

It is not unusual when a person becomes advanced in years for some frailty of mind to occur. Quite often, in any case, when a person is in his or her eighties he may become less mobile or more reliant on a close relative or friend to run errands for him.

Higher up the scale of reliance will be those helpers who are asked to assist in the financial affairs of the older person and this may involve keeping records, assisting with the payment of bills and writing out cheques for the older person to sign.

It sometimes happens that the older person loses interest in financial and business affairs and asks whether his helper can sign his cheques. This can be organised in one of two ways. Either the older person's bank can supply what is called a Third Party Mandate which enables another signatory or signatories to be added to the older person's bank account so that the other signatory or signatories can sign cheques which the bank will accept on behalf of the older person; alternatively, the older person can give a Power of Attorney to his helper which may either be a General Power of Attorney which would enable the assistant to do anything which the older person could lawfully do, or the Power of Attorney may be a Special Power of Attorney which is limited to one or more functions.

The Third Party Mandate and the Power of Attorney work very well until such time as the older person is confused to such an extent that he can no longer conduct his own business affairs. At this stage the Third Party Mandate and the Power of Attorney become ineffective because the older person cannot ratify any actions which his assistant may have taken on his behalf. It is also dangerous for an assistant to write cheques for example when he is aware that the older person has become frail because the assistant might expose himself to having to account for his actions. It is not for a lay man to make any official judgement as to when an older person is no longer capable of conducting his business affairs. This is a medical matter and the decision should be taken by the older person's general practitioner or alternatively by the medical attendant to the home where the older person is then residing.

In addition to this an application form should be completed and signed by the proposed applicant or applicants in the presence of a Notary Public who will also administer an Oath to the applicant or applicants to confirm the truth of the contents of that document. This form requires the full names and address of the older person or patient as he is called, the full names and addresses of the proposed Guardians or Guardian and details of their relationship to the patient.

Sometimes it is convenient to appoint just a sole guardian, but in a lot of cases it would be preferable to appoint joint Guardians "with power for the survivor to act alone". In the latter case, if one of the Guardians were to die, the survivor can carry on as before, whereas if a sole Guardian dies, it will be necessary to make another application to the Court for the appointment of a new Guardian. In addition, it may be extremely helpful for the two people appointed as joint Guardians to be able to share their responsibilities.

The application form also requires that three people should be listed as members of the Family Council. The function of these people is to assist and to support the Guardian. They should also be close relatives or close friends of the patient and will be familiar with the patient himself and with his affairs so that they are well placed in order to discuss aspects of the patient's welfare and the stewardship of his assets.

Finally, details must be given of the patient's assets and of the name and address of his medical attendant.

The completed application and the Affidavit from the doctor have to be lodged at the Greffe prior to 12pm on the date preceding the proposed application. At present applications are heard at 10.15am on a Tuesday at approximately two weekly intervals.

The advocate presenting the application normally outlines the facts briefly to the Court and then introduces the proposed Guardian or Guardians to the Court together with the members of the Family Council. The latter are asked to confirm their names and their relationship to the patient and whether they recommend that the proposed applicant or applicants are sworn as Guardians of the patient. The proposed Guardian or Guardians are asked whether, if the application is granted, he or they would be prepared to undertake the duties as a Guardian. Subject to the application being successful, the applicant or applicants stands at the bar of the Court and is required to raise his right hand whilst the relevant Oath is administered by the Bailiff or Deputy Bailiff.

Shortly after the Court sitting an Act of Court is released which is an official statement of the Court proceedings naming the Guardians and confirming that they are entitled to conduct the legal affairs of the patient. This document is the one which is to be registered with the patient's bank or other institution so that the bank can take note of it, return the original, and take a specimen signature from the Guardian so that thereafter the Guardian can have full conduct of the patient's financial affairs.

Sometimes if the patient has very few or relatively few friends or relations within Guernsey it may be necessary for the members of the Family Council to be represented at the Court hearing by a person or persons holding a Special Power of Attorney which enables that person to recommend that the proposed application is granted.

The Guardian is able to conduct the affairs of the patient with this authority except in two respects. If the Guardian considers it in the best interests of the patient, having first consulted the Family Council, to sell any real property (i.e. houses, buildings or land) belonging to the patient, then it is necessary to make a separate application to the Royal Court for permission to sell this property. For the purposes of such application, it is also necessary for a qualified valuer to give evidence to the Court of the value of that property. It is a requirement that the valuer should not have been interested in any way with any proposed sale of that property.

In addition if the Guardian and the Family Council consider that it is in the best interest of the patient to consent to a charge over the patient's property, and that this charge would be registered at the Greffe in the same way as a bank bond or mortgage, again the Royal Court would have to give specific permission for this and to be satisfied that it is in the best interest of the patient.

It should also be noted that the Court would be most reluctant to appoint as a sole Guardian a person who is not living within its jurisdiction. In cases where the patient has one child only who is living, for example, in England, the preferred method of proceeding would be for an application to be made for the appointment of joint Guardians, say an advocate or professional person or other relative of the patient who is resident in Guernsey, together with the child of the patient who is resident in England.

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This paper is intended as a general review and aide memoire. It does not create a retainer or lawyer-client relationship and does not provide comprehensive or specific legal advice concerning the matters contained within it. This paper should not be relied upon as giving or providing advice on any individual case.