I have been notified of a Court of Protection application; what should I do?

What should I do?

The first thing to do when you are notified of a Court of Protection application is to not panic!

The Court of Protection's role is to decide what is in a person's ("P") best interests, where that person lacks capacity to make a particular decision themselves. In order to make this determination, the court will often consult individuals who have an interest in that person's welfare. See our factsheet "*What is the Court of Protection"* for more information.

You should read through the information provided by the court or by the legal representative who has contacted you in order to understand:

- what the court proceedings are about;
- whether there are any timescales to be aware of, for example, a court hearing or a date on which you may be required to prepare evidence;
- whether you have a role to play in the proceedings (for example, has the court joined you as a party? Do you have permission to apply to be joined as a party?); and
- whether there is any action for you to take.

Should I become a party?

When you are notified of Court of Protection proceedings you may be asked whether you would like to become a "party" to proceedings. Being a party means that you formally participate in the Court proceedings. Usually:

- you have a right to see the court documents (contained within a folder called a "bundle");
- the court can require you to provide evidence (often in the form of a witness statement on or attached to a COP24 form (see here: https://www.gov.uk/government/publications/give-a-witness-statement-about-a-person-who-lacks-capacity-form-cop24);
- you will be given the opportunity to address the judge at a court hearing;
- you will participate in discussions with the other parties or their legal representatives about the management of the case;

It is often possible to express a view about the best interests of P and to receive updates on how the proceedings are progressing without being a formal party. If you intend to take this approach, it is a good idea to make the legal representatives of another party, or the court, aware, so that they can consider the need for any formalities to enable you to participate informally.

Court of Protection hearings are held in public, and so it is generally possible for anyone to attend, although there are often strict rules in place against the publication of information about the proceedings which could identify the identity or contact details of parties.

It is ultimately the court's decision whether or not someone should be a party to court proceedings.

Do I need a solicitor?

If you decide that you would like to be a party to the proceedings, you may wish to instruct a solicitor to advise you and to represent you in court. You can also seek advice from a solicitor before deciding whether to become a party. However, you do not have to instruct a solicitor in order to be a party to Court of Protection proceedings.

If you are a party to the proceedings but you do not have a solicitor, you will be known as a litigant in person. The legal representatives for other parties should ensure that you are included in any discussions that take place and that you receive a copy of the relevant documents. However, they will not be able to advise you on the position that you should put forward.

Legal aid funding is available to those who meet the financial and merits eligibility criteria, to enable them to pay for a solicitor. If you would like to find out whether you are eligible for legal aid, you should contact a solicitor who undertakes Court of Protection work and has a legal aid contract. You can use the government's online database to find a legal aid solicitor here: https://find-legal-advice.justice.gov.uk/

Will I have to pay?

The general rule in Court of Protection proceedings is that each party covers their own costs. This means that you do not have to pay to be a party in Court of Protection proceedings, unless you are instructing your own solicitor and are having to fund this yourself.

There are a couple of possible exceptions to this:

1. Where an independent expert needs to be instructed by the parties on a joint basis to provide evidence to assist the parties and the court, the cost is usually shared equally between all parties. If a non-legally represented party is not in a position to contribute towards this cost, then the court may be prepared to make an order excluding that party from needing to pay.

2. It is open to the court to order costs to be paid by a party in exceptional circumstances (for example, because of a party's conduct in the proceedings). However, this happens very rarely in Court of Protection proceedings.