

Making an application to the Court of Protection

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Part A: Introduction

About this booklet

This guidance explains the process for making an application to the Court of Protection (the 'Court'). It also explains what the Court does, what decisions it can make, the powers it holds and how it appoints a Deputy to act and make decisions on behalf of someone who lacks capacity.

In this booklet, a person's capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made.

Readers of this guidance may plan to make an application to the Court themselves, or they may have appointed a solicitor to assist them and wish to understand the process better.

Definitions of key words and terms used are listed in the Glossary at Appendix 3.

All forms and other documents mentioned in this booklet are downloadable from our website or from a CD that we can send you. You can also contact us and we will send you hard copies.

This document is also available in 'easy read' format.

The Mental Capacity Act

The Mental Capacity Act 2005 applies to England and Wales and sets out how decisions can be made on behalf of those who lack mental capacity.

The Act protects and empowers people who lack capacity due to reasons such as dementia, stroke, disability, mental health or head injury.

Everyone working with and/or caring for an adult who may lack capacity to make specific decisions, must comply with the Act when making any decision or taking any action on behalf of that person.

The Office of the Public Guardian

The Public Guardian (supported by the Office of the Public Guardian) is responsible under the Mental Capacity Act for:

- supervising Deputies;
- keeping registers of Deputies, Lasting Powers of Attorney and Enduring Powers of Attorney; and
- investigating any complaints about Attorneys or Deputies.

The Court of Protection

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This Court is the specialist Court for all issues relating to people who lack capacity to make specific decisions. The Court makes decisions and appoints Deputies to make decisions in the best interests of those who lack capacity.

Part B: Do I need to go to Court?

Informal and formal decision-making

The Mental Capacity Act's starting point is that a person should be assumed to have capacity to make their own decisions unless it can be shown that they lack capacity to do so.

The Act states that people must be given all appropriate help and support to enable them to make their own decisions or to maximise their participation in any decision-making process.

The intention of the Act is to ensure that any decision made, or action taken, on behalf of someone who lacks the capacity to make the decision or act for themselves is made in their best interests.

Section 5 of the Act provides protection for carers, health care and social care staff to carry out certain tasks without fear of liability. This may include personal care or treatment of people who lack capacity to consent to them. The aim is to give legal backing for acts that need to be carried out in the best interests of the person who lacks capacity to consent.

There are however important limitations on acts that can be carried out with protection from liability. Key areas include where there is inappropriate use of restraint or where a person who lacks capacity is deprived of their liberty.

In most matters concerning personal welfare, the principles set out in the Mental Capacity Act, and also in chapters 5 and 6 of the Code of Practice, will enable you to:

- take action or make a decision in the best interests of someone who lacks capacity; and
- find ways of settling disagreements about actions or decisions.

There are certain situations however where informal decision-making is not appropriate, and an application to the Court of Protection is necessary. This may include for:

- particularly difficult decisions;
- disagreements that cannot be resolved; or
- situations where ongoing personal welfare decisions must be made about someone who lacks capacity.

An order of the Court will usually be necessary for matters relating to the property and affairs of people who lack capacity to make specific financial decisions for themselves.

What type of decisions can the Court make?

Under the Mental Capacity Act, the Court has the power to:

- make decisions about the personal welfare or property and affairs of people who lack the capacity to make such decisions themselves;
- make declarations about a person's capacity to make a decision, if the matter of whether they can make a decision cannot be resolved informally;
- make decisions in relation to serious medical treatment cases, which relate to providing, withdrawing or withholding treatment to a person who lacks capacity;
- appoint a Deputy to make ongoing decisions on behalf of a person who lacks capacity, in relation to either the person's personal welfare or property and affairs; and
- make decisions about an LPA or EPA, including whether the power is valid, objections to registration, scope of Attorney powers and removal of Attorney powers.

Part C: How do I make a Court application?

Permission to make an application

The first stage of the process is to work out whether you need permission from the Court to make an application.

