

Court of Protection



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An unexpected illness or accident can happen before you have an opportunity to put your affairs in order.

By not having a Lasting Power of Attorney or Enduring Power of Attorney, you will not be able to appoint someone you trust to make decisions if you are incapable. In this case, the Court of Protection will appoint a Deputy to make the decisions for you.



What is the Court of Protection?

An application to the Court of Protection is the only option where there is no Lasting Power of Attorney or Enduring Power of Attorney in place. The Court of Protection is responsible for deciding whether someone has the mental capacity to make a particular decision for themselves, and if not, the Court will appoint a Deputy to make ongoing decisions on financial or welfare matters.

What is a Deputy?

Deputies are commonly friends or relatives of the person who needs help with making their decisions. However, in circumstances where there is no suitable family member or friend, a solicitor can be appointed Deputy.

A Deputy can typically be appointed to handle either:

1. Property and financial affairs, and/or
2. Personal welfare

Property and financial affairs applications tend to be more readily granted by the Court in order to ensure that assets are protected, invested and managed appropriately.

Personal welfare applications are less likely to be successful as the Court is reluctant to allow a Deputy to make personal welfare decisions on a day-to-day basis, and usually only allow applications in exceptional circumstances.

The Deputy will be supervised by the Office of the Public Guardian. A property and financial affairs Deputy will typically have to complete an annual report in order for the Court to check that all finances are being dealt with properly and in accordance with the Order granted. There are also annual supervision fees to be paid, as well as a security bond to protect the finances of the person concerned.

How do I make an application?

In order to make an application for Deputyship, a GP will be required to carry out an assessment of capacity to confirm that the person in question is incapable of managing their affairs. The Court will also need full details of the person's property and finances as well as details of close relatives, as they will need to be notified of the application.

Once the Court has considered all of the necessary information, and assuming no objections are received from the people notified of the application, the Court will issue an Order, appointing the applicant as the Deputy. However, the Orders granted are typically quite limited, so it may be necessary for the Deputy to make further applications in the future should they need the Court's permission to sell or purchase a property, or deal with valuable investments.

The entire process can take several months before the Court Order is obtained. It is possible to make an emergency application but the Court must be in agreement that the matter is serious and has an unavoidable time constraint attached to it.

How Blaser Mills can help

One of our Wills, Trusts and Probate solicitors can assist you in applying for Deputyship and can take away the administrative burden, allowing you to concentrate on the welfare of the sick or injured person.

To talk to us, please call 020 3814 2020 or contact the Head of the Wills, Trusts and Probate team at mit@blasermills.co.uk

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