

How to...

Act as your parent's deputy through the Court of Protection

NO. 4 IN A SERIES OF
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A guide to acting as your parent's deputy through the Court of Protection

There may come a time when your parent is unable to make certain decisions for themselves. If they haven't set up a Power of Attorney, then you will need to apply to the Court of Protection to make decisions on their behalf. This guide explains how to do that.

For the purpose of this guide we will focus mainly on Property & Financial Affairs deputyships, but will however also touch on Health & Welfare deputyships. The guide focuses on England and Wales. Please see the contact information for those in Scotland and Northern Ireland.



THE COURT OF PROTECTION (CoP) MAKES DECISIONS AND APPOINTS DEPUTIES TO ACT ON BEHALF OF PEOPLE WHO ARE UNABLE TO MAKE DECISIONS ABOUT THEIR PERSONAL HEALTH, FINANCE OR WELFARE DUE TO MENTAL INCAPACITY.

What is the Court of Protection?

The Court of Protection (CoP) makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare due to mental incapacity.

A deputy is a person appointed by the CoP to manage the affairs of someone who lacks the mental capacity to manage their own affairs. Such a person is usually a friend or relative of the person who lacks capacity, but in some circumstances could be a professional such as a solicitor, accountant or another professional appointed by the court.

The origins of the CoP date from the Middle Ages when the crown assumed jurisdiction over the persons and estates of the mentally ill. In 1842, two Commissioners in Lunacy, later known as Masters in Lunacy, were appointed. The CoP, in its present form, was established by the Mental Capacity Act (2005) and started operation from 1 October 2007.

The CoP is located in London, with six regional courts also located at various cities around England. The Office of the Public Guardian (OPG) works closely with the CoP, and is entrusted with supervising the work of deputies appointed by the CoP. The OPG also provide deputies with guidance and support. The main role of the OPG is to protect anyone who lacks the mental capacity to make decisions for themselves.

Why might I need the Court of Protection?

There may come a time when a person no longer has capacity to make certain decisions for themselves. In this situation (and assuming the person in question has not made either an Enduring Power of Attorney or a Lasting Power of Attorney), someone else may need to make these decisions on their behalf.

- » **Before 1 October 2007**, Enduring Powers of Attorney were made by people wanting to plan for a time when they may no longer be able to make decisions for themselves.
- » **Post 1 October 2007**, Lasting Powers of Attorney need to be made. This is a document that enables a person to appoint another person (or more than one person) to look after their affairs in the event that they are mentally (or physically) incapable of looking after them themselves.



THE COP DOES NOT
USUALLY APPOINT
DEPUTIES TO MAKE
CONTINUING
DECISIONS ABOUT
SOMEONE'S HEALTH
AND WELFARE UNLESS
REGULAR TREATMENT OR
SUPERVISION IS NEEDED

If the person in question has no property or savings and their only income is social security benefits, there will usually be no need for a deputy to be appointed. This is because the benefits can be managed by an appointee, appointed by the Department for Work and Pensions.

Tip: A person who has been deemed to no longer have capacity, cannot make a Lasting Power of Attorney, and will have no other choice but to appoint a deputy to manage their affairs.

What can the Court of Protection do for me?

By applying to the CoP to become a deputy for an incapacitated individual, this will allow you to legally manage that person's affairs.

There are two different types of deputyship:

- » **Property & Financial Affairs:** A property and financial affairs deputyship is the most common form of deputyship, and involves making decisions about property and financial affairs, including the sale of property.
- » **Health & Welfare:** A health and welfare deputyship allows you to make decisions about health and personal welfare, including treatment options, and where someone should reside.

A health and welfare deputyship is only granted in the most extreme of circumstances, where no resolution can be reached in the best interests of the person.

The CoP does not usually appoint deputies to make continuing decisions about someone's health and welfare unless regular treatment or supervision is needed, for example with a younger person. These decisions can usually be made in the person's best interests by those providing care and/or treatment. If there is a disagreement as to what is in the person's best interests, or the decision relates to specified serious medical treatment, it may be necessary to ask the court to intervene.

