to step in to start making decisions on the person's behalf providing they are still able and willing to act. An EPA will only ever cover decisions relating to property and financial affairs whereas LPAs can be made to cover property and financial affairs and/or health and welfare decisions.

In the absence of a valid EPA or LPA, it may be necessary to make an application to the Court of Protection for the appointment of a deputy. This is particularly the case for property and financial affairs decision making where the incapacity is likely to continue into the future and where multiple ongoing decisions are likely to be required.

It is worth noting that there is some scope for informal decision making to be made in respect of health and welfare decisions, with carers and health professionals empowered to carry out many day to day acts in the best interests of an incapacitated individual, for example helping the person with eating, drinking, medication, personal care, provision of nursing care etc. These informal powers may be sufficient in some cases although in other cases, the appointment of a health and welfare deputy might be prudent. For example, where consecutive serious medical treatment decisions are likely to be required, or where the decisions that need to be made are particularly complex or difficult or there is dispute between family members as to what is in the person's best interests.

In some circumstances it might be appropriate to apply to the Court of Protection to make a one-off decision in respect of a person who lacks capacity (eg authorisation to sell the person's house) as an alternative to an ongoing deputyship appointment.

In this case it is our advice that a deputyship for property and affairs would be the most appropriate course of action.

Who may be appointed deputy?

No person has an automatic right to be appointed in priority to another and the Court of Protection has the final say over who should be appointed. The court will consider the choice of deputy carefully having regard to the best interests of the incapacitated person and will want to ensure that the deputy has the right level of skill and competence.

In practice, a close family member is often appointed. Where there is no such person willing or able to act, a close friend, a solicitor or even a local authority might be appointed. A

solicitor might also be an appropriate choice where the incapacitated person has high value or complex financial affairs or where there is conflict amongst family members as to whom should be appointed.

The court may appoint two or more deputies and they may be appointed jointly or separately or jointly for certain key decisions and separately for other decisions.

The same person(s) or different person(s) may be appointed as property and financial affairs and health and welfare deputies.

Next Steps

To apply for a deputy to be appointed for an individual lacking capacity to manage their affairs, an application must be submitted to the Court of Protection. The application process involves providing the court with detailed information about the circumstances of the incapacitated individual, evidence of the person's incapacity and a declaration by the proposed deputy, which assists the court in ensuring that the right person is appointed. In the case of a property and affairs deputyship, it will also be necessary to submit detailed information about the person's finances. In the case of a health and welfare deputyship, information about the person's doctor and any treating NHS body will be required as well as details of individuals with whom the person has regular contact.

To prepare the application I will need to contact Mr Kellett's doctor in order to obtain an assessment of capacity. This is a requirement of the application process and they may render a charge for this service which will need to be paid before they complete the required form.

As mentioned above you will need to complete a Deputy's declaration which I will send you in due course.

A fee of £365 is also payable with the application although some people can get exemptions or reductions on the fees depending on their financial circumstances. You'll also need to pay £485 if the court decides your case needs a hearing.

Once the application has been submitted, the court will then assess the applicant's 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 for notifying other interested parties such as family members or friends of the person.

Once the various notifications have been given and providing no queries or objections are raised to the proposed appointment, the court will issue the order appointing the deputy. This order will set out the scope of the deputy's authority, provide for payment of any costs incurred and, in the case of property and affairs deputyships, will usually require the deputy to take out a 'security bond'. The bond is insurance that protects the assets of the person whose affairs and property the deputy is managing. Where such a security bond is required, the deputy will not be able to start acting until the bond is in place.

It will typically take several months from submitting the application to receiving a decision from the Court of Protection and the deputy being in a position to act. It is therefore

important not to delay in submitting the application where a deputy is required to act urgently.

I will also require you to sign and return the enclosed client care documentation as soon as possible.

If you have any questions, please do not hesitate to contact me.

I look forward to hearing from you.

Yours sincerely

Ben Kellett
PRACCTICE LTD