

Boyes Turner Newsletter Article

The Court of Protection – what it is?

You may have not heard of the Court of Protection but it is actually very important. The Court of Protection (“the Court”) is a specialist Court that makes decisions on financial or welfare matters for people who lack the mental capacity to make their own decisions. There may be a variety of reasons a person lacks capacity to make their own decisions including a physical or mental illness, a brain injury following an accident, a stroke or a learning disability.

An application needs to be made to the Court if someone needs permission from the Court to make decisions about a person’s property, finances, health or welfare.

The Court will decide if that person has the mental capacity to make a certain decision for themselves. If the Court decides the person lacks capacity then they can appoint a Deputy. The Court, and the Deputy if one is appointed, must act in the best interests of the person the application relates to.

The Court has a range of powers – for example it can remove an attorney under a lasting power of attorney, it can consider applications to make statutory wills and gifts and it can make decisions about when someone can be deprived of their liberty.

Do I need permission to apply?

In certain cases, permission is required to make an application to the Court.

How do I apply?

There are several forms that the Court will need to be filled in. The forms are long and detailed but it is important that they are completed correctly otherwise this could delay the application being processed. An assessment of the person’s capacity will also be needed and evidence of this submitted with the application. This assessment must be completed by an experienced, medical professional. During the application process, you must formally notify other people of the application.

Do I need to attend Court?

This should not be necessary. The Court can usually make an Order based on written evidence only. If the application is objected to then a hearing will be needed. This would be held in private.

How much does it cost?

You normally have to pay an application fee of £365 when applying to the Court – this has to be paid when you send in the application. If you wish for a solicitor to assist you with an application, they will be able to advise you on their fees for doing this work. A fee will often be charged for the capacity assessment – this can vary but it is usually between £200-500. If a Deputy is appointed then there will be other costs to pay.

How long does it take?

From experience, unless it is an urgent matter, once an application has been sent to the Court, it usually takes six months for an Order to be made.

How can we help?

This area of law can be daunting. If you have any queries or questions about the Court of Protection, deputyship or how to support someone to make their own decisions then please contact our specialist Court of Protection team by email on cop@boyesturner.com

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