

BECOMING A COURT APPOINTED DEPUTY

In the absence of a valid Lasting Power of Attorney or Enduring Power of Attorney, no one has the legal authority to make decisions relating to the assets or wellbeing of a mentally incapable person until a Deputy is appointed by the Court of Protection.

What is the Court of Protection?

The Court of Protection (the Court) is the specialist Court which has the power to make decisions, and appoint Deputies to make ongoing decisions, in relation to the property and financial affairs, or health and welfare, of those who are mentally incapable and do not have a Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA).

What is a Deputy?

A Deputy is someone appointed by the Court to make decisions for someone who is mentally incapable of doing so on their own. A Deputy is responsible for making decisions for a mentally incapable person until either the death or recovery of that person. A Deputy is usually a close friend or relative of the mentally incapable person, but can be a professional such as a solicitor or Local Authority.

There are two types of Deputy:

- A property and financial affairs Deputy
- A health and welfare Deputy

It is not necessary to have both types of Deputy, but where both are appointed they can be the same person or separate people.

When should a Deputy be appointed?

Prior to applying to the Court to be appointed as someone's Deputy, it is possible to search the Office of the Public Guardian (OPG) registers to see if someone already has a Deputy, or an Attorney under a registered LPA or EPA. Such a search will not reveal if someone has an Attorney under an unregistered EPA. The Court will not usually appoint a Deputy if the person has already made an LPA or EPA.

A Deputy will usually be needed if the person is mentally incapable of making decisions about their property and financial affairs. The exception is where the person has no property or savings, because a close friend or relative or a Local Authority can become their 'appointee' to deal with their benefits from the Department for Work and Pensions (DWP).

In most matters concerning health and welfare decisions, the law allows healthcare professionals to make a decision in the best interests of a mentally incapable person. There are, however, limitations on this such as where the decision is difficult or complex, or someone disagrees with a course of action, or the person needs ongoing help with decisions. Before you make an application to be appointed a health and welfare Deputy, you need to consider whether it is really necessary.

How do I commence the process to become a Deputy?

The first stage of the process to become a Court appointed Deputy is to see if you need permission from the Court to make an application:

- You do not usually need permission to apply to the Court if the application relates to property and financial affairs
- You will usually need permission if the application relates to health and welfare

If you need permission to apply, your application cannot proceed until permission has been granted. The Court aims to deal with an application for permission within 14 days of receiving it, although a Court hearing may be required. If permission to apply is refused, you can ask the Court to reconsider or apply for permission to appeal.

If you do not need permission to apply, or permission to apply has been granted, then to apply to be appointed as a Deputy the Court need to be supplied with:

- An application form together with supporting information
- An application fee (subject to any exemption or remission which can avoid or reduce the fee)
- An assessment of mental capacity
- A Deputy's declaration

Application form with supporting information

This form sets out the order the applicant is asking the Court to make and, together with the 'supporting information', requests detailed information to include:

- Full personal details for the mentally incapable person, such as full name, date of birth, marital status, address, National Insurance number, name of GP, name of Social Worker etc
- Details of the mentally incapable person's assets (such as property, personal possessions, bank and building society accounts, shares and investments), liabilities (such as mortgage or personal loan, or debt owed to a family member), income (such as pensions and benefits) and expenditure (such as utility bills and care home fees)
- Details of anyone who regularly visits the mentally incapable person
- Details of any person who ought to be heard in relation to the application (as opposed to merely being notified of it), known as a respondent
- Details of any other person who should be notified of the application, which will vary according to the personal circumstances of the mentally incapable person. At least three persons should be notified of the application in addition to anyone who has been named as a respondent

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Typically, the three persons to be notified of the application will be members of the mentally incapable person's close family (such as a spouse/(civil) partner, parent, child, grandchild or sibling). If there are circumstances which reasonably indicate that certain members of the mentally incapable person's close family should not be notified – for example, the relative has had little or no involvement in the mentally incapable person's life and has shown no inclination to do so – but that others should be notified instead, then the evidence in support of the application form must set out why that person was not notified.

You will need to spend time gathering together as much of this information as possible before proceeding to the completion of the Court forms.

Assessment of mental capacity

A legal principle within the Mental Capacity Act 2005 is that a person must be assumed to have capacity unless it is established that he lacks capacity. It is therefore essential that a medical practitioner or social worker provides an assessment of the person's mental capacity in relation to the matter on which the Court is being asked to decide.

Deputy's declaration

The Court uses the information contained in this form to assess the suitability of the proposed Deputy. You will therefore need to answer questions about such things as your occupation, any criminal convictions, your health, and your financial status (that is, outstanding debt or bankruptcy). You will also need to make several 'undertakings' (that is, promises) such as keeping accounts of your dealings on behalf of the mentally incapable person.

What happens after I have submitted my application?

When the Court receives your application it will 'issue' it by putting an original stamp on the application form and return this to you together with the following forms:

- 'Proceedings about you in the Court of Protection'
- 'Acknowledgement of service/notification'
- 'Certificate of notification/non-notification of the person to whom the proceedings relate'
- 'Notice that an application form has been issued'
- 'Certificate of service/non-service, notification/non-notification'

What do I do with the forms I have been sent?

Even if you believe that the mentally incapable person will not understand, you must hand them the necessary forms and explain:

- Who the applicant is
- That the application raises the question of whether they lack capacity and what that means
- What effect the outcome of the application would have
- Details of any person who would be appointed to make decisions on their behalf
- That they may seek advice and assistance in relation to the application

You must provide those people named as having an interest in the application with the necessary notice. You can either hand this over or send it by first class post.

After you have served or notified people about the application, you must complete and return to the Court the necessary forms to confirm this.

