

# Personal Welfare Court of Protection Applications

Factsheet

Specialist services from the  
Tax and Estate Planning Department

## **When is a health and welfare Court of Protection application needed?**

Someone may lack mental capacity to make decisions for themselves relating to their personal welfare due to a serious brain injury, mental illness, dementia, stroke or severe learning difficulties.

If someone lacks mental capacity and they have not previously made a valid health and welfare Lasting Power of Attorney, you may need to make a personal welfare application to the Court of Protection if:

- a decision concerns treatment to which the person cannot consent;
- a decision is difficult or complex;
- someone disagrees with a course of action;
- the person needs ongoing help with decisions relating to personal health and welfare.

## **Specific orders**

Most personal welfare Court of Protection applications relate to specific issues and result in the court making a one off order isolated to that particular issue, for example about proposed withdrawal of artificial nutrition or hydration from someone in a permanent vegetative state or stopping contact with a particular individual because of a risk of harm or abuse to a person lacking capacity to decide on the contact.

## **Deputyship orders**

Historically, the court has been reluctant to grant a general health and welfare order appointing a deputy to make ongoing decisions relating to personal health and welfare although recent case law suggests that the Court of Protection are now more agreeable to the idea of this, although they are still uncommon.

Welfare deputyship is helpful for families in lots of situations. For example, it can help ensure that you remain the 'decision-maker' for a child who has special needs when they turn 18. It is also helpful if you have difficulty getting information from health care providers about your loved one or if you feel that you aren't being included in best interest decisions.

A health and welfare deputy does not have the power to make decisions about life sustaining treatment.

All deputies are supervised by the Office of the Public Guardian ('OPG') and an annual supervision fee is payable to them. Each year the deputy needs to file a report with the OPG recording all significant health and welfare decisions made on the person's behalf.

## **The application process**

There are a number of forms that need to be completed when making an application to the Court of Protection and throughout the proceedings. The court's permission to apply is needed in most personal welfare cases.

Our lawyers can assist with completing all of the forms and guiding you through the process from beginning to end.

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## How much does a Court of Protection application cost?

- We offer fixed fee initial consultations
- If you then instruct us to make an application, our fee is calculated on a time basis. From our experience of previous cases this is usually in the region of £1,500 - £2,500 plus VAT to include the initial meeting, drafting all forms and documentation and liaising with necessary parties;
- £365 application fee to be paid to the Court of Protection; and
- If a GP needs to be instructed to complete a capacity assessment their fee is typically in the range of £350 - £500.

There are circumstances in which the court can waive all or part payment of the application fee depending on financial circumstances. Please note the court does not usually make an order for costs in personal welfare cases.

## How long does the application process take?

It will take on average 6 months for a deputyship order to be granted.

In relation to specific orders, the time frame does vary depending on the issue at hand and whether a hearing is required. There is an emergency procedure should there be a clear immediate risk of serious loss or harm to someone lacking capacity requiring a decision within 24 hours.

## Related Services

You may also be interested in speaking to our lawyers about:

- deputyship applications relating to property and finances;
- disabled persons trusts;
- education law including special education needs.

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