In general you **will not** need permission to apply to the Court if the application relates to property and affairs; however, there are some cases involving the appointment and removal of trustees, and a small number of applications relating to wills and gifts, where you may need the Court's permission.

In general you **will** need permission if the application relates to personal welfare.

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If you are unsure whether you need permission you can contact us for advice.

The **COP2: Permission form** can be submitted before or at the same time as your **COP1: Application form**. If you need permission to apply, your application cannot proceed until permission has been granted.

More information about permission to make an application can be found in **Court Practice Direction 8A**, which you can download from our website or contact us for a hard copy.

Which application forms must I complete?

The application forms that you need to complete will depend on the type of application that you wish to make.

Appendix 1 lists the forms you need to complete for each type of application. Each type of application has an application ID (APP).

If you know the type of application you wish to make you can download the relevant forms from our website or from a CD that we can post you. You can also call us and we will send you hard copies.

Appendix 2 has a description of what each Court form contains.

The types of application that you can make to the Court are as follows.

- **APP01:** Relating to property and affairs only and you do not need permission to apply;
- **APP02:** Relating to property and affairs only and you do need permission to apply;
- **APP03:** Relating to personal welfare only and you do not need permission to apply;
- **APP04:** Relating to personal welfare only and you do need permission to apply;
- **APP05:** Relating to property and affairs and personal welfare and you do not need permission to apply;
- **APP06:** Relating to property and affairs and personal welfare and you do need permission to apply;
- **APP07:** Application relating to the registration of an EPA (to object to registration or apply for registration following a suspension);
- **APP08:** Application to object (on prescribed grounds) to the registration of an LPA;
- **APP09:** Reconsideration of Court decision; and
- **APP10:** Appeal against a decision of the Court.

Applications within proceedings

You may discover that while your application is in progress, and before the Court makes its final decision, that certain matters need to be resolved. For example, action may be required to protect or sell the person's property. **COP9: Application notice** should be used to make an application within proceedings.

More information about how to make an application within proceedings can be found in **Court Practice Direction 10A**, which you can download from our website. If you are unable to do this you can contact us.

Submitting your application

You must submit the original and one copy of your entire application (including all forms and supporting documents) to the Court.

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You should also keep a copy of every document you send for your own reference.

Costs and expenses

If you have used a solicitor to help with your application then you will be liable for the costs unless the Court directs that someone else will pay them.

Fees are normally payable when you file applications with the Court. Detailed information about fees, exemptions and remissions is set out in separate guidance which you can download from our website. If you are unable to do this you can contact us.

Part D: What happens after I submit my application?

Your application for permission

If you need permission to apply, the Court will aim to deal with your application for permission within 14 days of receiving it. The Court will consider your connection to the person, your reasons for the application, the benefits and alternatives when deciding whether to grant permission.

Usually the Court will be able to decide a permission application without a hearing, however occasionally a Court hearing will be required.

What if I am refused permission to apply?

See section below on 'What if I am unhappy with the Court's decision?'

Issuing the application

If the Court gives you permission to apply, or if permission is not needed, when it receives your complete application (the original and one copy of all forms and supporting documents), it will 'issue' it by putting an original stamp on the application form and return this to you, along with the following forms:

- COP5: Acknowledgement of service/notification;
- COP14: Proceedings about you in the Court of Protection;
- COP14A: Guidance notes for completing form COP14;
- COP15: Notice that an application form has been issued;
- COP15A: Guidance notes for completing form COP15; and
- COP20: Certificate of service/non-service and certificate of notification/non-notification.

Who must I tell about my application?

Under the Court of Protection Rules you need to tell certain people about your application within 21 days of the Court 'issuing' your application. You must:

- 'serve' a copy of your application form and any forms or documents sent in support of your application on anyone you have named as a respondent in your application;
- 'notify' relatives and others named in your application as likely to have an interest in your application by using form **COP15: Notice that an application form has been issued**; and
- if your application relates to an objection to registration of a LPA or EPA, serve a copy of **COP7: Application to object to the registration of a LPA** or **COP8: Application to object to the registration of an EPA** on every Attorney and the Donor.

