

Mental Capacity Act

Appointment of Deputies under the Mental Capacity Act

When a relative or loved one loses mental capacity to make decisions for himself, someone else has to be appointed to make decisions for him. This is especially relevant where the relative or loved one has assets that can be used for his own welfare. The Mental Capacity Act is a statute addressing this need to make decisions for persons who are 21 years or older, when they lose mental capacity to make decisions for themselves.

What is a deputy?

A deputy is person the court appoints to make certain decisions on behalf of a person who lacks mental capacity, when the person has not made a Lasting Power of Attorney, and therefore has no donee to make decisions on behalf. Similar in function to a donee in an LPA, the deputy has to act in the best interests of the person he makes decisions on behalf of. However, the deputy's powers are defined by the court order under which they are appointed, or any such further orders the court may make which can affect their powers of their appointment.

When is an appointment of deputy needed

Generally, the threshold requirement of an appointment of deputy is that there is no relevant LPA. There are subsequently a few possible situations where a deputy might be needed.

A deputy is desirable in situations involving parents of young children with intellectual disabilities, who are concerned about who will take care of their children should anything untoward happen to them. The Mental Capacity Act allows parents of children with intellectual disabilities who are below the age of 21 years old to apply to the court to appoint a deputy to ensure that their child's future care is arranged if the parents pass away or lose their mental capacity.

Another example where a deputy is desirable would be where one's parent suffers from a debilitating illness or is in a coma which will incur high expenses, yet their bank accounts are inaccessible given their state of health. A court order appointing a deputy could allow a deputy to access their bank account to cover such expenses.

Process of appointing a deputy

Who appoints the deputy?

The court plays the key role in appointing a deputy. The court may appoint a deputy for an adult person if the court deems that the person lacks capacity regarding matters involving his personal welfare or his property and affairs. The court may appoint a deputy for minors under the age of 21 years old, if

the court considers it likely that the minor will still lack capacity to make decisions regarding his personal welfare or his property and affairs when he reaches the age of 21 years old.

In appointing a deputy, the court has to consider if an appointment of a deputy is preferable to a decision of the court in solving the problem at hand. The court must also keep in mind that the deputy's powers have to be limited in scope and duration in a manner that is reasonably practicable in the situation.

What the court considers in appointing a deputy

The court will most likely consider these factors in determining whether they should appoint a deputy:

1. The circumstances of the person concerned.
2. The likelihood that future or ongoing decisions will be required.
3. Whether the appointment is for decisions with respect to property & affairs or personal welfare matters.

The court will usually choose a family member or a close friend to be a deputy. However, where family disputes are present, it is possible that the court chooses an independent third party to become a deputy.

It is noted that a deputy is unlikely to be appointed for property and affairs matters unless the person who lacks capacity has property or assets that will become entitled to them, through an inheritance.

How to appoint a deputy

A person who wishes to appoint a deputy for another person should apply to the court to do so. The person should state what particular decisions the person who has lost mental capacity cannot make, and what affairs the deputy should be responsible for, such as decisions relating to property and affairs or personal welfare matters.

The court will then decide if a deputy should be appointed after considering the factors above. The court can appoint more than one deputy, either jointly, or jointly and severally, or jointly on some matters but severally on others.

The deputy appointed must agree to the appointment and act in the best interests of the person. The deputy must also be at least 21 years old.

The lawyer should play a crucial role in helping one apply to the court for a deputy to be appointed. This is especially so, since the only way a deputy can be appointed is through the court, and a lawyer's expertise is necessary in fulfilling the formalities required for an application to court, and in stating the case for an appointment of a deputy.

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