



Court of Protection

Key contact



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The Court of Protection is a specialist court. It makes decisions about the property and affairs and health and welfare of those who lack capacity to decide for themselves. A person who lacks capacity will suffer from an impairment of, or a disturbance in, the functioning of their mind or brain which affects their ability to make decisions when required.

The Court will decide whether it should make a decision on behalf of the incapacitated individual or whether it is appropriate to appoint a deputy. It will also approve action to be taken by attorneys, if outside of their legal powers.

If a person has capacity to make decisions for themselves then they can prepare and sign a lasting power of attorney.

When would I use the Court?

The law says that everyone is presumed to have capacity unless it can be proven otherwise. A person lacking capacity may use the Court to safeguard and manage their affairs. The Court will look after incapacitated adults and children, if they will continue to lack capacity past 18.

An individual may need to use the Court because they have never had capacity, have fluctuating capacity or lose capacity as a result of an accident or illness.

An application would need to be made on behalf of the incapacitated person for a

Court order authorising the appointment of a deputy to act on their behalf. The process of applying to the Court is not straightforward.

A number of application forms must be submitted and medical evidence of capacity is required to accompany an application. If an issue becomes urgent the Court can grant urgent orders or directions. The urgent application process differs to the everyday application process.

The administrative arm of the Court, the Office of the Public Guardian (OPG), will register enduring and lasting powers of attorney. Applications will be sent to the OPG. Once registered, a lasting power is ready to use (if appropriate) by the attorneys. If there are problems with a power or the OPG needs to clarify a provision contained in it, the OPG will refer a power of attorney to the Court of Protection for consideration.

There are, however, some small decisions that can be made for an incapacitated person which do not need to be authorised by the Court. These can be made under the Mental Capacity Act.

What can the Court decide?

There are occasions when the Court will make decisions and issue orders to act without the appointment of a deputy.

With health and welfare matters it is unusual for the Court to appoint a deputy unless there is overwhelming evidence and a clear need

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for an appointment. Usually, in relation to property and affairs, the Court will appoint a deputy to act and provide a framework for management. It may choose to impose limitations on the deputy. The deputy acts with the Court’s authority.

A deputy is heavily regulated by the Court and their activity is monitored. They are accountable to the Court for their decisions and actions.

A property and affairs deputy will be responsible for dealing with all financial and property transactions for an incapacitated individual. They will have to report annually to the Court for decisions they have made and provide accounts for the Court’s consideration. They will be supervised by the Court of Protection who may choose to send a Court of Protection Visitor to meet the deputy and incapacitated person to see how they are managing their responsibility.

An attorney under a power of attorney is less regulated and has no requirement to report to the Court, unless requested.

Anyone can be a deputy whether they are a professional, family member or friend. Family members and those closely involved with the incapacitated individual should be notified of an application for the appointment of a deputy just in case they have concerns or wish to raise objections to the application.

How can Brachers help?

Brachers has generations of experience in dealing with the affairs of those who lack capacity. We can act as a professional deputy or provide guidance to family deputies. We can assist with the daunting Court process. Our dedicated team can assist with:

- professional deputy and attorney appointments
- supporting relatives and friends acting as deputy and attorney
- preparation of property and affairs, and health and welfare lasting powers of attorney
- advising in relation to enduring powers of attorney and registration
- advice and assistance with application for statutory Wills, gifts and trusts
- advice and assistance in relation to contested Court applications
- administration of the affairs of the elderly and vulnerable
- creation and management of personal injury trusts under the Court
- assisting vulnerable beneficiaries of trusts
- providing expert witness statements relating to Court of Protection matters

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.