When you serve or notify people about your application you must also send each person the form **COP5: Acknowledgement of service/notification**.

The most common way to serve or notify someone is to send the documents by first class post to their home address. However you can also serve documents by fax, document exchange or in person.

How do I notify the person to whom the application relates?

Under the Court of Protection Rules you need to notify the person to whom the application relates that your application has been issued by the Court. You should also use this procedure if your application relates to an EPA or LPA and you have reason to believe that the Donor lacks capacity.

Notification must be provided personally within 21 days of the Court issuing the application form.

You or your representative must provide the information in a way that is appropriate to the person's circumstances, for example using simple language, visual aids or any other means. You must explain:

- who the applicant is;
- that the application raises the question of whether they lack capacity and what that means;
- what effect the outcome of the application would have;
- details of any person who would be appointed to make decisions on their behalf; and
- that they may seek advice and assistance in relation to the application.

You must also provide the person to whom the application relates with the following forms:

- COP5: Acknowledgement of service/notification; and
- COP14: Proceedings about you in the Court of Protection.

What do I do after service/notification

After you have served or notified people about your application you must complete and return to the Court the form **COP20: Certificate of service/non-service and certificate of notification/non-notification** for each person you have served or notified. You should provide this within 7 days of the date of service/notification.

If you cannot achieve the 21 day timeframe for service and notification, you must explain this to the Court on the form COP20.

More information about service and notifications can be found in **COP1: Application form** and **Court Practice Directions 6A, 7A and 9B**, which you can download from our website. If you are unable to do this you can contact us.

Part E: The Court process

After the service and notification period has concluded the Court may consider the application and next steps. This will be based on the type of application you made and whether anyone objects to the application or proposed that a different order is made. The Court may decide to:

- make a decision based on the application without a Court hearing;
- give directions about your application and next steps to be taken; or
- fix a date for your application to be heard by the Court.

When would the Court make a decision without a hearing?

If no one objected to your application or proposed that a different order is made, the Court can usually make a decision without the need for a hearing.

When would the Court decide to give directions?

If the Court cannot make a final decision when it initially considers your application, it may give directions about what you and/or anyone else who is involved in the application must do to bring the matter to a conclusion. Directions may include to:

- provide additional evidence;
- obtain reports from the Public Guardian, a Court visitor or Social Services;
- decide whether anyone else, for example the Health Authority, should be involved in the application; or
- set a date or timetable for the final hearing of the application.

What happens if the Court decides to hold a hearing?

If the Court decides to hold a hearing, you and all others involved in the application will receive a **COP28: Notice of hearing form**. This will include the date, time and details of where the hearing will take place.

Within 21 days of the date you receive the notice of hearing (and no later than 14 days before the date of the hearing) you must inform the person to whom the application relates of the date of the hearing, using form **COP14: Proceedings about you in the Court of Protection**. You must also explain to them that they may seek advice and assistance in relation to the hearing.

You must then complete and return the form **COP20: Certificate of service/non-service and certificate of notification/non-notification** within 7 days of making that notification.

What happens after the Court makes an order?

After the Court has made its decision you and every other party will be sent official copies of the order.

Within 21 days of the final order being made you must inform the person to whom the application relates of the final order, its effects and that they may seek advice and assistance in relation to the order. You do this using form **COP14: Proceedings about you in the Court of Protection**. You must also complete and return a **COP20: Certificate of service/non-service and certificate of notification/non-notification** within 7 days of making that notification.

You should carefully check all the information contained in the order, including the spelling. If you notice any errors, return all copies in your possession to the Court for amendment. Do not alter documents yourself, as this will make them invalid.

What if I am unhappy with the Court's decision?

If the order is made without a hearing, or without notice to any person affected by the order, then you or any person affected by the order may apply to the Court for the order to be reconsidered. The person to whom the application relates can also ask the Court to reconsider its order.

An application for reconsideration must be made within 21 days of the date you are served with a copy of the order, using form **COP9: Application notice**.

