Where an Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA) are not in place

Where an EPA or LPA is not in place already, and the person concerned is judged to have lost cognitive capacity to make decisions for themselves, the family cannot take out a Lasting Power of Attorney but need to apply to the Court of Protection to be appointed as a Deputy or Deputies.

In such a situation the surviving spouse or family without an EPA or LPA are legally unable to manage the assets / income, for the relevant person, that is their name or their share of the family home. The family would need to seek powers from the Court of Protection to be able to do so and they are constrained as to what they can do. Abuse can be reported to the Public Guardian Office with steps taken to remove the Deputy / Deputies.

Deputies are usually close relatives or friends of the person who needs help making decisions. If someone wants to become a 'Property and Affairs' Deputy they need to have the skills to make financial decisions for someone else. The Court of Protection can appoint 2 or more Deputies for the same person being cared for. It makes sense for the Deputy / Deputies to be younger than the person for whom the Deputy / Deputies will act for reasons of continuity and certainty.

The process requires a separate Application to be made for 'Property and Affairs' and' Welfare'. The Court of Protection Application fees apply for each Application.

Court of Protection – application to become a Deputy and duties of a Deputy

The important website indicating the procedures to follow is https://www.gov.uk/become-deputy

Where no EPA or LPA exist then application needs to be made to the Court of Protection. All figures below are the current Court of Protection fees (January 2021): -

- £365 for each Application – (a) 'Property and Affairs' and (b) 'Welfare'
- General supervision fee £320 in year 1
- Supervision fee might fall to £35 a year from year 2 if minimal supervision applies – this applies to some 'Property and Affairs' Deputies managing less than £21,000 – otherwise the Annual general supervision fee £320 applies – that applies for each Application
- Also an £100 assessment fee for a new Deputy
- Possible exemption or reduction of the Application Fee and Supervision Fee

With the Application the following also need to be provided: -

- Assessment of capacity form
- Deputy's declaration
- Supporting information form for (a) 'Property and Affairs' and (b) 'Welfare'

It may be that these additional documents might result in additional professional fees making the whole process considerably more expensive.

An Application to become a Deputy requires at least 3 people to be named in the Application who know the person concerned and one would expect close family or friends to be named. If they have suspicions that the person making the Application might be up to no good then they could ensure that the Doctor or Social / Care Visitor are on notice about those concerns as they could be named Deputies by the Applicant and so relay those concerns to the Court of Protection.

When Application is made the Court of Protection need to be advised how decisions will be made where there are two or more Deputies: -

- together ('**joint deputyship'**), which means all the Deputies must agree on the decision
- separately or together ('**jointly and severally**'), which means Deputies can make decisions on their own or with other Deputies

Joint Deputyship offers control over someone who might not be so diligent or trustworthy, but it does mean the sometimes a decision can be blocked as it requires all to agree. If all Deputies can be trusted and are of like mind then Joint and Several enables quicker action to be taken and for some or all elements of the work to be undertaken by one person consulting the others.

In relation to 'Property and Affairs' then the Deputy / Deputies must make sure: -

- they keep their own property and money separate from the other person being cared for
- they keep records of the finances managed on their behalf in an annual report submitted to the Office of the Public Guardian

This ensures a form of supervision to prevent abuse of the powers held by the Deputy / Deputies.

As a 'Property and Affairs' Deputy, the Deputy must keep copies of: -

- bank statements
- contracts for services or tradespeople
- receipts
- letters and emails about their activities as a deputy

The Court of Protection Order will say if gifts can be bought or give gifts of money on behalf of the person concerned, including donations to charities. It will also say if there is an annual limit on how much money can be used for gifts. Gifts must be reasonable and cannot reduce the level of care for the person concerned.

A Deputy can claim expenses for things they must do to carry out their role as a Deputy, for example phone calls, postage, and travel costs. They cannot claim: -

- travel costs for social visits
- for the time spent carrying out their duties (unless they are a professional deputy, for example a Solicitor)

The Deputy / Deputies may be asked to give a detailed report of what was spent and repay the money back if the Office of the Public Guardian finds the expenses are unreasonable. They may ask the Court to stop the Deputy acting if they think they have been dishonest.

Court of Protection website

https://www.gov.uk/courts-tribunals/court-of-protection