Background
Where an individual suffers an injury as a result of an accident or negligence, often a substantial compensation award will be made to give the injured person sufficient funds to last them throughout their lifetime. In cases where an award is made to an individual who lacks capacity to make decisions for themselves, the Court of Protection will appoint a person to act as a Deputy. The individual is called the Protected Person.

Court of Protection
- Provides protection for individuals not able to manage their own affairs
- Able to appoint a Deputy to manage the affairs and needs of the individual
- Has power to authorise the setting up of a Trust

Deputyship Overview
- Deputies are responsible for acting and making decisions on behalf of the Protected Person
- The court order will set out the specific powers of the Deputy
- The powers given will relate directly to the Protected Person, so will not be the same in every case

Supervision
- The Office of the Public Guardian (“OPG”) is responsible for supervising Deputies.
- Deputies must report any financial decisions made in relation to the Protected Person to the OPG on a regular basis
- In addition, the OPG often requires Deputies to take independent advice from a financial advisor before investing

The award may have to provide an income and capital for the Protected Person’s lifetime. This presents the need to develop financial solutions to meet immediate and longer term needs of the Protected Person.
Case Study

Gordon, 55, attended hospital for a routine operation to repair ligament damage caused by a sporting injury. An incident occurred while he was in the operating theatre with Gordon sustaining a brain injury caused by a lack of oxygen. He is now profoundly disabled, unable to walk and in need of care and assistance around the clock.

A firm of solicitors was appointed by Gordon’s family to act on his behalf in a claim against the Hospital Trust for negligence. While the Trust denied liability throughout the case, with just one week to go before the trial was to be heard by a Judge, a settlement was agreed for the sum of £1.5M.

The involvement of the law firm didn’t end there. Due to the size of the award the family were not keen to be responsible for the ongoing management of the fund. As a result the law firm was appointed as the Deputy by the Court of Protection.

The law firm had a professional relationship with an adviser in the area. They arranged a meeting and also included Gordon’s family in the discussions.

At the meeting, the adviser gathered further information from the family. He considered the amount of funds needed to cover immediate expenditure to pay for alterations to Gordon’s property, and for the purchase of specific equipment to improve his lifestyle. He then assessed Gordon’s situation, taking into account the state benefits that he is receiving due to his disability and his available tax allowances. This provided the necessary information to consider the most suitable methods of investment to provide for Gordon’s future capital and income needs.

The adviser recommended a mix of investment funds and an Offshore Bond to make the best use of Gordon’s tax allowances. The Deputy has also engaged the adviser to provide annual advice on the most appropriate withdrawal strategy for Gordon.

As the Court of Protection have authorised the use of a DIM, the adviser recommended appointing a discretionary investment manager. He put forward Aberdeen Standard Capital, as they can put in place a goal-based strategy to meet future needs at defined points in the future.

It was agreed that future meetings should be set up on a quarterly basis with a report and account being produced on an annual basis.

The adviser was also appointed to manage Gordon’s financial affairs which include a company pension, an ISA and small mutual funds portfolio.

The value of investments can go down as well as up, and could be worth less than originally invested.

Opportunities for your business

In addition to a Deputy being appointed in personal injury cases, they may also be appointed whenever a person lacks capacity to make their own decisions.

This creates an opportunity for you to develop professional connections with law firms appointed by the Court of Protection.