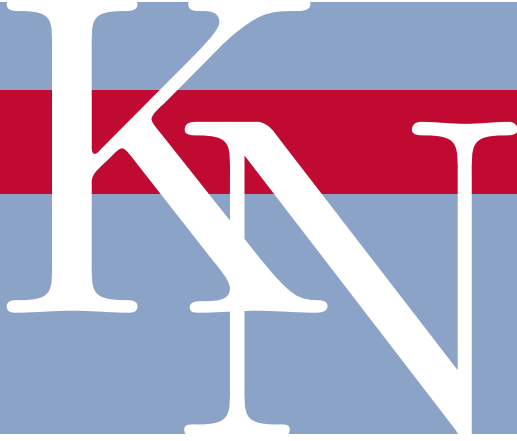


Private Client Team

# Looking after the vulnerable

Injury, illness or old age may require someone else to make decisions on behalf of yourself, family or friends or someone you care for regarding financial or welfare matters. Our expert Court of Protection and Deputyship team can help you overcome the challenges of everyday life and provide support and advice when a person lacks capacity to make decisions for themselves.





# Private Client Team

## About the Court of Protection

The Mental Capacity Act 2005 provided for a new Court of Protection to safeguard the property, financial affairs and welfare of a person who lacks mental capacity to make their own decisions. The Court has the power to:

- Decide whether a person has capacity to make decisions
- Appoint Court Deputies to make decisions on behalf of a person lacking capacity
- Make financial or welfare decisions on behalf of a person who lacks capacity
- Consider and decide upon objections to the appointment of an Attorney or Deputy
- Decide upon the validity or scope of a Lasting or Enduring Power of Attorney
- Remove Deputies or Attorneys who fail to carry out their duties

## What is a Court Deputy?

A Deputy is a person appointed by the Court of Protection to make financial and / or welfare decisions on behalf of another person who lacks the ability to make these decisions themselves.

The Court may decide to appoint a professional person such as a solicitor or accountant to act as a Professional Deputy or to appoint a Lay Deputy such as a family member or friend. The Court will also decide upon the length of the appointment and the scope of the Deputy's powers and duties. Individuals may lose mental capacity due to illnesses such as dementia, or following a brain injury as a result of an accident or negligence. If there is no valid Power of Attorney already in place at the time a person loses mental capacity, a Court Deputy will be appointed by the Court.

## Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) is a document which allows you to authorise one or more people to handle your property and financial affairs or to make certain welfare decisions on your behalf.

In order to be valid the Lasting Power of Attorney must first be registered with the Court of Protection before use and must clearly set out the extent to which you authorise someone else (the Attorney) to act on your behalf and in what circumstances. You may authorise the Attorney to handle your financial affairs whilst you still have mental capacity or only at the point in the future when you lose mental capacity to make your own decisions regarding your welfare or finances.

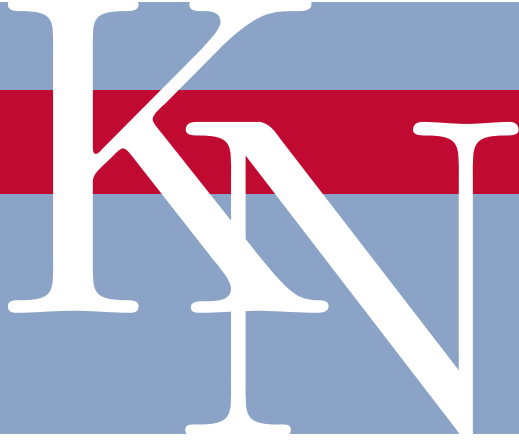
## Our Court of Protection and Deputyship service

Our specialist Court of Protection and Deputyship service at Kingsley Napley forms part of our Private Client team services and is unique in bringing together six partners with nationally recognised expertise in the fields of:

- Clinical negligence and personal injury
- Catastrophic brain injuries
- Mental illness and disabilities
- Dementia
- Welfare and public law issues
- Wills including statutory wills
- Trusts on behalf of children and Personal Injury Trusts
- Powers of Attorney

Our Deputyship team is able to provide expert, practical and effective advice and assistance to:

- Families who have concerns about someone who is having difficulty making decisions about their finances or welfare
- Experts and case managers involved in the affairs of vulnerable members of society
- Charities and local government agencies dealing with the affairs of vulnerable people
- Solicitors acting on behalf of individuals with acquired brain injuries due to illness, accidents or clinical negligence



# Private Client Team

## How can Kingsley Napley's services help a vulnerable person?

We recognise the huge responsibility of protecting the best interests of someone who lacks mental capacity. We are also very much aware of the emotional and practical implications in acting for such a person and the effects upon their wider family who often also require support and advice.

Our range of services include:

- Acting as a Professional Deputy in respect of property and financial affairs or welfare issues
- Assisting Lay Deputies in relation to applications to Court, preparation of accounts and tax returns and care and case management input
- Long term financial planning including investments, tax advice and welfare benefits
- Working with health and social care teams and Case Managers to provide appropriate, effective and sensitive care and support
- Dealing with disputes relating to where you or a loved one wish to live and provision or withdrawal of medical treatment
- Purchase and adaptation of property and resourcing of specialist equipment
- Preparation of wills and statutory will applications
- Acting in relation to disputes regarding the appointment of a Deputy or Attorney, validity of Wills and determination of a person's mental capacity

Other specialist areas of advice and support include:

**Expert Witness Service:** our specialist team are able to offer assistance to clinical negligence and personal injury solicitors. This includes providing expert witness statements regarding costs likely to be incurred in a personal injury or clinical negligence claim where a Court of Protection Deputy is to be appointed or a Trust is to be created.

**Deprivation of Liberty:** we are able to provide quick, effective and practical advice in often very stressful and sensitive situations where family, friends, carers and professionals dealing with a person who lacks mental capacity are concerned about a deprivation of that person's liberty. This includes the person not being allowed to leave the hospital or care home where they are staying, others in a care home or hospital having control over all of the decisions in the vulnerable person's life, or family, friends or carers not being allowed to visit that person.

**Advance Decisions and Directives:** an individual can use an Advance Decision or Directive to indicate their wish to refuse all or some forms of medical treatment if they lose mental capacity in the future. Our services in this area include the preparation of documentation and challenges to the validity of an Advance Decision or Directive.

**Trusts on behalf of children and personal injury trusts:** where an award of damages has been made to a person who has sustained a personal injury, and who has mental capacity, the setting up of a Personal Injury Trust ensures that means tested benefits can continue to be received and the award of damages is "ring-fenced" under the Trust. Where an award has been made to a child who will have mental capacity at age 18, advice upon the setting up and administering of a Trust in their favour is essential, as is advice in relation to both types of Trust regarding tax implications and long-term financial planning.

**For further information about Court of Protection and Deputyship services at Kingsley Napley please contact**



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