

Here Sarah Hartley, Director and Solicitor at Malcolm C Foy & Co, gives a brief overview of Court of Protection applications

Court of Protection Orders & Deputyship – what are they?

- If a person loses mental capacity and does not have a Power of Attorney in place, it might well be necessary for someone to apply to the Court of Protection (“COP”) to be appointed as “Deputy”, so that the finances or the person who has lost capacity can be managed.
- Being appointed as a Deputy is similar to being appointed as an Attorney, except that there are more rigorous controls in place for people who are appointed as a Deputy.
- The COP monitors Deputies much more closely than it does Attorney’s, and the reason for that is that the person who has lost capacity has lost their ability to make a decision themselves as to who they would like to control their financial affairs.
- Deputies must compile annual accounts to detail all payments made from and to the person who has lost capacity, and this is in itself an onerous task. A very high standard is expected from the COP, and it is therefore important that Deputies understand and accept this from the outset.

What powers do Deputies have?

- Generally, the COP will give Deputies power to deal with all of the property and financial affairs of the person who has lost capacity, but on occasion the COP decides to limit those powers. If the COP does this, the Deputy is legally bound to only act within the scope of powers granted by the Court.
- If the person who has lost capacity owns property jointly with another person, the COP will require that a separate application is made to enable the property to be sold. This does not generally present a problem, but it does mean that further costs and time are involved.

What to think about if you decide to apply to the Court of Protection

- Who would be best placed to act as Deputy. The Deputy must be able to set aside the time to make the initial application, and to deal with ongoing management of the person who has lost capacity’s affairs. They must accept that they may be visited by a Court Officer to check that they are acting appropriately.
- Having a criminal record in itself does not prevent a person from becoming a Deputy, but the COP will likely reject any application to have a person who has been convicted of fraud or other offences involving dishonesty appointed as Deputy
- It is possible to have two Deputies appointed to act jointly, and this may often be beneficial as it will reduce the burden in terms of time that would be placed on a single person.

What are the costs involved?

- Unfortunately, Court of Protection applications are very expensive. The legal costs of making an application of £850 plus VAT, and there are a number of expenses payable to other persons, for example:
 - A fee payable to a GP / consultation to complete the medical report required by the COP, which is generally between £50-£200
 - The Court fee payable to the COP, which is £400
 - A supervision fee payable to Court, which is generally £320
 - A deputy registration fee payable to Court, which is £100
 - An annual insurance bond, to protect the assets of the person who has lost capacity, which is generally around £100 per year
- All of the above costs are technically due to be paid from the assets of the person who has lost capacity, but some of the expenses require payment up front, e.g. the doctors report and Court fee of £400, so the Deputy would need to be prepared to ‘loan’ the money to the person who has lost capacity, and be repaid once the Court Order had been made.

- Advice and costs correct as at 21st April 2015