



Deputyship and the Court of Protection

When someone becomes mentally incapable of dealing with their own financial affairs and/or personal welfare and has not made an Enduring Power of Attorney or a Lasting Power of Attorney, the Court of Protection can appoint somebody else to act as a Deputy. The Deputy will manage the incapable person's affairs under the Court's guidance.

Who can apply?

The application to become a Deputy can be made by anyone who is concerned with protecting the person with mental incapacity (the Client). This is usually a close relative or family friend, but can also be a professional, such as a solicitor. The applicant may need to apply to the Court for permission to apply to become a Deputy if they want to be able to make decisions about the Client's personal welfare or in certain circumstances involving trusts, Wills and gifts.

How do I apply to become a Deputy?

Various forms, issued by the Office of the Public Guardian, which is the administrative arm to the Court, must be completed. These include:

- Application form
- Supporting information for property and affairs applications and/or Supporting information for personal welfare applications
- Assessment of capacity form
- Deputy's declaration form
- Permission form (if required)

The Application form, the Deputy's declaration form and the Supporting information forms information to the Court about the intending Deputy and the Client. These should be completed in full to avoid further questions being asked later, which will delay the application process.

The assessment of capacity form needs to be completed by a doctor and is required to confirm the mental ability of the Client. The medical evidence needs to be clear and up to date. The doctor may ask for a fee for completing the assessment of capacity form.

The forms should be sent to the Court, together with the fee of £400.

What will the Court do?

If you needed permission to apply, the Court will deal with this first. The Court will consider your connection to the Client, your reasons for applying to be appointed as a Deputy, the benefits of appointing you as a Deputy and the alternatives to appointing you as a Deputy. The Court will usually decide this without a formal hearing.

If the Court gives you permission to apply, or if you do not need permission, it will "issue" your application form by returning it to you with an official stamp on. They will also send you some more forms and information.

The Court believes it is important for relatives or friends involved in the Client's welfare to be informed of the deputyship application. You will need to give a notice to the Client and to certain relatives of the Client using the prescribed form and sending them an Acknowledgement of service/notification form. This gives the Client and their relatives the opportunity to object to the application if they feel it is inappropriate. You must do this within 21 days of the Court issuing your application form. You then need to send the Court a certificate setting out who you have notified and who you have not notified within 7 days of the date you notified them.

The Court will then consider the information you have provided and:

- Make a decision without a Court hearing;
- Give directions about your application and the next steps to be taken; or
- Hold a hearing to decide your application.

The Court will usually make a decision without a Court hearing if no-one objected to your application or proposed that a different order should be made.

If the Court cannot make a final decision it may give various directions, for example, asking for more information, requiring a report to be written, or requiring other parties (e.g. the Health Authority) to be involved with the application.

If the Court has all the information it needs to make a decision, it will issue a hearing date. Again, you must give a notice to the Client informing them of the hearing and then send the Court a certificate setting out that you have notified them.

You will not normally need to attend the hearing.

The Court will then issue an order. Again, you must give a notice to the Client informing them of the final order and then send the Court a certificate setting out that you have notified them.

[What will the order allow me to do?](#)

The order will clearly set out your powers as a Deputy. Property and affairs powers will normally include:

- Closing the Client's existing accounts and opening a Deputyship account into which to transfer the funds
- Claiming all benefits that are due to the Client
- Taking out insurance which covers the Client's income and spending during your Deputyship
- Preparing accounts every year or whenever the Court requests you to do so
- Dealing with the Client's income tax and other tax matters

You will not normally be able to deal with the Client's capital, unless you have received directions to do so in the order (this usually requires an application for permission to apply to the Court).

If you have applied for personal welfare powers the powers the Court gives will depend on the needs of the Client and the Court's decision.

[How can Lester Aldridge LLP help?](#)

This factsheet broadly outlines the steps involved in the deputyship process. The paperwork involved can be lengthy and time-consuming and you may require advice on certain aspects of the application.

We will be pleased to guide you through the deputyship application process and/or advise you on the management of the deputyship in subsequent years or any other matters connected with your appointment as a Deputy.

For further information, please contact David Parkhouse or Melanie Sweeting of our Tax Trusts and Wills team who will be pleased to help you.