If the order was made at a hearing, you or any other party to the proceedings and/or any person affected by the order (including the person to whom the application relates), may ask for permission to appeal against the decision by filing a **COP35: Appellant's notice**.

More information about appealing orders of the Court can be found in **Court Practice Direction 20A**.

Part F: Assistance and contacts

Who can assist me with my application?

You can contact Court of Protection and the Office of the Public Guardian staff who may be able to assist you to complete your application and forms. We cannot however provide any legal advice or services.

You can instruct a solicitor to make an application on your behalf, with fees payable by you.

Further reading

Mental Capacity Act 2005

Mental Capacity Act 2005 Code of Practice

Court of Protection Rules 2007

Download these from our website or contact us for a copy.

Contact us

Court of Protection and the Office of the Public Guardian
Archway Tower
2 Junction Road
London N19 5SZ

Phone Number: 0845 330 2900

Fax Number: 020 7664 7705

Email: customerservices@publicguardian.gsi.gov.uk

Website: www.publicguardian.gov.uk

DX: 141150 Archway 2

Textphone: 020 7664 7755 (If you have speech or hearing difficulties and have access to a textphone, you can call us for assistance.)

International Calls: +44 20 7664 7000

International Faxes: +44 20 7664 7705

Urgent contacts

If you have an urgent matter and it is within business hours, you should use the contact details above.

Outside business hours in a genuine emergency you can contact the security office at the Royal Courts of Justice on 020 7947 6000 for assistance.

More information on urgent applications can be found in **Court Practice Direction 10B**, which you can download from our website.

Disclaimer

OPG and Court staff can provide advice about OPG and Court processes only, and cannot provide legal advice or services. We recommend that you seek independent legal advice where appropriate. Information in this publication is believed to be correct at the time of printing, however we do not accept liability for any error it may contain.

Appendix 1: Application forms by application type

ID	Application type	Forms and supporting documents
APP01	Relating to property and affairs only and you do not need permission to apply	<p>COP1: Application form</p> <p>COP1A Annex A: Supporting information for property and affairs applications</p> <p>COP3: Assessment of capacity form</p> <p>COP4: Deputy’s declaration form (if you are applying to be a Deputy)</p> <p>Copy of LPA or EPA (if applicable)</p> <p>Application fee</p>
APP02	Relating to property and affairs only and you need permission to apply	<p>COP1: Application form</p> <p>COP1A Annex A: Supporting information for property and affairs applications</p> <p>COP2: Permission form</p> <p>COP3: Assessment of capacity form</p> <p>Copy of LPA or EPA (if applicable)</p> <p>Application fee</p>

ID	Application type	Forms and supporting documents
APP03	Relating to personal welfare only and you do not need permission to apply	<p>COP1: Application form</p> <p>COP1B Annex B: Supporting information for personal welfare applications</p> <p>COP3: Assessment of capacity form</p> <p>COP4: Deputy’s declaration form (if you are applying to be a Deputy)</p> <p>Copy of LPA or EPA (if applicable)</p> <p>Application fee</p>
APP04	Relating to personal welfare only and you need permission to apply	<p>COP1: Application form</p> <p>COP1B Annex B: Supporting information for personal welfare applications</p> <p>COP2: Permission form</p> <p>COP3: Assessment of capacity form</p> <p>COP4: Deputy’s declaration form (if you are applying to be a Deputy)</p> <p>Copy of LPA or EPA (if applicable)</p> <p>Application fee</p>

ID	Application type	Forms and supporting documents
APP05	Relating to property and affairs and personal welfare and you do not need permission to apply	<p>COP1: Application form</p> <p>COP1A Annex A: Supporting information for property and affairs applications</p> <p>COP1B Annex B: Supporting information for personal welfare applications</p> <p>COP3: Assessment of capacity form</p> <p>COP4: Deputy’s declaration form (if you are applying to be a Deputy)</p> <p>Copy of LPA or EPA (if applicable)</p> <p>Application fee</p>

