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Court of Protection and Deputyship ^[1]

We are frequently asked whether there is anything that can be done when a person has become mentally incapable of managing their own affairs but they have not prepared a Power of Attorney.

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This is often highlighted as a problem when family members try to use the person's accounts to settle bills etc and are informed by the bank that they do not have authority to do so. Fortunately there is a solution to the problem.

What is the Court of Protection?

The Court of Protection is a part of the court system in England and Wales with responsibility for matters involving vulnerable adults. They are able to appoint people to manage the affairs of those individuals who lack the mental capacity to make decisions about their own affairs and have not already appointed Attorneys. This can be in relation to their finances & property and in some cases, their health & welfare. The people appointed by the Court are called Deputies.

Who can become a Deputy?

One or more people can apply to the Court of Protection to become a Deputy. These are usually the family or friends of the person who lacks mental capacity. They must be at least 18 years of age and have the appropriate skills to take on what can sometimes be an onerous role.

How does the Court decide that a person lacks capacity?

There are many reasons that someone may be considered to lack the capacity required to manage their own affairs, for example:

- they have suffered a stroke, serious illness or injury which affects their cognitive abilities; or
- they have dementia; or
- they have severe learning difficulties or disabilities

As part of the application, medical evidence needs to be submitted to the Court to confirm that the person can no longer make decisions for themselves. This evidence is usually provided by the person's doctor or consultant but if that isn't possible then an independent capacity assessor can be instructed to prepare the necessary document.

Types of Deputyship:

There are two types of Deputyship Order which the Court can make:

- Property and Financial Affairs Order; allowing the deputy(s) to deal with monetary matters for example, paying bills, selling property, making gifts and maintaining financial stability. This type of application represents the vast majority of submissions to the Court
- Personal Health and Welfare Order; allowing the Deputy to make decisions about medical treatment the person undergoes, the type of care that the person receives and where they will receive it (for example, will that care be provided in a care home or in the person's own home). Health and Welfare applications to the Court are relatively rare and very few of these types of orders are issued

How do you apply to be appointed as a Deputy?

- The application forms the Court have produced are lengthy and are designed to collect as much information as possible about the person who lacks capacity. This includes where they live, what monies they have, what other assets they own as well as their income and expenditure.
- The medical evidence mentioned above will be submitted for consideration so the court can be certain that the appointment of a Deputy is absolutely necessary. The court will consider the information provided and will ensure any interested parties, including the person lacking capacity are informed of the application.

When they have made a decision, the court require the Deputy(s) to provide a bond (a kind of insurance policy) before finally issuing the Order.

- It is not unusual for the process to take between 6-9 months.

What next?

If you wish for more information about applying for a deputyship or the role that you have, please contact a member of the **Private Client Department on 0808 166 8860** where a member of the team will be pleased to help you.

Links

[1] <https://www.sydneyMitchell.co.uk/services-individuals/court-protection-and-deputyship>

[2] <https://www.sydneyMitchell.co.uk/contact>

[3] https://www.sydneyMitchell.co.uk/sites/default/files/attachments/deputyship_web.pdf