



# A GUIDE TO COURT OF PROTECTION

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## WHAT IS THE COURT OF PROTECTION

The Court of Protection is a dedicated court set-up to deal with vulnerable people who, due to serious injury or illness, lack mental capacity to make decisions for themselves. In these circumstances, the Court has the power to make decisions in relation to the property and affairs, health and personal welfare of adults (and sometimes children) or appoint a Deputy to make such decisions on their behalf. Deputies are supervised by the Office of the Public Guardian (“OPG”) and required to provide an account (or report) to the OPG on an annual basis.

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## WHAT APPLICATIONS CAN BE MADE TO THE COURT OF PROTECTION?

The most common applications that are made to the Court of Protection include:

- Where a person is incapable of managing their own property and affairs and there is no Power of Attorney already in place.
  - Where a person is incapable of making decisions relating to their health and welfare and there is no Power of Attorney already in place.
  - To make or amend a Will (also known as a Statutory Will application).
  - To make gifts from the person’s estate during their lifetime.
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## WHO CAN BE APPOINTED AS DEPUTY?

Anyone can be appointed as Deputy as long as they are over 18 and are able to demonstrate to the Court their suitability to act on the person’s behalf. More often than not, a family member is appointed, but other people can also be appointed, such as a close friend, professional or even a Local Authority.

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## CAN MORE THAN ONE PERSON BE APPOINTED AS DEPUTY?

In certain circumstances, it might be appropriate for more than one person to be appointed as Deputy and where there are two or more people appointed to act, they can either be appointed jointly and severally (i.e. they can make decisions on the persons’ behalf separately from each other) or jointly (i.e. they can only make decisions on the persons’ behalf together).

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## WHAT CAN A DEPUTY DO?

Orders appointing a Deputy to make decisions on someone else's behalf often vary, but the powers given by the Court are usually fairly wide so as to allow the Deputy to make the decisions that will be required to be made.

For a property and affairs Deputy this usually includes allowing them to:-

- Rent, buy, adapt and sell property.
- Ensure that any property is adequately insured, maintained and repaired.
- Employ staff either directly or through an agency.
- Ensure that the person's tax affairs are kept up-to-date.
- Claim appropriate State Benefits and other forms of Statutory funding.
- Instruct a suitably qualified and experienced financial advisor or investment manager.
- Pay bills and monitor cash flow.

In welfare cases the Deputy may be authorised to make the following decisions:

- Deciding where the person lives.
- Consenting to a package of care.
- Deciding on medical treatment.

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## HOW DOES A DEPUTY MAKE DECISIONS?

A Deputy can only make decisions that the person cannot make for themselves and an unwise decision is not evidence of a lack of capacity in itself. Furthermore, decisions that are made by a Deputy must be made in the person's best interests and least restrictive of their rights and freedoms. This includes taking into account all relevant circumstances and such steps as:-

- Considering whether it is likely that the person will at some time have capacity.
- Encouraging the person to participate, or to improve their ability to participate in the decision making process.
- Considering the person's past and present wishes and feelings.
- Considering the beliefs and values that would be likely to influence the person's decision if they had capacity and other factors that they would be likely to consider if they were able to do so.
- Taking into account the views of others.

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## WHAT DOES IT COST TO MAKE AN APPLICATION TO BE APPOINTED AS DEPUTY?

The initial application fee payable to the Court is £385. In addition, there is usually a fee relating to a medical assessment and a Deputy assessment fee of £100 payable to the OPG. If you instruct a solicitor to prepare the application for you, their costs will be dependent upon the complexity of the matter and how much time they spend. Fixed Costs are £950 plus VAT and disbursements.

On appointment, a Deputy is also required to take-out Security (i.e. an insurance policy with a Court approved provider), which is usually set at the level of funds under their control. An average annual premium would be around £100.

An annual supervision fee of £35 or £320 is also payable to the OPG.

In certain circumstances, fee exemptions and remissions are available.

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## WHO HAS TO PAY?

As a “general rule”, the costs associated with applications relating to a person’s property and affairs are paid out of their estate. In health and welfare cases the “general rule” is that each party bears its own costs.

In certain circumstances however, the Court can depart from these “rules”. An example being when a particular party has acted unreasonably.

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## WHAT NEXT?

We hope you have found this guide useful. Our team of experts are able to take you through the process and tailor our services specifically to your needs. Please contact us on the details below to discuss further.

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