



What you need to know about: The Court of Protection

There are many reasons for making an application to the Court, including:

- Authorising a deputy to make property and financial decisions.
- Selling a property and making large gifts.
- Authorising a deputy to make health and welfare decisions.
- Deciding where a person should live and who they can have contact with.
- Making a statutory Will.
- Removing an attorney or deputy who is in breach of their duties or if they have not acted in the vulnerable adult's best interests.

The Court of Protection can make decisions on behalf of a person who lacks capacity to make their own decisions on a variety of financial and welfare matters. An application to the Court is complex and our team can support you.

Our experienced lawyers are here to help you navigate around the complicated application process and give you and your family continued support in this area of law. We take a practical approach with dedicated teams spanning the full remit of Private Client work to include a specialist Court of Protection team. Working with some of the country's best lawyers means we are well placed to take a collaborative approach for our clients and advise on especially complex issues within our specialist sector.

Mental Capacity

The Mental Capacity Act 2005 enables another person (deputy) to make decisions for those who lack the capacity to do so themselves. Losing mental capacity can be a very confusing and difficult time, not only for the individual but also for their family. Loss of capacity can result from a trauma to the brain or diagnosis of Alzheimer's or other conditions which attack the ability to manage. Making a Court application in these circumstances requires compassion and specialist legal experience, to ensure that any personal or business affairs are handled in line with that person's best interests.

Deputyship

Following a family member's loss of capacity, it might be deemed necessary to make an application to the Court of Protection for a deputy to be appointed to make decisions on that family member's behalf. The Court can appoint one or more individuals, or a professional, to deputise in relation to property and affairs and, in some cases, health and welfare. All Court-appointed deputies are subject to the conditions set out in their Order. Requirements include maintaining accounts; keeping a security bond; and reporting to the Office of the Public Guardian (OPG) at least once a year. The OPG has statutory authority to investigate a deputy and any deputy who is found to have behaved in a way that contravenes this authority or who has not acted in the person's best interest can be held personally liable for the financial loss arising. The Court can receive applications to consider the removal of a deputy under these circumstances.

Best Interest Decisions

All decisions made on behalf of a vulnerable person must, of course, be made in that person's best interest. Within the Court order appointing a deputy, there may be restrictions on the decisions a deputy is permitted to make. Having confirmed authority, a deputy must apply the best interest checklist when making decisions.

This should as a minimum include incorporating the vulnerable person's feelings and wishes (both past and present); any relevant circumstances; and the views of family, friends and carers.

Health and Welfare

In welfare dispute matters, the Court prefers to make its own decisions when, for example, it comes to deciding where a person should live or prohibiting contact. An application to appoint a welfare deputy will only be considered under complex circumstances, where daily welfare decisions need to be made. Consequently, welfare deputies are rarely appointed by the Court.

Property and Financial Affairs

These decisions can range from day-to-day transactions such as paying utility bills to the sale of a property or carrying on a business. All deputies must keep receipts and invoices of any dealings they have and report promptly to the OPG.

Statutory Will

The execution of a Will (or a codicil) can be authorised by the Court on behalf of a person who lacks capacity. The application needs to make clear the reasons behind the request as the Court must be satisfied that the statutory will is in the best interest of the person concerned. Providing the correct evidence in support of this application is crucial.

Gifting

There is very limited authority granted to a deputy when making gifts on a vulnerable person's behalf. Deputies are permitted to make gifts on "customary occasions" to continue their usual traditions, but for larger, one-off gifts, an application to the Court for authority must be made. Likewise, regular payments to a family member in respect of care (often referred to as "gratuitous care payments"), which can involve complicated calculations, also need the Court's authorisation.

Next steps

If you would like to discuss creating or reviewing your Will, please get in touch with a member of your Private Client team at Roythornes.