

Court of Protection



The Court of Protection is probably an institution that a lot of readers won't have heard about. It is a Court based in London which helps to look after individuals who lack the capacity to make decisions for themselves. Someone loses their mental capacity in a variety of ways. The most common of these is when an elderly client is suffering from one of the various forms of dementia in a moderate to advanced stage.

If you have concerns for yourself and you still have the mental capacity to appoint others to assist you with your property and affairs or person welfare, you can do so under a Lasting Power of Attorney, or LPA. If it is felt that you no longer have the capacity to make this decision and you do not already have in place an Enduring Power of Attorney or Lasting Power of Attorney, it will be left for the Court of Protection to appoint a person called a 'Deputy' to look after your affairs on your behalf.

A Deputy in most cases tends to be a close relative but in some cases a professional Deputy, such as a solicitor. There is a need for the proposed Deputy to make an application to the Court of Protection and submit evidence in support. That evidence includes a medical report prepared by a GP or consultant. There are prescribed application forms which must be completed to begin the application. Notice must be given to the person's close relatives and any person with an interest in their welfare such as their unmarried partner or carer. These persons have a right to raise any concerns about the proposed Deputy's suitability to act. The Court can refuse an application if they feel the proposed Deputy is unsuitable.

Once the application has been sent to the Court it usually takes 3 to 6 months for someone to be appointed as Deputy. There can be delays prior to sending the application to Court as the medical evidence can sometimes take a long time to get hold of depending on the medical practitioner involved.

A Court of Protection application can be a costly process. Dependent upon the incapable person's income, you may need to pay an application fee of £400. The GP/Consultant preparing the medical report will also charge between £50 to £250. The Deputy has to also take out a 'security bond' to cover their actions as Deputy and this too is payable annually. The bond is set by the Court; the more assets a person has (and therefore the more responsibility the Deputy has), the higher the bond. The bond tends to be between £100 to £300 per annum.

Once a Deputy is appointed, they will take control of the incapable person's finances and property and, if applied for, their personal welfare. The Deputy must always act in the incapable person's best interests and comply with the Mental Capacity Act 2005 and related Code of Practice. The Deputy must keep accurate records of his or her dealings with the assets and income, submitting an annual account to the Office of the Public Guardian.

A Deputy has to account to the Court at all times. Any major decision (such as selling someone's property) needs the Court's permission. Every year the Deputy has to provide a 'Deputyship Report' to the Court. This gives the Court information on decisions that the Deputy has made on that person's behalf and also provides summary accounts for the Court to approve.

It is possible for a Deputy to be appointed to make personal welfare decisions on an incapable person's behalf, e.g. where they should live or what medical treatment they should receive. However, the Court will only appoint a Deputy in extremely limited circumstances such as where there is disagreement amongst family members/carers or where their medical condition means that treatment decisions must be made frequently.

A Court of Protection application is always the last resort. If you have the capacity to appoint someone to act for you, you should take steps to make a Lasting Power of Attorney to protect you in the event that you lose capacity in future.

If you would like further information on the Court of Protection process or Lasting Powers of Attorney, please contact us. All of our Elderly Client Solicitors are members of Solicitors for the Elderly, a recognised national organisation, specialising in this area of practice.

Contact: James Shingleton

T: 033 3344 9600

E: james.shingleton@morrishsolicitors.com

www.morrishsolicitors.com

