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## Briefing Note

### Take the wheel - the importance of Guardianship

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If one of your relatives or friends is struggling to manage their financial affairs alone because of a mental or physical condition affecting their capacity, you should not underestimate the importance of ensuring they have a guardian.

#### **What is a Guardianship application?**

It is an application to the Royal Court made by a person wishing to be appointed as guardian for a person who is unable to manage their affairs (the patient) because that person lacks the mental or physical capacity to do so themselves.

#### **What can a Guardian do?**

There can be more than one guardian. A guardian has legal authority to manage the patient's financial affairs (e.g. access his bank accounts, write cheques, liaise with financial institutions, and generally manage investments).

A guardian can also (subject to an additional application to the Court) sell the patient's property or consent to a charge on their property.

It is essential that at all times the guardian acts in the best interests of the patient.

A guardian will retain this authority throughout the lifetime of the patient. On the death of the patient, the legal personal representative appointed in the patient's Will, or entitled by law, will take over the administration of the patient's estate.

#### **Who can be a Guardian?**

Typically, the prospective guardian will be a relative or close friend of the patient, but occasionally in the absence of family or friends the Court will appoint a professional such as an advocate.

The application must be supported by a "Family Council", usually consisting of three other relatives or close friends of the patient, who are willing to recommend to the Court the appointment of the applicant as guardian.

#### **Duties of the Guardian**

The guardian holds a very important role which is not to be taken lightly. The guardian must ensure that he always acts in the best interests of the patient.

The guardian may be required by the Court to render a full account of the administration of the patient's estate.

The guardian must also keep the Family Council reasonably informed of the course of administration of the patient's estate, and consult them in respect of any major decisions (such as the sale of a house).

#### **What is the procedure for a Guardianship application?**

The patient must first be assessed by a medical practitioner to confirm that they are unable to manage their affairs and that a guardianship order is required.

The prospective guardian then makes an application to the Royal Court. There will then be a Court hearing where an advocate will present the application.

If the application is granted an Act of Court will be issued confirming who the Court has appointed as guardian. This Act can then be presented to the various financial institutions to allow the guardian to take full control of the financial affairs of the patient.

The application and evidence to submit for a guardianship application must comply with various requirements. It is also important that the details given in the application are correct as errors could jeopardise or delay the application. The requirements can also vary depending on the patient's situation. In addition, the interpretation of the law and approaches taken by the Court can evolve over time.

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### Key Contacts

For any queries about guardianship, please contact us.



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