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**Supporting you and your caring professionals**

# Property and Affairs Deputyship and the Court of Protection

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At Hyphen Law, we specialise in Deputyship work and have a wealth of knowledge and expertise in this field, as well as a clear understanding of the needs of our clients and their families.

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What is the Court of Protection?

The Court of Protection is a specialist Court that assists and protects people who are unable to make decisions about their personal health, finance or welfare.

What is a Deputy?

A Deputy is appointed by the Court of Protection to make or assist with decisions on a day-to-day basis and has direct contact with clients, their families and other professionals. A Deputy is usually appointed to deal with financial matters and is called a “Property and Affairs” Deputy. Sometimes the Court appoints a “Health and Welfare” Deputy to make decisions about care and medical issues but this is unusual. A Property and Affairs Deputy doesn’t have the right to make decisions about Health and Welfare issues.

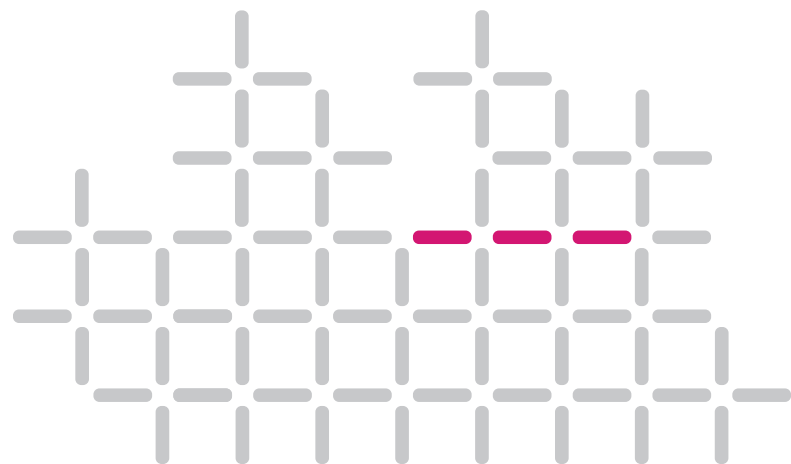
Who decides whether a Property and Affairs Deputy is needed?

The Court of Protection makes this decision based on medical evidence.

What sort of financial decisions might a Property and Affairs Deputy make?

The Deputy will only make the decisions that their client is unable to make and will do so by working closely with their client, their families, their Case Manager or Social Worker and others to make sure that such decisions are in their client’s best interests.

During the course of a claim for personal injury damages, a Deputy will work closely with the solicitor dealing with the claim to ensure that any interim payments are properly used and accounted for. When the claim is concluded, the Deputy will ensure that the final award is properly invested and used for the benefit of their client.



# Being a Deputy

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The Deputy may have to make lots of decisions, or very few, and the frequency and type of decisions may vary over time

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These are some of the things that a Deputy might need to do:

- Buy and sell property.
- Oversee any property adaptations which may be needed. Working with an appointed architect to ensure that works are on budget and that funds are available to meet payments that fall due as the work progresses.
- Employ support workers and deal with any legal issues arising out of that employment including pay reviews and performance issues.
- Employ other professionals such as a Case Manager, Occupational Therapist or similar treating therapists.
- Purchase vehicles and arrange for their adaptation.
- Pay utility bills.
- Arrange and pay insurance for property, contents, specialist equipment and vehicles etc.
- Regularly review and claim state benefits.
- Obtain care funding from a Local Authority or the NHS, if there is an entitlement to this.
- Obtain and act upon independent financial advice.
- Prepare the annual report which is required by the Public Guardian.
- Complete an annual Tax Return and ensure that the correct amounts of tax are paid.
- Prepare and review income and expenditure budgets.
- Ensure that all bills, fees and regular payments are met and that funds are available at the right time.
- Look at whether a Will is needed and if so whether this may require further authority from the Court.
- Contract for Care provision in a Care home

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## Who supervises the Property and Affairs Deputy?

Every year, the Deputy prepares a report setting out the decisions they have made or assisted with during the previous 12 months and who they have consulted with during that period. This report also contains details of all the financial transactions which have happened during the year.

The report is sent to the Public Guardian, a government-appointed official who is responsible for monitoring the conduct of Deputies. If the Public Guardian's Office wants more information about anything that has happened during the course of the year, they can ask for this. The Court of Protection also has a team of court visitors who will visit clients and the Deputy to make sure all is in order and that the Deputyship is running smoothly.