A common misconception that people have when it comes to property and financial affairs is that a spouse can continue to operate a bank account in joint names, when the other spouse has been deemed to no longer have capacity. The bank will more often than not (depending on each bank's guidelines) freeze the account in question, until someone returns with a court order indicating that they now act as deputy for the person in question. This is one main example of where a deputyship order can certainly assist a deputy in their role acting for an incapacitated individual.



TO APPLY TO BECOME A DEPUTY, YOU WILL NEED TO SUBMIT AN APPLICATION TO THE CoP. IT INVOLVES PROVIDING THE COURT WITH DETAILED INFORMATION REGARDING THE CIRCUMSTANCES AND FINANCES OF THE PERSON WHO IS ALLEGED TO LACK CAPACITY.

How do I use the Court of Protection?

Overview of application process

To apply to become a deputy, you will need to submit an application to the CoP. The application process involves providing the court with detailed information regarding the circumstances and finances of the person who is alleged to lack capacity.

The following main forms will need to be completed:

- » COP1 – main application form
- » COP1A – Annex A: supporting information for property and affairs
- » COP3 – assessment of capacity

Tip: *In looking to get this undertaken as quickly as possible, as well as the person's doctor been able to carry out an assessment, social workers and independent mental capacity assessors are also qualified to carry out such assessments.*

- » COP4 – deputy's declaration

Other miscellaneous forms (amongst others) that may need to be completed include COP5, COP14, COP20A, COP20B and COP24.

Tip: *If there is an immediate need to access the funds of the incapacitated individual, the proposed deputy can submit an interim application by completing a COP9, along with the usual main forms. The CoP will then usually fast-track this application. The need for an interim application most commonly arises when residential care fees need to be met, and access to the incapacitated individual's bank account/s is required.*

The CoP will then assess the suitability of each deputy from the information provided on the application forms.

Once the person who is alleged to lack capacity has been notified of the impending application about themselves, and other applicable people (family members/friends) have also been notified of the impending application, (giving them the opportunity to object to the application if they so desire), the court will then request that a security bond is put in place before issuing the final order. The security bond is a type of insurance policy designed to financially protect the person who lacks capacity, in the unlikely event that the deputy were to mismanage their finances.



MAINTAINING A SIMPLE SPREADSHEET OF ALL INCOME COLLECTED AND EXPENDITURE INCURRED THROUGHOUT THE YEAR, WILL HELP WHEN IT COMES TO SUBMITTING THE ANNUAL REPORT.

Responsibilities of a deputy

Some of the key responsibilities of a deputy include:

- » receiving the individuals income from all sources, including shares, occupational pensions, state benefits, premium bond winnings etc
- » administering the day to day finances of their client eg. paying bills
- » keeping accurate records of the administration of their client's finances, and been accountable to the OPG in the form of an annual report. This details the key decisions made during the year, while also providing summary accounts for the OPG to approve.

Tip: Maintaining a simple spreadsheet of all income collected and expenditure incurred throughout the year, will help when it comes to submitting the annual report.

- » submitting tax returns
- » looking after the client's property
- » closing down bank accounts and opening one interest bearing account to be used for the maintenance of the client
- » taking out insurance which covers the client's income & spending during the life of the deputyship
- » keeping to all orders & directions the court makes

Restrictions of a deputy

Deputies need to adhere to the Mental Capacity Act 2005 (MCA), which makes clear who can make decisions, in which situations and how they should go about it.

Some of the key restrictions of a deputy include:

- » act with due care and skill (duty of care)
- » not take advantage of the situation of the incapacitated person (fiduciary duty)
- » protect the person against liability to third parties caused by the deputy's negligence
- » not delegate your duties unless authorised to do so
- » act in good faith
- » respect the person's confidentiality

Within the 'COP4 – Deputy's declaration, section 4 – Your personal undertakings to the person to whom the application relates', is listed seventeen undertakings that a deputy is expected to comply with.

[Download the forms here.](#)



THE APPLICATION PROCESS CAN BE QUITE LENGTHY. FOR STANDARD APPLICATIONS, THE COURT AIMS TO NOTIFY YOU OF THEIR DECISION WITHIN 16 WEEKS OF RECEIVING IT.

