

# A Guide to the Court of Protection

As a carer for someone with dementia, there may come a time when your loved one is unable to make appropriate decisions for themselves. Not only can this be an emotionally difficult time, but it can also leave you wondering what your legal rights are when it comes to decision-making.

In specific circumstances, applying to the Court of Protection for the right to make decisions on behalf of someone else is the best course of action.

## What Is the Court of Protection?

The Court of Protection exclusively deals with issues relating to mental capacity in England and Wales. It is a specialist service that ensures the best decisions are made for those who are unable to make decisions for themselves.

The court was established in line with the Mental Capacity Act 2005, which came into force in 2007. It's important to note that the Court of Protection isn't a physical location, so hearings can take place in various courts across England and Wales.

## What Is the Mental Capacity Act?

The Mental Capacity Act aims to protect vulnerable adults when it comes to making decisions.

If you feel that the person you care for is unable to make decisions in their own best interests, the Act can give you or someone else the power to make decisions for them. This might relate to their care, finances, property or something else.

Visit the website below to learn all about the Mental Capacity Act.

[www.legislation.gov.uk/ukpga/2005/9/contents](http://www.legislation.gov.uk/ukpga/2005/9/contents)

The Deprivation of Liberty Safeguards (DoLS) is an important component of the Mental Capacity Act. It's designed to protect the rights of a person who has had their liberty deprived in a care home or hospital.

Visit the website below to learn all about DoLS.

[www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance](http://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance)

## What Does the Court of Protection Do?

The Court of Protection has two main purposes.

First of all, it can decide whether a person has capacity to make their own decisions, or whether a person has capacity to make a decision about a specific matter.

Secondly, the Court can make a decision on behalf of the person in question. However, if a person has capacity to make a decision or decisions for themselves, then the court is not able to intervene.

The Court of Protection should generally be regarded as the last resort, as the family and/or carers of the person in question should make best-interests decisions for them. Where there is no disagreement about these decisions, then there's typically no need to consult the Court.

Where the person in question disagrees with decisions being made for them, they can ask the Court to get involved.

## How Does the Court of Protection Work?

When a case is raised with the Court, the relevant professionals will speak to everyone involved and gather evidence. Those who wish to express an opinion on the case, such as carers or family members, will be required to write witness statements expressing their views.

During the evidence gathering, the Court may have an expert, such as a social worker or psychiatrist, visit the person in question and write a report.

There are multiple pathways for dealing with different types of cases, and it's not always the case that a physical hearing will take place.

## Appealing the Court's Decision

If you feel that the Court of Protection has reached the wrong outcome in a case, you can appeal.

In instances where a decision was made without a hearing, a COP9 application form can be used within 21 days of the judge's decision to ask them to reconsider.

In other cases, you should ask the judge who made the decision for permission to appeal against it. If the judge says no, you should fill in an application form within 21 days to request permission from a different judge.

## Court of Protection Fees

The Court of Protection is not a free service and a fee must be paid upon application.

- **Application fee:** £371 - payable on making an application to start the proceedings or when making an application for permission to start.

- **Appeal fee:** £234 - payable on filing an appellant's notice appealing a court decision or seeking permission to appeal a court decision.
- **Hearing fee:** £494 - payable where the court has held a hearing to decide the application and has made a final order, declaration or decision.
- **Copy of document fee:** £5 - payable when requesting a copy of a document filed during the proceedings.

The person who is making the application or the appeal is the one who has to pay the fee. It is possible, in some situations, to recover the fee from the person you are making the application for and the court will advise on this. It's also sometimes possible to apply for a fee exemption, depending on the individual circumstances of your case and situation.

To pay, send a cheque to HM Courts & Tribunals Service along with a letter that states your case number (if you know it) and your contact details.

## How Long Does the Court of Protection Take?

This process is likely to take between four and six months, but this isn't set in stone. Ensuring that all forms are filled out correctly and all relevant information has been provided will help to keep the proceedings on track.

In certain situations, you may be able to expedite the process by making an urgent application.

## Learn More and Start the Process

To learn more about the Court of Protection and apply to start the process, visit the website below to find the relevant details.

[www.gov.uk/courts-tribunals/court-of-protection](http://www.gov.uk/courts-tribunals/court-of-protection)

**This information was accurate and up-to-date as of 15/03/2024.**