## How is the Deputy paid?

The fees of a professional Deputy are paid for by the person they represent. If that person had an accident which has led to their incapacity, the cost of running the Deputyship should be included within the damages claim.

Every year the Deputy sends details of the work they have done and their proposed charges to the Court. A Judge then decides whether those charges are reasonable and whether they can be paid.

# How can we help?

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Hyphen Law is a specialist firm dealing exclusively with Deputyships and Personal Injury Trusts; we are here to support and advise you

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How can Hyphen Law help with a Property and Affairs Deputyship?

Living with a brain injury, mental illness or dementia can bring many challenges for both individuals and their families. The role of a Deputy can be complex, time consuming and require many skills. At Hyphen Law we relieve the burden that families sometimes feel when faced with the complexities of caring for someone who lacks the capacity to deal with their own property and affairs.

Hyphen Law has a particular expertise in supplying high quality Deputyship services to clients with a brain injury which has usually been acquired through an accident or medical negligence. We have a wealth of knowledge, experience and resources upon which to draw. We also have perspective and empathy and bring a very human touch to our work.

Each of our clients has a dedicated team who support the Deputy and work with their client, their families and other professionals on a day-to-day basis. We work hard to build and maintain personal but professional relationships with all parties.

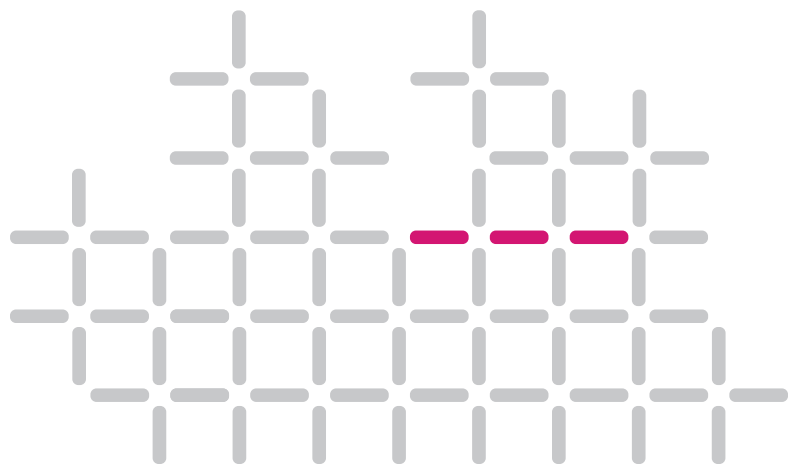
We tailor our service to our clients' needs rather than making our clients fit the box because, in our experience, that doesn't work. We also ensure that we don't work in isolation but as part of our clients' "team". This often includes Case Managers, Social Workers, medical professionals, financial advisors and litigation solicitors. We understand how team work ensures the best outcome for our clients.

You need to know that whoever you are working with not only understands the legal issues surrounding Property and Affairs Deputyship, but also that they understand the individual personalities, issues and circumstances involved. Reliable, responsive and collaborative support helps everyone to deliver the best outcomes.

Our Values and Client Care

We have a strong reputation in client care and will always:

- Put clients first and act in their best interests.
- Treat all clients fairly and not discriminate against anyone because of his or her race, sex, sexual orientation or disability.
- Explain things clearly, keeping jargon to a minimum.
- Make sure clients and others know who to contact if they need help from their dedicated team.
- Provide direct dial telephone numbers and email addresses so that you can get in touch when you need our assistance.
- Answer telephone calls as they are received. If the person you need to speak to is unavailable they will return your call as soon as possible.
- Make sure that you know who you can talk to if your main contact is away from the office.
- Respond to emails and letters as soon as possible - we believe that each email or letter requires a different level of consideration and would rather reply properly than meet a service standard by simply sending an acknowledgment. We will, however, ensure that all correspondence is dealt with appropriately and within a reasonable period of time.
- Keep information confidential.



# Jargon buster

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There's a lot of legal jargon that goes with Deputyship. Here's a guide to help you understand it

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## Appointee

Someone appointed to manage state benefits for someone who is unable to do so for themselves. The Appointee is permitted to use the money claimed to meet the person's needs. An Appointee cannot deal with other assets or savings which are from sources other than benefits.

