

New Model Planner

Advisers and attorneys must abide court's code on elderly's interests



JACQUELINE ALMOND

IBB Solicitors

The Court of Protection regularly has to deal with concerns about the way in which an elderly person's attorney or its deputies have used assets.

Advising a deputy or someone with power of attorney means making sure certain rules over use and investment of funds are strictly followed.

The interests of elderly people who do not have the mental capacity to look after their own interests, are taken care of by either a person who has been given power of attorney – normally a family member – or a court appointed deputy.

There have been cases where deputies used money to make gifts or claimed what appeared to be large expenses, in a way that they ought not to.

The Mental Capacity Act 2005 says deputies must act in the best interests of the person for whom they are appointed. Further, the ability to make gifts is extremely limited without court approval. Deputies cannot take unnecessary risks, so funds invested using an IFA should be spread between accounts and investments.

Code of practice

Deputies are provided with a code of practice that gives practical guidance. While there is no specific sanction for a failure to comply, it can be used in evidence to show the deputy did not act in a person's best interests. The code is not exhaustive, but guidance is also produced by the Office of the Public Guardian and the Department of Health.

Deputies can also get help from Court of Protection 'visitors' in the first year of appointment, who support and advise on claiming benefits and making gifts. The Mental Capacity Act 2005 provides a more 'hands off' regime than the previous rules.

This has had significant advantages as it makes a wider range of investment options available.

However, it also makes it easier for financial abuse to take place. The Public Guardian will use his power to intervene, such as asking for accounts and, if necessary, referring the deputy to the Court of Protection, usually to seek their removal.

It is not a defence for a deputy to claim that they were not aware of their responsibilities and the Court of Protection takes a particularly dim view of deputies who have misused funds. Misuse could result in that authority being taken away.

Jacqueline Almond is a partner at IBB Solicitors