

What can I do if somebody I know cannot manage their financial affairs?

Unfortunately, a growing number of people are unable to manage their own affairs. This may be due to degenerative or sudden loss of mental or physical capacity. If the person lacking capacity has appointed an attorney or attorneys, the attorneys will be able to step in to assist the person lacking capacity. If no attorneys have been appointed, it may be necessary for someone to apply to the Court of Protection to be appointed to be the person's Deputy.

What is role of the Court of Protection?

The Court of Protection exists to ensure that a person who has lost (or is losing) mental capacity is not disadvantaged by no longer being able to make important decisions. The Court will either make the decision for the incapacitated person or appoint one or more people to make decisions for them

What is a Deputy?

A Deputy is a person who is appointed by the Court of Protection to make decisions for someone who is unable to make decisions themselves because they lack capacity to do so. The Court will limit the Deputies' authority to making decisions to specific areas, usually in relation to property and financial affairs.

Who should apply to be a Deputy?

Usually, a close family member or friend will apply to be a Deputy. A professional, such as a solicitor specialising in the affairs of those lacking mental capacity, may also be appointed. The person applying will have to complete a questionnaire to satisfy the Court that they are a suitable person to be making decisions for someone else.

How do I become a Deputy for someone else?

An application should be made to the Court of Protection. The application must be supported with information about the financial circumstances of the person lacking mental capacity and a medical report to show that the person cannot make decisions for themselves. The applicant must also complete a questionnaire to show that they are an appropriate person to be trusted with the management of someone else's finances. Notice of the application must be served on close family members who may have an interest in the person's finances.

What happens if I have been appointed to act as a Deputy?

You will be able to make decisions for the person who lacks capacity in the manner set out in the Court Order. You will be asked to set up a bond (insurance policy) for the protection of the person whose finances you will be managing. You will also need to keep records of all decisions you make and any money you receive, spend or transfer on behalf of the person. Every year you will need to complete an online report of what you have done for the Office of the Public Guardian.

Can I apply to be a Deputy to make decisions about health and welfare?

Whilst technically, it is possible to be appointed as a Deputy for health and welfare, the Court of Protection will not generally make such an Order. The reason for this is so that, as far as possible, the person lacking capacity can still be involved in such decisions even if it is only to a small degree. Instead of making general health and welfare orders, the Court prefers that applications are made for decisions to be made in relation to specific issues.

Can I make any other applications to the Court of Protection?

You can apply to the Court of Protection where a specific decision needs to be made for someone who is unable to make that decision themselves due to a lack of mental capacity. Such decisions may include:

- whether or not the person should receive certain medical treatment;
- whether gifts can be made on behalf of the person that are more than token gifts or whether a Trust should be set up on their behalf;
- whether a Will should be drafted and signed on behalf of the person;
- whether the person should be able to get married; or
- whether the person should be deprived of their liberty.

Can Sills & Betteridge help me with dealing with the Court of Protection?

Yes, we can! We have a team of specialist lawyers who will be able to assist you with an application to the Court of Protection, whether it is to be appointed as a person's Deputy or for more complex applications. We also act as Deputy for clients where family members do not feel able to take on this role themselves.

If you would like to know more about the Court of Protection, please contact our Wills, Trusts & Probate team on 0800 542 4245.