

Becoming an adult... who makes the decisions when you can't?

Sol Jorgensen chose to become a 'Deputy' for her son who lacks capacity to consent. Helen Morris from the Friendly Trust explains how to become a Deputy and what it entails and explains that there are other options.

photography by Anne Lord

Parents and carers often find they face many obstacles when their child turns eighteen, particularly if the child in question lacks capacity. Suddenly they are no longer able to make certain decisions relating to the child's finances, such as consenting to a Direct Payments package. There is another way... Becoming a Deputy.

Sol Jorgensen, a mothers view

Beware Men in Suits. Never mind about bothering about men in black. Spooks, bikers, punks and Goths. What you have to watch out for are the Men in Suits. Those insidious grey formed people are more ghost and ghouls to my mind. They flit in and out of your life, like just glimpsed shadows at the edge of vision; but they leave behind such weight, such constrictions, feelings of helplessness. This is the way it has to be, they say impassively. There is no other way. The list of what you can and can't do is endless. Sometimes I think that they are put on this earth to bore you into endless sleep, with

a monotone, monochrome view of the world. But there is another way... you can become a Deputy.

This species does not survive by being bound by convention. It thrives on change, adaptation and mutation. We adapt to our circumstances, and this is just one adaptation.

My son lacks the capacity to consent. Because of this I was told I had to set up a Trust Fund to continue to receive direct payments after he turned 18 years of age in March 2009. The trust fund, meeting at least 4 times a year, was to be made up of unknown others who would discuss how I should look after him for the rest of his life!!! Forgive me if I thought there must be another way. When water meets an obstacle it follows the path of least resistance and finds another course, another way. So, faced with yet another immovable statement I found another way. I went to the Court of Protection and applied to become a Deputy. It is like Power of Attorney but acknowledges his lack of capacity



to consent. Now we don't have to set up a Trust Fund.

Rebecca Conlon a Case Manager's view

Direct payments offer Seth and Sol a care package that is flexible. They are used very effectively and imaginatively by Sol to meet the needs of Seth, as detailed in his care plan. Seth is due to turn 18 in March 2009 – although Seth will officially become an adult and receive support via the Adult support services – his care needs will remain the same. The care plan already in place will continue

to meet Seth's care needs – of course, this will need continued reviewing and assessing by future case managers.

I know how important it is to both Sol and Seth that the package works well and meets Seth's needs. I can also understand how the Transition process can be such an anxious and difficult time for parents. I know that one of the main concerns for Sol is whether Direct Payments can continue post 18, as Seth has not got the capacity to consent for direct payments.

But, as Sol has discovered (and talked about), applying for deputyship has assisted with this and made this process easier. This has allowed Sol to obtain an Order from the Court of Protection entitling her to manage Seth's financial affairs and is in the process of applying for the second part of deputyship. This will hopefully now allow for the local authority to be in the position to continue with direct payments following Seth's birthday.

Helen Morris, Deputy Co-ordinator, Friendly Trust, views her options?

Parents and carers often find they face many obstacles when their child turns eighteen, particularly if the child in question lacks capacity. Suddenly they are no longer able to make certain decisions relating to the child's finances, such as consenting to a Direct Payments package.

One solution to this problem is to apply to The Court of Protection (CoP) to be appointed as the individual's Deputy. The CoP is the

court responsible for the management of property and affairs of individuals who lack the capacity to make decisions relating to these matters. Its administrative wing is the Office of the Public Guardian (OPG), whose role is to regulate and supervise court appointed Deputies.

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The CoP can appoint a Deputy to make decisions for the individual who lacks capacity, relating to their property and affairs. In addition to this, since October 2007, the CoP has been able to appoint Deputies to act in relation to matters concerning the personal welfare of the individual. This involves a separate application and many different issues which there is not time to cover here!

Anyone who is over eighteen can apply to be a Deputy and the CoP will decide if a person is suitable to act.

