

When is a guardianship order Appropriate?

Guardianship Applications should be made when the Adult is without the capacity to make decisions about themselves and cannot appoint someone else to make these decisions for them.

What does it do?

The order allows the guardian to make decisions on both financial and welfare matters relating to the Adult. Financial powers allow the Guardian to access bank accounts, pay expenses, sell or buy land and recover debts. Welfare powers include the right to decide where the Adult should live, agree to or refuse medical treatment and what social activities the Adult should have.

What are the types of Guardianship?

There are two types of Guardianship Orders – Financial and Welfare. However one application can ask for both Financial and Welfare powers.

What is the process?

The process of becoming a Guardian is by application by the Guardian to the Sheriff Court.

The application requires two Doctors reports, one of which is by a Psychiatrist within 30 days of the application confirming that the Adult does not have capacity.

If the application is for a Financial Guardianship only there must be a report from a Financial Officer. If the application is for a welfare Guardianship there must be a report from the Mental Health Officer or sometimes both for Financial and Welfare, all completed within 30 days of the application.

What Happens Next?

After the application is submitted to the court a hearing is fixed and all interested parties are invited to attend. The Sheriff must decide if the Guardian is suitable to be appointed and if the Powers they seek are necessary. The Guardian should be able to demonstrate to the Sheriff that they know what the obligations on them are as Guardian.

Who can be made Guardian?

Anyone who has interest in the Adult can be made Guardian most of the time. This could be a close family member and more than one person can be appointed as joint Guardian. It is also possible to appoint a substitute guardian who becomes Guardian if something happens to the principle Guardian.

What are the obligations of a Guardian?

Where there is a Welfare Guardianship Order the Guardian will be monitored by the Local Authority to make sure they are not abusing their powers. The Guardian may not place an Adult in hospital for treatment of a mental disorder against their will or consent to any medical experiments. In principal, the Guardian should follow the known views of adult.

There are more specific obligations in respect of a Financial Guardian. The Court is likely to order Caution, which is a form of insurance that requires to be made annually and must be obtained on the granting of the Order. A Financial Guardian must provide an Inventory and Management Plan for the Adult's Estate within 3 months of the Order being granted. Thereafter the Financial Guardian must submit Accounts annually. Throughout the Guardianship Order the Financial Guardian must apply to the Public Guardians Office for authority to undertake certain decisions with regards the Adult's Estate. This applies to such things as gifts and the buying or selling of land.

The Guardian must keep records of any decision they take and must advise the Local Authority and or Public Guardians Office of a Change of address.

How long does it last?

The Court can fix the order for any length including indefinitely. However, the general practice is to initially grant the guardianship for 3 years and on renewal grant the order for 5 years.

What is renewal?

Renewal is the process when the guardianship is due to come to an end and an application is made to renew the order. It is an opportunity to look at the powers granted and see if they are still needed or if there should be any powers added. You should instruct solicitors for the renewal about 6 months before the guardianship is due to expire.

Who Pays for the Guardianship?

Depending on the Court's Order any expenses in the course of the Guardianship order should be paid from the Adult's Estate.

What are the costs of the Application?

If you decide to instruct us privately you as the prospective Guardian would be responsible for our fee until the successful Order allowing recovery from the Adult's Estate. The cost will include our fee, the fee to the Doctors for preparing their reports, VAT and any other outlays.

Is Legal Aid Available?

Advice and Assistance Legal Aid is available for meeting with you and discussing and preparing a full Legal Aid Application. This is assessed on the Adult's means and requires their income and savings be assessed.

If you are seeking a Welfare Guardianship or a Welfare and Financial Guardianship Order then there is no financial test for Civil Legal Aid. Therefore the cost of the application after the grant of Legal Aid would be met by the Legal Aid Board and will pay for the bulk of the fees involved. Civil Legal Aid for Financial Guardianship only is means tested against the Adult's estate.

What costs could there be for the application?

If advice and assistance Legal Aid is not available then you will require to pay our fee for preparing your Civil Legal Aid Applications. A Doctor's Report to confirm that the Order is necessary may be required and you will require to meet the fee for this.

What happens after the application has been put in place?

We will arrange for the Bond of Caution to be obtained but you will need to pay for this and then claim it back from the adults estate. We will also register your interest as Guardian against any land owned by the Adult. We can pass your details to financial advisors who specialise in preparing the inventory and management plan in Guardianship applications. We can your solicitors throughout the Guardianship Order and will work with you for the renewal of the Bond of Caution, submission of Accounts and any other advice you require. You will be responsible for our fee in respect of this work, which again should be recoverable from the Adult's Estate but Advice and Assistance Legal Aid may be available.

How long it takes?

An Application can take about 9 months to get to the initial court hearing. If it is opposed by the Local Authority or other family members it can take longer.

Are there other applications I can make?

Yes – we can add additional guardians or substitute guardians. We can also seek various orders and help with other cases associated with guardianships. Please ask our office

Find us – We are available by telephone or email to discuss any questions about guardianships

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Guardianships

- a practical guide for clients



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