

GUARDIANSHIP

What is Guardianship?

It's a court order appointing someone to manage another person's affairs because they are incapacitated mentally and unable to look after their own property, financial affairs and personal welfare.

Most guardianships are granted because a person is suffering from some form of dementia, and the majority are for elderly people.

How can I get a Guardianship for my relative?

You need to make an application to the court. You will need legal advice for this. Briefly, it is necessary to obtain two medical reports confirming that the person is unable to understand their affairs and make decisions for themselves. These are submitted to the court, often with a report from a Mental Health Officer, and a formal application. The application sets out who the proposed Guardian is, and what powers the Guardian will need e.g. to sell a house or to pay Nursing Home fees.

Getting a guardianship can be expensive, and is paid for from the person's assets (legal aid may be available). It is important to get legal advice about whether a guardianship is really necessary.

Our family lawyers can advise you on the procedure and we can do all the administrative work required to obtain the guardianship.

What does a Guardian have to do?

Being a financial guardian for someone means you can manage their financial affairs for them, and have access to bank accounts or sell their house if necessary. Your powers are restricted to what the court grants. There is strict supervision by the Public Guardian and you have to produce a management plan and annual accounts.

Being a welfare guardian for someone means you can make decisions about their personal welfare, such as where they are to live (maybe a nursing home). This might be needed if someone is unwilling to go into a nursing home but unable to manage at home.

Power of Attorney or Guardianship - which should it be?

If a person can manage their own affairs they can appoint an attorney by signing a power of attorney – see our factsheet Powers of Attorney. But if they can't manage their own affairs they can't sign a power of attorney because they don't have the mental capacity to understand what they are doing. In such cases it is necessary to have a guardian appointed.