ID	Application type	Forms and supporting documents
APP06	Relating to property and affairs and personal welfare and you need permission to apply	<p>COP1: Application form</p> <p>COP1A Annex A: Supporting information for property and affairs applications</p> <p>COP1B Annex B: Supporting information for personal welfare applications</p> <p>COP2: Permission form</p> <p>COP3: Assessment of capacity form</p> <p>COP4: Deputy’s declaration form (if you are applying to be a Deputy)</p> <p>Copy of LPA or EPA (if applicable)</p> <p>Application fee</p>
APP07	Application relating to the registration of an Enduring Power of Attorney (to object to registration or apply for registration following a suspension)	<p>COP8 or COP1 (depending who the applicant is – see form descriptions in Annex 2)</p> <p>COP24: Witness statement (if the applicant/objector wishes to provide additional written evidence)</p>

ID	Application type	Forms and supporting documents
APP08	Application to object (on prescribed grounds) to the registration of a Lasting Power of Attorney	<p>COP7 or COP1 (depending who the applicant is – see form descriptions in Annex 2)</p> <p>COP24: Witness statement (if the applicant/objector wishes to provide additional written evidence)</p>
APP09	Reconsideration of Court decision	<p>COP9: Application notice</p> <p>Copy of Court order you want the Court to reconsider</p>
APP10	Appeal against a decision of the Court	<p>COP35: Appellants notice</p> <p>COP37: Skeleton argument</p> <p>COP24: (if you wish to provide evidence in support of your appeal)</p> <p>Original application form (if relevant to the appeal)</p> <p>Copy of court order you wish to appeal</p> <p>Application fee</p>

Appendix 2: Description of relevant Court forms

COP1: Application form

This form is used to start proceedings in the Court and sets out the order the applicant is asking the Court to make. When the Court issues the Application form the applicant has to serve certain people with a copy and notify others (including the person to whom the application relates) that the Application form has been issued.

COP1A Annex A: Supporting information for property and affairs applications

This form must be filed with the Court with the COP1 Application form where the application relates to property and affairs.

COP1B Annex B: Supporting information for personal welfare applications

This form must be filed with the Court with the COP1 Application form where the application relates to personal welfare.

COP2: Permission form

This form must be filed with the Court with the COP1: Application form where permission is needed to make an application.

COP3: Assessment of capacity

This form must be filed with the Court with the COP1: Application form. A practitioner (such as a medical practitioner, psychiatrist or psychologist) completes part of the form and provides an assessment of the person's capacity in relation to the matter(s) the Court is being asked to decide. The practitioner may charge a fee for completing the assessment of capacity.

Note: This form is not required where the application relates to an LPA or EPA.

COP4: Deputy's declaration

This form must be filed with the Court with the COP1: Application form when the applicant is asking the Court to appoint a Deputy. The Court may use the information to assess the person's suitability to be a Deputy.

COP5: Acknowledgement of service/notification

People who are served or notified with a COP1: Application form and who want to take part in the proceedings must file this form with the Court.

COP7: Application to object to the registration of a Lasting Power of Attorney (LPA)

This form is used to object (on prescribed grounds) to the registration by:

- an intended Attorney; or
- a person entitled to be notified of the application to register an LPA.

COP8: Application relating to the registration of an Enduring Power of Attorney (EPA)

This form is used to object to registration or apply for registration following a suspension by:

- the Donor;
- an intended Attorney; or
- a relative of the Donor that is entitled to be notified of an application to register an EPA.

COP9: Application notice

This form is used for certain types of applications, including applications made in the course of existing proceedings.

COP10: Application notice for applications to be joined as a party

People who wish to apply to be joined as a party to proceedings need to use this form (where they are not one of the people who can file the COP5: Acknowledgment of service/notification).

COP14: Proceedings about you in the Court of Protection

This form is used to explain to the person to whom the application relates (i.e. the person who lacks capacity, or is alleged to lack capacity) the matter for which notification is being provided, in addition to the information being provided personally.

