

Your Client, Capacity and the Court of Protection



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Aim of this session

Provide you with information on:

- What a deputy does
- Is a deputy needed ?
- Timing - when to involve a deputy
- Costs - contents of a witness statement
- Benefit of having a professional deputy
- What happens post settlement

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What a Deputy does



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Is a deputy needed?

CHILD

- Will they have capacity at 18 to manage their property and affairs to the estimated value of the claim?

If NO

- Is value of claim over £50,000? (CPR PD 21.10.1)

If YES

- Deputy needs to be appointed



ADULT

- Do they have capacity to manage their property and affairs to the estimated value of the claim?

If NO

- Check no EPA/LPA in place

If NO

- Is value of claim over £50,000 (CPR PD 21.10.1)

If YES

- Deputy needs to be appointed



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People who lack capacity - section 2.1

“a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, mind or brain”.

The test for capacity is issue specific. Most clients have capacity to make some decisions and therefore the test for capacity has to be addressed separately on different issues.

Inability to make a decision - section 3(1)

A person is unable to make a decision if they cannot:

- Understand the information relevant to the decision
- Retain that information
- Use or weigh up that information as part of the decision making process, or
- Or communicate their decision.



Contents of a witness statement

Ensure all aspects are covered:

- Tailor to individual client
- Include all up to date OPG disbursements
- Legal fees for application and general management
- Include fees and disbursements for change of deputy
- Statutory/will(s) legal fees and disbursements
- Costs draftsman fees
- Taxation fees



CPR practice direction 21 10.1

10.1 The Court of Protection has jurisdiction to make decisions in the best interests of a protected beneficiary. Fees may be charged for the administration of funds and these must be provided for in any settlement.

10.2 Where the sum to be administered for the benefit of the protected beneficiary is:

(1) £50,000 or more, (save where under para 10.2A the Court of Protection has authorised a sum of £50,000 or more at the request of the judge giving investment directions) unless a person with [authority](#) as:

- a. the attorney under a registered enduring power of attorney;
- b. the donee of a lasting power of attorney; or
- c. the deputy appointed by the Court of Protection to administer or manage the protected beneficiary's financial affairs has been appointed, the order approving the settlement will contain a direction to the litigation friend to apply to the Court of Protection for the appointment of a deputy, after which the fund will be dealt with as directed by the Court of Protection; or

(2) under £50,000, it may be retained in court and invested in the same way as the fund of a child.

What happens post-settlement?

- Legal team and experts' job done
- Client and family left - 'what happens now?'
- Build relationship between client and CoP team
- Promote recommendations made by experts during claim
- Consider changes to circumstances in planning ahead



How can we help you?

We assist litigation lawyers with the following:

- Witness statements for deputyship costs
- Deputy appointment during a claim
- Statutory wills

For more information:

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