What happens after the appropriate forms have been returned to the Court?

Each person that you serve or notify has 21 days in which they may respond to the Court. After this 'statutory waiting period' has ended, the Court may decide to:

- Make a decision based on the application without an attended Court hearing
- Fix a date, time and place for a hearing to be attended
- Delay making a decision until further information is to hand, and so instead give 'directions' about the need to obtain, for example, additional evidence or reports from a Court Visitor or Social Services

What happens if the Court decides to hold a hearing?

If no one objects to the application, the Court can usually make a decision. However, if the Court decides to hold a hearing then you will receive a notice confirming the date, time and details of where this will take place. You must then inform the person to whom the application relates of the hearing, and that they may seek advice and assistance in relation to it. You must then complete and return a form to the Court which confirms that you have done this.

What if the matter is urgent?

You can apply to the Court using the emergency procedure for a decision within 24 hours if there is a clear risk that someone may suffer serious loss or harm. Examples include:

- Applications about urgent medical treatment
- Applications to prevent someone being removed from the place where they live
- Applications to execute a Statutory Will where the person's life expectancy is very short

You can apply to the Court to make an interim order in circumstances where it is unavoidable and there is a genuine need for an urgent order. Examples include:

- Where there are mounting debts for care home fees which are being actively chased for payment and so urgent access to funds is required
- Where a property is being sold, and the date for exchange of contracts or completion is imminent

A request for an interim application can be submitted together with the application for Deputyship, or sent in later if urgent matters come to light.

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What happens after the Court makes an order?

After the Court has made its decision you will be sent official copies of the order for you to check. If you notice any errors, return all copies to the Court for amendment. If you are unhappy with the Court's decision, you may apply to the Court for the order to be reconsidered or for permission to appeal.

Once the final order has been made, you must inform the person to whom it relates of its content and effects and that they may seek advice and assistance in relation to it.

What is a Security Bond?

The Court requires that a Deputy appointed to manage a mentally incapable person's property and financial affairs arrange a Security Bond with an insurer. This is a standard requirement and is not intended to reflect on the Deputy's personal integrity.

A Security Bond is an insurance policy to protect the mentally incapable person from any financial loss that may occur due to mis-handling of their finances. The annual premium depends on the level of security set by the Court, which in turn is determined by the amount of funds that the Deputy will have control of, including any non-cash assets such as property.

The Court will not send out the sealed orders until the bond is set up and they have received confirmation from the bond provider.

You may pay the annual premium from money you hold for the mentally incapable person, or pay from your own money and be reimbursed when you have access to the mentally incapable person's assets. If you are not happy with the level of the bond you should apply to the Court stating your reasons.

What costs are involved with becoming a Deputy?

The fees and costs associated with a Deputyship application are:

- **Doctor's fee:** this is payable for the completion of the medical certificate
- **Court's application fee:** payable on making an application to start Court proceedings, unless a fee exemption or remission application is submitted
- **Court's hearing fee:** this is only payable if the Court holds a hearing
- **OPG's Deputy Assessment Fee:** once the Deputyship Order is granted, this one off fee is charged for the OPG to assess the case and set the supervision level
- **Solicitor's fees:** if a solicitor is involved in making the application, the bill will generally have to be agreed by the Deputy or assessed by the Senior Courts Costs Office
- **Security Bond:** further details on this are set out above

You will be responsible for all fees and costs unless and until the Court decides otherwise. Typically, the Court will authorise the payment of any fees and costs associated with a Deputyship application from the funds of the mentally incapable person, after a Deputy has been appointed.

How long will all of this take to complete?

Gathering together the information needed to submit the application to the Court – including the assessment of mental capacity – can take a considerable amount of time. Once the Court has received the application, their aim is to notify you of the decision within 16 weeks. However, this timeframe depends on a number of factors such as whether the Court requires more information before the decision can be made, whether anyone opposes the application, and the workload of the Court which often experiences significant delays. **It is not uncommon for the appointment of a Deputy to take a year or more to complete.**

Is a solicitor needed to submit a Deputyship application?

A solicitor can make an application on your behalf, but this is not essential. Guidance is available on www.gov.uk or by contacting the Court staff who will be able to assist with general queries and provide basic guidance. The Court cannot provide any legal advice or services, and so many people find the assistance of a solicitor helpful when making an application.

What do I need to do if I am appointed as a Deputy?

Whilst our separate guidance sheet headed 'Acting as a Court appointed Deputy' sets out the detail, the basic ongoing obligations of a Deputy are to:

- **Act and make decisions in the best interests of the mentally incapable person:** there is no definition of 'best interests', but guidance is available to help you work out what would be in someone's best interests
- **Maintain the Security Bond:** the annual premium for the Security Bond must be paid for the lifetime of the mentally incapable person
- **Make further Court applications where necessary: being appointed as a Deputy commences rather than concludes your dealings with the Court.** For any act to be done, or decision made, on behalf of the mentally incapable person, which is not authorised by the Deputyship order, an application must be made to Court for approval
- **Complete an Annual Report:** a Deputy will probably need to send a report to the OPG every year. The OPG will let you know when a report is due and send a form which sets out what is required. You should keep a record of all financial dealings and decisions you make, and how you reached the decisions in the best interests of the mentally incapable person to include who you consulted, in case the OPG ever requests this information from you
- **Comply with the Court/the OPG:** the OPG has a duty to investigate any complaints about a Deputy. This may involve the OPG's Investigation Team and/or the Court Visitors meeting the Deputy to gather information. Whilst a Deputy may not like being investigated, if they are acting in the best interests of the mentally incapable person and in accordance with the law then there is nothing to fear