Powers

The Deputy's powers will be specified in the order from the CoP. They can only make decisions in line with these powers and they must be in the best interest of the individual. The Deputy must ensure they act in line with the five main principles of The Mental

Capacity act. These are:

- 1) It must be assumed that every adult has capacity unless it is proved that they lack capacity.
- 2) A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
- 3) A person is not to be treated as unable to make a decision just because they make an unwise decision.
- 4) Anything done or decision made on behalf of a person who lacks capacity must be done, or made, in their best interests.
- 5) Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

The Deputy will be supervised by the OPG and will be expected to keep accurate accounts of the individual's monies. A Court of Protection Visitor will meet with the person who lacks capacity and the Deputy at regular intervals. It is the Deputy's responsibility to demonstrate that they have involved the person lacking capacity in decision making as much as possible and that they have consulted with others involved to ensure that the decisions made are in the person's best interest.

Solutions

Acting as a deputy can be the solution to many of the problems faced by parents and carers of a person that lacks capacity. For example, if an individual's capacity has lessened they may



not be able to access existing bank accounts. The Friendly Trust receive many referrals where this is the case and the individual's money is trapped. A Deputy would be able to access this money and use it for the benefit of the individual. The Deputy would also be able to access savings accounts, private pensions and inheritances. If a property is involved, the Deputy may be given authority to sell it. Without this power, the money and property would simply remain untouchable and could not be used to benefit the person who lacks capacity.

Sol encountered problems in relation to her son's lack of capacity and the issue of Direct Payments. Currently the parent can provide consent for a child without capacity who is under 18 to receive Direct Payments. However once the child becomes an adult, the parent (or person with parental responsibility) can no longer automatically give this consent. By applying to become a Deputy, Sol is now able to consent to Direct Payments so that her son can continue to access the care package which is so important to him.

Acting as Deputy can have many advantages. It allows parents and carers to act in situations where they would otherwise have no authority. It provides protection to

the person lacking capacity and works towards ensuring their best interests are met.

Disadvantages

There can be disadvantages to becoming a Deputy however, and people need to be aware of these when making a decision whether or not to apply. The initial application involves a great deal of paperwork which can be daunting. Often people find the language used confusing and a barrier to the process. The CoP provides detailed advice booklets to help with this matter and have a customer services helpline. The Friendly Trust can provide support for people wishing to apply as we have ten years experience of dealing with The CoP. Solicitors can also assist with this but they may charge.

There are financial implications of applying to the CoP to act as somebody's Deputy. The fee for the initial application is £400 and there are annual supervision and administration fees of varying levels. The Deputy is also required to take out an insurance bond. Some of these fees may be waived, depending on the level of income of the person who lacks capacity .

The responsibilities involved of acting as a Deputy, such as completing annual accounts and

tax returns may also prove a barrier to some. The Friendly Trust will act as Deputy for an individual if a parent or carer finds the task too demanding on top of their very busy lives and caring responsibilities.

Other options

It is also important to consider whether it is necessary to have a Deputy at all. Parents and carers are able to act as appointees for individuals who lack capacity and manage their benefits without being a Deputy. If Direct Payments are an issue then an Independent Living Trust could be set up as an alternative way of managing them. For some people setting up a Trust has helped make the transition to adult services smoother: the young person's Direct Payment has continued with all the freedom of choice and flexibility a Direct Payment funded service can bring, and, the parent or carer is supported in administering the Direct Payment by the other trustees.

The Friendly Trust are able to provide advice and practical help on applying to the Court of Protection; setting up an Independent Living Trust; wills & trusts and many other matters where decisions about money are involved.

The Friendly Trust work in the Vale of Glamorgan, Cardiff, Torfaen and Monmouthshire.

They are also happy to provide advice to people in other parts of Wales. Contact the Friendly Trust info@friendlytrust.org.uk. Tel 029 2022 5200.