

Guidance note



# Court of Protection & Deputyship Orders

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# Contents

- 01 Introduction
- 02 What is the Court of Protection?
- 03 Who can be appointed as a Deputy?
- 04 Sole or Joint Appointment?
- 05 What powers does a Deputy have?
- 06 Selling a property
- 07 The application process
- 08 Deputy's Duties once appointed
- 09 Further Help



# 01

## Introduction

If an individual is no longer able to make decisions for themselves and they haven't previously set up Lasting Powers of Attorney, then no-one has a right to manage their affairs.

An application will have to be made to the Court of Protection for a Deputy to be appointed.

A Deputy can be appointed to make both financial and health and welfare decisions, if the Court feels that this is appropriate.



# 02

## What is the Court of Protection?

The Court of Protection is a specialist court that makes decisions on financial or welfare matters for people who can't make decisions at the time they need to be made.

### The Court

- decides whether the person can make their own decisions.
- appoints deputies to make ongoing decisions for people who can't make their own decisions.
- can give permission for one-off decisions to be made for someone.
- handle urgent or emergency applications where a decision must be made on someone's behalf without delay.



# 03

## Who can be appointed as a Deputy?

- To be appointed to act as a Deputy you must be 18 or over and could be:
- a family member or friend; or
- a professional such as a Solicitor or Chartered Legal Executive.

If you are applying to be appointed as a Deputy to deal with someone's property and affairs, you must have the necessary skills to be able to make financial decisions for someone else.

The final decision about the appointment lies with the Court of Protection.



# 04

## Sole or Joint Appointment

The application can be made by just one person, or by two or more people together.

If just one person is applying then it is worth bearing in mind that if they are no longer able to act, for instance if they become unable to make their own decisions or were to die, then the Deputyship would come to an end.

Depending on the ages and health of the people concerned, it might be prudent to make a joint application to make sure that financial decisions can continue to be taken even if one Deputy can't act.

If two or more deputies are appointed they can choose to act either:

- jointly; or
- jointly and severally.

If they choose to act jointly then they will have to make all decisions and act together all the time.

If they decide to act jointly and severally then either one can make a decision or take an action independently of the other.

# 05

## What powers does a Deputy have?

This will depend on the terms of the order made by the Court of Protection.

The Court has a duty to grant powers that are as limited in extent and time as possible while still being sufficient to allow the Deputy to carry out the tasks they need to.

The Court can impose any terms on the appointment as it feels are in the best interest's of the person to whom the order applies.

Where a person is unlikely to regain the ability to make their own decisions in their lifetime then the Deputy will usually be granted general power to manage their finances.

Any order related to a persons health or welfare is likely to be limited to a particular issue. It is unusual, but not impossible, to obtain a general authority over all health decisions.



# 06

## Selling a Property

Where a property needs to be sold, for instance where care home fees need to be paid, then it will be necessary to show that the sale is in the best interest of the person to whom the property belongs.

This is because the sale will deprive that person of the option of returning to their own home in the future. The Court will need to see information regarding any potential deprivation of liberty when making their decision.

It might be possible for the Deputy to meet the fees from other funds whilst the sale is pending. If matters are urgent an interim order could be obtained allowing access to sufficient funds to enable outstanding fees to be settled, but not to all the person's money.

Sometimes an additional application to appoint a second property trustee may be required depending on how the property is owned. For instance where a spouse is deputy and joint owner of the property a second property trustee will be needed.

# 07

## The application process

The person who would like to be appointed as Deputy applies to the Court outlining the order they would like to be made.

They must provide the Court with evidence that the person is unable to make their own decisions about the issue in question. The report can be completed by a suitably qualified person. This might be a GP, social worker, nurse or other healthcare professional

Information about the person's financial circumstances will have to be given to the Court including their income, assets and liabilities.

The applicant will also have to provide some financial information about themselves to satisfy the Court that they are fit to act. This will include details of their credit history.

At least three people, usually family members of the person to whom the order will relate, must be told about the application to see whether they consent, object or wish to join in the proceedings.

If the Court is satisfied that the order is in the persons best interests they will make it. It may, however, contain restrictions on the actions the Deputy can take.

# 08

## Deputies duties once appointed

If the order is related to property and financial matters then the Court will require the Deputy to put a security bond in place before the order is issued.

The Deputy must keep accurate records of all actions and transactions taken in relation to the person's finances. They must complete an annual report for the Court setting out what they have done.

Where necessary they should seek professional advice to make sure that any decision they make complies with the terms of the order.

There may be some decisions that the person can still make for themselves and the Deputy must always consider whether they could make a particular decision.



09

## Further Help

If you'd like more information about making an application to be appointed as Deputy for someone please contact either Kieren Cross or Cath Collins.

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