

Gifting applications

Attorneys and Deputies are restricted in relation to gifts they can make on behalf of a person who lacks mental capacity. Any gifting required - for example, for inheritance tax planning, may require the approval of the Court of Protection.

What is a gift?

The court has a broad definition of gifting. It can include using someone's money to buy something for someone else, but it can also include making donations to charities; paying someone's school or university fees; giving someone an interest free loan from the person's funds or living rent free at a property belonging to another person.

When can gifts be made?

If someone has mental capacity to make a gift from their own funds, then that person can proceed to make the gift.

However, if the person lacks the capacity to make the decision to gift, then the decision rests with their deputy or attorney, who have very limited powers to make gifts. Unless the power of attorney or deputy order says otherwise, then the deputy or attorney can only make a gift to a family member, friend or acquaintance of the person on customary occasions or to a charity.

A customary occasion means a birth, a birthday, a wedding or civil partnership, an anniversary, or any other occasions when family, friends or acquaintances usually give presents - such as Christmas or Eid.

You must remember that gifts must be reasonable and proportionate in relation to the person's own assets and that the past actions of the individual are relevant. A gift of £1,000 to each grandchild at Christmas when they previously received £20 each, would not be reasonable. A gift of £1,000 from an estate worth £40,000 will be less proportionate than a gift of £1,000 from an estate worth £1,000,000.

What if I want to make additional gifts?

If you would like to make a gift which you do not have the authority to make under the power of attorney or deputy order (outside of a customary occasion or to yourself as attorney or deputy) then you will need to apply to the Court of Protection for formal authority.

In most applications, the person whose finances the matter relates to will be joined as a party to the proceedings, and the Official Solicitor will be appointed to act as their litigation friend. The Official Solicitor will carry out their own investigations to decide whether the proposed gift is in the persons best interests. After submitting the application to the Court of Protection, it may take five to nine months before a final order is made.

What happens if I have made an unauthorised gift?

The Office of the Public Guardian can investigate the gifts that you have made. If you have gone above your authority without getting court approval, the Office of the Public Guardian may:

1. Apply to the Court to have you removed from your role
2. Apply to the Court to suspend you temporarily from your role
3. If you are a deputy, they may apply to call in the deputy's security bond
4. Ask you to apply to the Court to retrospectively obtain approval for the gift

Our team can support you with advice on proposed gifting arrangements and the reasonableness of the same. We can also support you with preparing an application to the Court for approval.

Meet our team



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