

Do I need to apply for a Health and Welfare Deputyship?

Where a person lacks the necessary capacity to make decisions about their health and welfare the Court of Protection has always preferred to make a one-off decision rather than appointing a personal welfare deputy. However, the recent case of *Re Lawson, Mottram and Hopton* has offered new guidance on the principles which should be applied when deciding whether it is appropriate to appoint a personal welfare deputy.

What decisions can a Health and Welfare Deputy make?

If a person is unable to make welfare decisions such as where they live, who they live with, their care arrangements, medical and dental treatment and their leisure and social activities then they may need the Court to appoint a Deputy to make these decisions on their behalf.

Who can apply to be a Personal Welfare Deputy?

Any person over the age of 18 can apply to be a Deputy. They cannot be paid for any of the work they do although reasonable expenses can be claimed.

When a child reaches the age of 18 their parents no longer have “parental responsibility” to make decisions about their health and welfare. This is a problem for parents of children who will never have mental capacity. Once their child turns 18 a public body such as a local authority or NHS trust take the lead responsibility for making these decisions. There is often conflict between the parents and authorities and the parents feel excluded.

What about people who don't have a Personal Welfare Deputy?

Section 5 of the Mental Capacity Act is designed to provide protection from liability so that carers can act in connection with a person's care or treatment and make certain decisions without the need for a deputyship. Actions that might be covered by Section 5 include personal care such as:-

- Helping with washing, dressing or personal hygiene.
- Helping with eating and drinking.
- Helping with communication.
- Helping with mobility.
- Helping someone take part in education, social or leisure activities.
- Going into a person's home to drop off shopping or check on them.
- Doing the shopping or buying necessary goods with the person's money.
- Arranging household services.
- Providing services that help around the home.
- Undertaking actions relating to community care services.
- Helping someone to move home.

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In respect of healthcare and treatment, this could include:-

- Carrying out diagnostic examinations and tests.
- Providing professional, medical, dental and similar treatment.
- Giving medication.
- Taking somebody to hospital for assessment or treatment.
- Providing nursing care.
- Carrying out any other necessary medical procedures or therapies.
- Providing care in an emergency.

The parents in the case argued that this provision did not extend far enough to protect their children because it does not give a substantive right to make more serious decisions such as where they should live and what care they should receive. For an application to be successful it must be shown that lots of decisions beyond Section 5 have to be made regularly and that there is conflict.

What principles has the new case introduced?

The principles that have been laid out by the Court are quite detailed, however they can be summarised as follows:

1. The presumption that personal welfare deputies should only be appointed in the most difficult cases as expressed in the Code of Practice is incorrect. However, a person's ability to make their own decisions should be promoted as far as possible.
2. Parental responsibility cannot be extended beyond the age of 18
3. Every case must be considered individually.
4. The wishes and feelings of the relevant person must be considered but will not decide the success of an application.
5. The best interests checklist as well as Section 5 of the Mental Capacity Act 2005 mean that personal welfare deputies may not need to be appointed and that decisions regarding a person's health and welfare can be made in a less restrictive way.

When is a Health and Welfare Deputyship required?

It will be appropriate to make an application where a person lacks capacity and their condition is so complex that a series of linked welfare decisions over time have to be made. Applicants will need to show that it would not be helpful to require all of those decisions to be made by the court through separate applications to Court. The application should also provide evidence that the working relationship between the applicant and the authorities is not allowing them to properly support the person in question.

How do I apply to become a Health and Welfare Deputy?

The application for Deputyship includes the completion of paperwork for the Court, including a statement of the person's personal circumstances, a medical certificate regarding the capacity of the client and a deputy's declaration. These will need to be fully completed and returned to the Court of Protection with the commencement fee. In certain circumstances the fee can be waived if it can be shown that the fee would cause hardship.

For more information on health and welfare deputyships and how we can help please contact Jemma Garside in our Court of Protection team by email on cop@bovestuner.com.

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