

Court of Protection - Deputyship



If a person becomes unable to make decisions for themselves, and they have not already appointed an Attorney to act for them (or all appointed Attorneys are unable or unwilling to act) then it might be necessary to apply to the Court of Protection for what is called a “Deputyship Order”.

This is a Court Order appointing one or more people to take decisions on behalf of the person who cannot do this themselves.

What order can be made?

Applications can be made for a Deputyship Order covering a person’s financial affairs and/or health and welfare matters. It should be noted however that the Court is reluctant to make Health and Welfare Orders. On average 375 applications are approved per year compared to 15,000 property and finance applications. This is partly because the law allows some welfare decisions to be taken without this or other authority.

What is the process?

As with any Court process, a set application process must be followed, and the Court provided with a great deal of information about the circumstances of the person who it is said cannot make decisions for themselves.

The following forms must be completed and submitted as a matter of course:

- **Main application form (COP1)** - This gives details about the person(s) making the application, who it concerns, family/people entitled to be notified of it, and not least, what the application actually relates to.
- **Annex A: supporting information for property and affairs (COP1A)** - This contains a lot of detail about the financial circumstances of the person who is the subject of the application. It can take some time to gather this together, but it is necessary to do so to give the Court a full picture of that person’s finances.
- **Annex B: supporting information for personal welfare applications (COP1B)** - This is designed to advise the Court why it is felt a Welfare Deputyship Order is needed if one is being sought. Remember these are rarely granted however.
- **Assessment of capacity (COP3)** - This must be completed by, for example the GP of the person subject to the application, a psychiatrist, approved mental health professional, Social worker, psychologist or Nurse. A separate fee set by the person completing this form is usually charged.
- **Deputy’s declaration (COP4)** - This outlines the applicants own circumstances and includes details of what their responsibilities and duties will actually be. This form is needed to satisfy the Court that the proposed Deputy(s) understands and is appropriate for the role. It is designed to ensure that there is no circumstance that might make an appointment inappropriate, such as a bankrupt seeking to manage someone else’s finances.

Sometimes it is also necessary to apply for permission to make an application before actually doing so, but this is not common.

What is the process? *continued*

Once the Application is underway then the person who is the subject of it and, usually, three other people (and there is a set order of precedence) must be notified of the application. Again set forms must be used for this purpose and, in the case of the subject of the application, given to them personally unless there is a very strong reason to prevent this.

The Court will then consider the information provided. It has the right to ask for more information and this must usually be given in a formal witness statement.

Sadly, the application process can be quite long. It will take months (sometimes over a year) for a decision to be made. Sometimes it is possible to make an emergency application but the criteria for doing this is very narrow.

Once the Court has agreed to appoint a financial Deputy it will write to them setting out a requirement for a 'surety bond' (also called a 'security bond' or sometimes 'insurance bond'). The bond is insurance that protects the value of the assets of the person whose affairs and property the Deputy is going to manage from fraud or mismanagement (including negligence). The Court sets the level of the bond and reviews this each year. Bonds are available through an official scheme or the Deputy can seek an alternative arrangement. In this case however the Court must be satisfied that the bond is adequate. The cost of bond will depend on the provider and the circumstances of each case.

Only when the bond is in place will the Order be sent out. It should be noted however that, sometimes, the Court may require subsequent applications to deal with particular matters. An initial Deputyship Order may not give carte blanche authority over every aspect of a person's affairs whether financial or welfare. In any event any actions must always be in the best interests of the person to whom the order relates.

What is the cost?

The initial application fee is £371. On top of that there is any fee payable to obtain form COP3 (these are charges at the discretion of the person preparing the forms and not set down as a fixed fee by the Court) and the Insurance bond. There are also annual supervision fees for a Deputy (usually £320). These are in addition to any legal fees that a Deputy may incur and which are paid/recoverable from the subjects' assets, as are the other costs mentioned here.

How to avoid this long, costly process...

Simple, make sure you put in place Property and Finance and Health and Welfare lasting powers of Attorney. These can only be done while you have the necessary mental capacity to do them. Once this is lost it is too late! Incapacity can hit anyone at any time (e.g. a stroke, accident etc.). Powers of attorney are not just for the elderly. They should be done by everyone as soon as possible

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