Who else needs to be involved?

As a deputy, you must instruct various individuals and organisations that you are now acting on the incapacitated person's behalf. Some of the key individuals and organisations that should be informed of your new role include:

- » the Department for Work and Pensions for pension and/or state benefit entitlement
- » the local authority for housing/council tax benefit or assistance with residential care fees
- » banks or building societies
- » accountant
- » payer of any private/occupational pension(s)
- » any other financial institutions that the individual may hold investments with
- » solicitor who holds the person's will and/or property deeds
- » residential or nursing home where the person may reside
- » utility companies
- » insurance companies

It is also a good idea to inform other people involved in the person's care, such as carers, and also their relatives and friends.

How long does a Court of Protection application take?

The application process can be quite lengthy. For standard applications, the court aims to notify you of their decision within 16 weeks of receiving it. However, in more complex cases, or where the court needs to clarify information, it can take longer than this.

Tip: Due to the number of forms, and processes that need to be followed with any CoP application, you could consider employing a professional to draft and submit the application on your behalf.



How much might an application to the Court of Protection cost, along with on-going costs?

Note - these figures are correct at February 2014. They are likely to change.

Application fee – to be paid when making an application	£400
Appointment of deputy fee – payable once and following appointment of deputy	£100
Supervision fee – payable annually, starting at the end of the first year. There are four types:	
• Type 1 (highest level of supervision)	£800
• Type 2A (intermediate level)	£350
• Type 2 (lower level)	£175
• Type 3 (lowest level)	£0
Security bond – payable annually and following appointment but prior to receiving deputyship order. The security level is usually set at approximately two-thirds of the total value of the estate. For example, an estate of £300,000 the security would be set at £200,000, with the annual premium on a bond for that amount	£460
Medical evidence – required for all CoP applications (approximately)	£150
If you were to employ a professional to draft and submit the application for you, you can expect to pay anything between £750 - £1,500 + VAT .	

Depending on the level of assets and income of the incapacitated individual, there are exemptions and remissions available for some of the above mentioned fees. For further information [click here](#)

Want to know more?

To avoid getting to the point of applying to the Court of Protection your parent can set up Power of Attorney. [Read our guide here](#). You can contact the organisations involved in applying for deputyship at the following addresses.

England

Court of Protection
PO Box 70185
First Avenue House
42 - 49 High Holborn
London WC1A 9JA

Telephone: 0300 456 4600
Email: courttoprotectionenquiries@hmcts.gsi.gov.uk
Website: <https://www.gov.uk/court-of-protection>

Office of the Public Guardian

PO Box 16185
Birmingham B2 2WH

Telephone: 0300 456 0300
Email: customerservices@publicguardian.gsi.gov.uk
Website: <https://www.gov.uk/office-of-public-guardian>

Both Northern Ireland and Scotland operate under different jurisdictions when it comes to the work of both the Court of Protection and the Office of the Public Guardian.

Northern Ireland

The Office of Care & Protection
<http://www.courtsni.gov.uk/en-GB/Services/OCP/Pages/default.aspx>

Scotland

The Court of Protection
http://www.directscot.org/article/DG_176210

Office of the Public Guardian
<http://www.publicguardian-scotland.gov.uk/>

Author(s)

We hope this guide has given you some idea about how to use the Court of Protection to help your parent manage their affairs. While the information in this guide is given in good faith and is correct at February 2014, we recommend you consult professionals for advice on all medical, financial and legal issues.

This guide was created in association with [Andy Riddle](#), director at Professional Deputies, a firm specialising in managing financial and property affairs for vulnerable people. The key services they offer include: Appointeeship, Court of Protection and Lasting Powers of Attorney. Find the company [here](#).

This is one of a series of guides created by the When They Get Older team to provide tips and advice to people who want to support their ageing parents in the best way they can.

Keep in touch

Did you find the information in this “How to” guide helpful? Perhaps you have more legal questions that we can help you find the answers for? Have your say and discover more of our free stuff at [When They Get Older](#). Follow us on [Twitter](#), like us on [Facebook](#) or repin us on [Pinterest](#) for updates on health and care news relevant to you and your parent.