COP14A: Guidance notes for completing form COP14

COP15: Notice that an application form has been issued

This form is used to notify people who are likely to have an interest that an application form has been issued by the Court.

COP15A: Guidance notes for completing form COP15

COP20: Certificate of service/non-service and certificate of notification/non-notification

This form must be filed with the Court to confirm that a document has been served or notification has been provided. A separate certificate must be filed for each person every time a document is served or notification is provided.

COP28: Notice of hearing

The Court will send this notice to tell people the date, time and location of a hearing.

COP35: Appellant's notice

This notice is used where a person wishes to appeal against a decision of the Court.

COP36: Respondent's notice

Used by respondents to an appeal who wish to appeal against the same order or ask the Court to uphold the order.

COP37: Skeleton argument

Used by appellants and respondents who are appealing against an order to provide arguments in support of their appeal.

Appendix 3: Glossary

Attorney	Someone appointed under either a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (EPA) who has the legal right to make decisions within the scope of their authority on behalf of the person (the Donor) who made the Power of Attorney.
Best interests	Any decisions made or anything done for a person who lacks capacity to make specific decisions must be in the person's best interests. There are standard minimum steps to follow when working out someone's best interests. These are set out in section 4 of the Mental Capacity Act.
Capacity	The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in section 2 of the Mental Capacity Act.
Code of Practice	The Code of Practice is practical guidance to support the Mental Capacity Act. It explains how the Act will operate on a day-to-day basis and offers examples of best practice to carers and practitioners.
Court of Protection	The specialist Court for all issues relating to people who lack capacity to make specific decisions.

Data Protection Act 1998	A law controlling the handling of, and access to, personal information such as medical records, files held by public bodies and financial information held by credit reference agencies.
Deputy	Someone appointed by the Court with ongoing legal authority as prescribed by the Court to make decisions on behalf of a person who lacks capacity to make particular decisions as set out in Section 16(2) of the Mental Capacity Act.
Donor	A person who makes a Lasting Power of Attorney or Enduring Power of Attorney.
Enduring Power of Attorney (EPA)	A Power of Attorney created under the Enduring Powers of Attorney Act 1985 appointing an Attorney to deal with the Donor's property and financial affairs. Existing EPAs will continue to operate under Schedule 4 of the Mental Capacity Act, which replaces the EPA Act 1985.
Instrument	The form used to create a Lasting Power of Attorney.
Jointly (or 'together')	Attorneys appointed 'jointly' must always act together. They must all agree before doing anything on your behalf. If one Attorney does not agree with a proposed action, that decision cannot be made.

Jointly and severally (or 'together and independently')	Attorneys appointed 'jointly and severally' can act on their own and can act together. This means that any one Attorney can decide on a particular issue independently of the others. This can be useful if your Attorneys are not always in the same place at the same time.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the Mental Capacity Act (see Section 9(1)) appointing an Attorney to make decisions about the Donor's personal welfare (including healthcare) or deal with the Donor's property and affairs.
Mental Capacity	See 'Capacity'.
Office of the Public Guardian	The Public Guardian is an officer established under Section 57 of the Mental Capacity Act. The Public Guardian will be supported by the Office of the Public Guardian, which will supervise Deputies, keep a register of Deputies, LPAs and EPAs, and investigate any complaints about Attorneys or Deputies. The OPG replaces the Public Guardianship Office (PGO) that has been in existence for many years.

Personal welfare	Personal welfare decisions are any decisions about a person's healthcare, where they live, what clothes they wear, what they eat and anything needed for their general care and well-being. Attorneys and Deputies can be appointed to make decisions about personal welfare on behalf of a person who lacks capacity. Many acts of care are to do with personal welfare.
Property and affairs	Any possessions owned by a person (such as a house or flat, jewellery or other possessions), the money they have in income, savings or investments and any expenditure. Attorneys and Deputies can be appointed to make decisions about property and affairs on behalf of a person who lacks capacity.
Public Guardian	See 'Office of the Public Guardian'.

Court of Protection

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