

Probate, Trusts and Wills

A quick guide to the Court of Protection

If a person loses the mental capacity to deal with their own legal and financial affairs and has not already made an Enduring or Lasting Power of Attorney there is no one legally authorised to deal with that person's affairs.

In those situations someone must apply to the Court of Protection for a Deputy (or Deputies) to be appointed on behalf of the person who lacks capacity, referred to by the Court as "P".

The Court of Protection is just that, a court that is there to protect the assets of vulnerable people and because of this the procedure for applying to be a Deputy can be complicated, lengthy and expensive.

There are safeguards built into the process including the requirement for a doctor to confirm P's capacity, and there is an opportunity for interested parties to object to the application to the Court of Protection if they have concerns.

The Court sets out the extent of the Deputy's authority and oversees their actions. The Deputy will have to submit yearly finance accounts to the Court of Protection and prepare a report detailing significant decisions they have made and who was consulted in the decision process. The Court charges fees for each application, their supervisory role and the submission of accounts.



In addition to the Court fees, legal fees and doctor's certificate fees, the Court of Protection also insists on the Deputy having insurance in place to protect P's assets from any financial abuse by the Deputy. The Court determines the level of insurance required and the premium is based on this and is payable annually. The Court may also insist on a professional Deputy being appointed if significant sums of money are involved.

A Deputyship can generally be avoided if P had made an Enduring or Lasting Power of Attorney before losing their capacity but if not, this can be a complex and expensive process. We have a specialist team

who can advise Deputies throughout the application and afterwards if required. We can also provide someone to act as Deputy if there are no family members able or wishing to take on this role.

For further advice or information please contact a member of our Probate, Trusts & Wills team at enquiries@mayowynnebaxter.co.uk
Offices at Brighton 01273 775533, Eastbourne 01323 730543, Lewes 01273 477071 and Seaford 01323 891412

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