## Best Interests

Any decision which is made on behalf of a person who lacks capacity must be a decision which is in their best interests rather than the interests of others. Section 4 of the Mental Capacity Act 2005 sets out the steps to follow in order to reach a best interests decision.

## Court of Protection

A specialist Court that has responsibility for dealing with all aspects of financial and health and welfare issues for those who lack capacity to make decisions about those issues for themselves.

## Certificate of Capacity

A Court of Protection form. This provides the Court with information about the incapacitated person and why they would benefit from having a Deputy. Part of the form is completed by a doctor or experienced Healthcare Professional, setting out their professional opinion on the person's capacity to make decisions.

## Deputy

Someone appointed by the Court of Protection to make decisions on behalf of the person who lacks capacity to deal with some or all aspects of their affairs. A Deputy can be appointed to make decisions about a person's property and affairs and, in some cases, personal welfare although welfare issues are often dealt with by a Court declaration.

## Deputies Declaration

A Court of Protection form. This is filed with the application, requesting that a Deputy be appointed. It contains information about the Deputy and seeks various commitments and promises from them.

## Deputies annual report

A report which the Property and Affairs Deputy submits to the Office of the Public Guardian each year to show how they have dealt with an incapacitated person's financial affairs.

## Guarantee Bond

All Deputies must be insured to act in that role. This is usually done by way of a bond which has an annual premium. The level of the bond is set by the Court of Protection.

## Guardianship

Arrangements made under the Mental Health Act 1983 for a Guardian to be appointed for a person with a mental disorder to help ensure that the person gets the care they need in the community.

## Litigation Friend

A person appointed by the Court to conduct Legal Proceedings on behalf of, and in the name of, someone who lacks the capacity to give instructions.

## Mental Capacity Act

The Act of Parliament which contains most of the law relating to people who are unable to deal with their affairs due to mental incapacity.

## Mental Capacity Act Code of Practice

A practical guide setting out how to ensure that the law within the Mental Capacity Act is followed.

## Office of the Public Guardian (OPG)

The Public Guardian is responsible for the supervision of Deputies. A Property and Affairs Deputy must file an annual report with the Public Guardian showing how they have managed all aspects of a person's finances.

## Official Solicitor

Acts for people who, because they lack mental capacity and cannot properly manage their own affairs, are unable to represent themselves in County Court or High Court proceedings in England and Wales and in the Court of Protection.

## Receiver

Someone appointed by the Court to manage the property and affairs of a person lacking capacity. Receivers were appointed by the Court prior to the introduction of the Mental Capacity Act which created the role of Deputy. Many Receivers have become Deputies, having first obtained an updated order from the Court of Protection.

## Statutory Will

A Will made by the Court of Protection for a person who lacks testamentary capacity. Testamentary capacity is the level of understanding a person needs to make a Will.

## Visitor

An independent representative of the Court of Protection and Office of the Public Guardian who will visit the Deputy and the person they represent.

# Case studies

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## Some people we have helped

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### Client P

P was involved in a serious car accident in 2011. As a result, P suffered a severe brain injury requiring lengthy stays in hospital and at a rehabilitation centre.

A Hyphen Lawyer was appointed as Deputy for P who is regarded as not having capacity to manage his property and affairs, as he has difficulties in communicating his ideas and wishes. However, P is able to make broad preferences known regarding straightforward issues. Capacity will be kept under regular review. P now resides at home with his family. A carer is employed to support P and he is able to manage a weekly budget with a little support. P's litigation lawyer is pursuing a substantial personal injury claim on his behalf. The Hyphen team work closely with the litigation lawyer, for example to apply interim payments for P's benefit.

### Client R

R sustained his injuries at birth following negligence on the part of the NHS. R's personal Injury litigation settled in 2009. R received a significant lump sum. He also receives annual payments.

A Hyphen Lawyer was appointed to act as Deputy for R. The Deputy and Hyphen team have worked together to purchase and adapt a property on R's behalf. The Deputy and Hyphen team have also worked closely with the Case Manager in relation to the recruitment of a care team. R is still at school. The Hyphen team arranged for the purchase of all the equipment needed to support R at home and at school – this includes a motability vehicle. The Deputy and Hyphen team have supported R's family with budgeting, property maintenance and house insurance issues.

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## Do you have any more questions?

If you would like a free, no obligation discussion with one of our expert Personal Injury Trust lawyers, please contact us:

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