

Court of Protection applications

Dementia, brain injuries and mental health problems are a few of the conditions that can leave us temporarily or permanently incapable of making our own choices. When someone loses capacity the Court of Protection steps in and can make decisions for you as well as appoint deputies to manage day-to-day issues on your behalf.

What is a deputy?

A deputy is appointed by the Court of Protection to make decisions on behalf of someone who does not have the mental capacity to manage their own affairs.

There are two types of deputyship:

Property and affairs

This is the most common form. A property and affairs deputy is responsible for managing someone's financial affairs including paying bills, arranging pensions, managing bank accounts and investments.

Personal welfare

This includes decisions about medical treatment, where someone lives, and anything relating to their care and general wellbeing.

It is worth noting that a personal welfare deputy will only be appointed in exceptional circumstances. These decisions can usually be made by care providers or medical practitioners, with the court intervening if there is a disagreement as to what is in the person's best interests.

Who can be a deputy?

The court will decide on an appropriate deputy, often a spouse or close relative. Anyone can be considered by the court if they are over 18. A prospective deputy must sign a declaration detailing any criminal convictions or bankruptcy arrangements. If there is no-one willing or able to take on the role then a professional person may be appointed.

What are the responsibilities of a deputy?

The court will make an order appointing the deputy and setting out the scope of the deputy's powers.

The deputy's duties are set out in the Mental Capacity Act 2005 and include the over-riding principle that any decisions made on behalf of a person must be in their best interests.

As a safeguard the court also places certain obligations on the deputy. These include the requirement to obtain a security bond, to comply with supervision by the Office of the Public Guardian and to file annual reports and accounts.

How do I avoid the Court of Protection appointing a deputy on my behalf?

Going through the court can be an expensive and lengthy process which can prove tiresome and distressing for families. You also won't have any control over who is appointed to look after your affairs.

If you have made an enduring or lasting power of attorney you will have already appointed an attorney to make decisions for you if you are no longer able to make them for yourself. It may pay to check that the EPA or LPA has been properly completed and registered. Information on lasting powers of attorney can be downloaded from the wills, probate & trusts page of our website, under the private services menu.

What do I do if I think a deputyship is necessary?

If someone requires the support of a deputy then an application will need to be submitted to the Court of Protection, along with the relevant application fee. The application must also be accompanied by a formal medical assessment to confirm that the person is unable to make decisions themselves.

The application process is complex and even for straightforward cases it will take a number of months for the order appointing a deputy to be received.

If you think a friend or relative may require a deputyship, we strongly recommend that you seek professional advice at the earliest possible opportunity.

How can Willans help?

Our knowledgeable team handles all aspects of wills, trusts and inheritance tax planning and Court of Protection applications. Our work is often for clients who have been with us for many years; in some instances we act for second or third generations of the same family.

Please telephone or email to arrange an appointment.

Contact

Please contact either partner in our wills, probate & trusts team:

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