

GUARDIANSHIP

An application for guardianship may be necessary where a person has become incapable of managing their own affairs due to illness or mental incapacity and has not made a Lasting Power of Attorney prior to becoming incapacitated. It may also be necessary in the case of a child with no living parents who needs an adult to act on his behalf e.g. in buying/selling real property or in legal proceedings. A Guardian must be appointed by the Royal Court and information as to the procedure for applications is available at www.guernseyroyalcourt.gg.

A Guardian, once appointed, will have power to do anything which the patient would be able to do (provided that it is in the patient's best interests) if they were capable except for selling real property – if it is considered necessary to sell real property a further application to the Court for authorisation will be necessary.

A Guardian may be a relative or friend or a professional person and must be supported by a Family Council made up of (normally) three of the closest blood relatives of the patient (who may appear by Attorney if necessary). If they are not the closest relatives it will be necessary to explain to the Court why the closest relatives are not members of the Family Council.

More than one Guardian may be appointed – if more than one, it may be a joint guardianship, in which case all decisions will need to be made jointly; or one person may be appointed as Guardian with power to the other to act if the Guardian dies. All Guardians must be resident in the Bailiwick.

Medical evidence that the patient is unable to manage their affairs must be provided by a medical professional who has seen the Patient within the last six weeks prior to the Court hearing – this will be provided by sworn Affidavit which must include the particulars set out in Practice Direction No. 4 of 2009 (also available on the Royal Court website).

A Guardianship application may be made without the assistance of an advocate, in which case the applicant is required to comply with rule 90 of the Civil Rules and first seek permission from the Court to make an application for Guardianship. They are therefore likely to need to go before the Court twice, to get permission and then to bring the Guardianship application itself. In practice it is recommended by the Court that legal advice is obtained as such applications are not always straightforward.

Guardianship applications are normally heard on Thursday mornings. The Family Council will be asked if they approve the appointment of the applicant as Guardian and then the Guardian/s will be required to take an oath or affirm. If there is opposition from the family it may be necessary for the application to be adjourned to a later date for a full hearing.

The Royal Court website includes relevant downloadable forms which can also be obtained from the Greffe.