

Number 15

Management of a resident's affairs I

Questions often arise when a resident is unable or incapable of managing their own affairs.

There are a number of limited possibilities that may assist in such circumstances. Which is available or appropriate will depend upon the circumstances of the case and whether the resident has capacity.

The alternatives are:

1. The appointment of an attorney.
2. The use of an enduring power of attorney.
3. The appointment of a receiver.

The government has proposed a change to the law in this area via the Mental Incapacity Bill. However this is likely to be some way off as the bill has not even started its progress through Parliament.

In this briefing we will explain the procedure for the appointment of a receiver. A subsequent briefing will address issues relating to a power of attorney and an enduring power of attorney.

Applying to the Court of Protection to Appoint a Receiver

The Court of Protection has a discretion to appoint a receiver of a patient. This discretion is usually exercised when the patient has more than £16,000 after payment of all liabilities or the patient receives sufficient income for the Court to deem such an appointment necessary. Applications for receivership appointments are made to the Public Guardianship Office. There is no specification, either in statute or in the Court of Protection Rules, as to who should apply for the appointment.

A patient is defined under the Mental Health Act 1983 as a person who, on medical evidence is incapable, by reason of mental disorder, of managing and administering his property and affairs.

Who can be appointed as a receiver?

The Court has an order of preference for the appointment of a receiver:

- a spouse or a close relation who has taken an interest in the patient's affairs
- a close friend
- an officer of a local authority
- a professional adviser (e.g. a solicitor)

In cases where a receiver cannot be found from the above list the Court may appoint a member of its Professional Receivership Panel. As a final resort the Court would appoint the chief executive of the Public Guardianship Office. The Court looks at a number of factors before making an appointment including the size and complexity of the estate of the patient, the views of the patient, the location of the receiver, the relationship between the receiver and patient, the care required and any remuneration to be paid to the receiver.

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Joint-receivership appointments are discouraged because of cost considerations.

The application

The application is submitted to the Public Guardianship Office with the following documents which have to be included:

- a covering letter
- the receiver's declaration
- a medical certificate (CP3)
- a statement of the patient's assets and income
- copies of notification letters
- a copy of any will the patient may have
- a cheque for the commencement fee of £70

A first application for the appointment of a receiver has to state the name and address of both the applicant and the receiver and details of any relationship between the two.

An applicant must complete the receiver's declaration which includes the following information:

- contact details
- relationship to the patient
- the personal circumstances of the receiver
- an understanding of the duties and responsibilities of a receiver and why the application is being made

The Court will require a medical certificate (CP3) in support of the application. This is evidence that the patient is unable to manage his affairs. It is prepared for the Court rather than for the patient or receiver.

The CP3 requires a doctor to certify that the patient is unable to manage his affairs. The doctor must also give reasons why this opinion has been reached. A patient's GP is often approached to give a medical assessment. However, it may be worth getting a psycho-geriatric consultant's assessment. Consultants are objective and not subject to the kind of pressures from family members that a GP may be. A link is also established with a specialist who can be called upon if required.

A statement of the client's assets and income has to be completed as well. This form is quite detailed and includes the patient's background and personal circumstances, financial circumstances, whether a guardianship order or enduring power of attorney has been made and whether the patient has made a will.

Notifying the patient

The patient must be personally notified of an application to appoint a receiver and no order may be entered until at least ten days after the service of that notice. The notification letter to the patient must include:

- the fact that an application has been made
- the effect of the application
- the identity of the applicant and the receiver (if a different person)
- any hearing date fixed by the Court

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If the patient has a living spouse, their written consent should be sought. The applicant must give notice of his intention to make an application to all relatives of the patient who have the same or nearer degree of relationship to the patient than the applicant or receiver.

Powers of a receiver

A receiver has power to administer all of a resident's assets and takes full control of their financial affairs. However, a receiver has no power to consent to or refuse medical treatment or make any healthcare decisions on the resident's behalf. Their role is simply one of managing and administering a patient's property and financial affairs.

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Out of office emergency advice available 24hrs on 07802 506 306.

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