

The Court of Protection Frequently Asked Questions

What is the Court of Protection?

The Court of Protection is a specialist court which looks after individuals who lack the capacity to make decisions for themselves.

Are the Court of Protection and Office of the Public Guardian different?

The Court of Protection and Office of the Public Guardian (OPG) are essentially the same institution and their names are often used interchangeably. The simplest explanation (for these purposes) is that the Court makes all the decisions and the OPG handles the ongoing administration. The two bodies work together but with separate defined roles.

When would the Court appoint a Deputy?

If someone has not made an LPA and they lose capacity then there needs to be an application to the Court of Protection asking the Court to appoint a Deputy to act in the same way for that individual as an attorney would act. If the Court appoints a Deputy, this appointment will be the Court's decision, and the Deputy could be someone different from the person who may have been appointed as Attorney under an LPA.

What happens before a Deputy is appointed?

Until the Order appointing the Deputy is made, nothing can be done with the individual's financial affairs which includes the property, bank accounts, and payment of bills.

If the individual is in a Care Home, their relative may come under pressure to pay the fees, even though the relative does not have the authority to deal with the individual's affairs.

How would someone lose capacity?

Someone can lose their mental capacity in a variety of ways. The most common of this is an individual suffering from one of the various forms of dementia in a moderate to advanced stage. Other common ways in which someone loses capacity include those who have suffered from acquired brain injuries from an accident or medical procedure.

Who decides if someone lacks capacity?

Ultimately, it is the Court who decides, based on medical advice from an individual's GP or Consultant.

What does a Deputy do?

A Deputy deals with a person's finances which includes paying bills and taking over bank accounts. A Deputy can do all the things an attorney can do. In some cases a Deputy can sell a house if it is in a person's best interests to do so.

A Deputy has to account to the Court at all times. Any major decision (such as selling someone's property) needs the Court's permission.

Every year the Deputy has to provide a 'Deputyship Report' to the Court. This gives the Court information on decisions that the Deputy has made on that person's behalf. The Deputy must also provide accounts for the Court to approve.

Who can be a Deputy?

Anyone over 18 can be a Deputy. However, the Court wants to ensure that the person being appointed is suitable and has the appropriate experience and ability. Usually the Deputy will have a connection to the person who lacks capacity. It is usually a family member or close friend who is appointed as Deputy, or a professional such as a solicitor or accountant. It is however the Court's decision.

What happens if there is a dispute about the Deputy?

In some cases, a relative may feel that a Deputy is not acting in the individual's best interests, or a Deputy could be facing a challenge to their conduct. These matters would be resolved by the Court of Protection, but can be both lengthy and costly.

How long does it take to apply to the Court?

Medical evidence is required and there are a number of forms to complete before the papers can be sent to the Court. It can take some time for the medical evidence to be finalised. Once the application has been sent it usually takes 3 or 4 months for someone to be appointed as Deputy.

What are the costs involved?

- The medical practitioner sometimes charges a fee for completing the medical evidence. This fee can range from £50 to £300.
- The Court charges an application fee of £400* and a separate fee for an appointment of the Deputy of £100*.
- The Court also charges an annual supervision fee which in most cases is £320* per annum.
- The Deputy must take out a 'security bond' to cover their actions as Deputy and this too is payable annually. The bond is set by the Court. The more assets a person has (and therefore the more responsibility the Deputy has), the higher the bond. As an example, if a person's total assets (including their property) are £300,000 the annual premium payable would be £460*. £500,000 would mean an annual premium of £650*.
- A solicitor will also charge a fee for making the application to appoint the Deputy. Depending on the complexity of the matter this can range from £850 plus VAT to £1500 plus VAT. All fees are approved by the Court.

Who pays the fees?

All fees are payable from the assets of the person who lacks capacity. This is not usually possible until the Deputy has access to the accounts. This means that the person who is to be appointed as Deputy will need to advance the monies. In some circumstances, the solicitor and the Court will agree to postpone their fee until the Deputy appointment has been sanctioned by the Court. One fee that cannot be postponed is the security bond and the proposed Deputy usually has to pay this from his own assets. The Deputy can recover any costs incurred in making the application from the person's estate when they are able.

Are there different rules for larger estates?

If assets are over £1 million, the Court will usually appoint a solicitor as Deputy. The solicitor will then charge for their time. Annual fees can range from £1,500 plus VAT to £20,000 plus VAT depending on the level of work required. All these fees are assessed by the Court.

Why Use Linder Myers

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- We can arrange a home visit and if this is necessary we will discuss the costs associated with this prior to the visit.

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