

Gift applications

Where a property and affairs deputy has been appointed, they have the right to manage the money of the incapacitated person and spend it on their behalf, in their best interests and ordinarily for their benefit. A deputy does not have the right to make gifts of the incapacitated person's money, other than small gifts for birthdays and Christmas etc. So for example a deputy could not decide to give away £20,000 of the money belonging to a severely brain injured client to the client's child to help fund the costs of their wedding.

Sometimes, gifts like this can be a good idea, either because it would help the person with a disability to undertake some inheritance tax planning, or because it would be "right" to help look after their family and friends in that situation, particularly if this is something the injured party would have done if they possessed capacity.

Before such a gift can be made, the Court of Protection must give its permission. This involves making an application to Court setting out the financial position of the person who has been deemed incapable, what their current state of health is and whether their financial needs might change substantially in the future. The application would also need to set out what the proposed gift is, to whom it will be made and why. The Court will then decide whether the gift is approved or not.

Although you do not need to instruct a solicitor to make this application for you, it can be very useful to do so. We will make sure that your case is presented properly and that all of the arguments as to why the gift should be made are put forward in order to persuade the Court that the gift is appropriate. We have made numerous gift applications in the past, such as the gift from a mother to her children of her rental properties, in order to minimise the inheritance tax that would be payable in the event of her death.

If you, or someone you know, might be in a situation where a gift application would be appropriate, please contact us so that this can be discussed in more detail.