

Family Factsheets

Lasting Powers of Attorney and Deputyship

When your son or daughter approaches adulthood you may want to think about applying for Lasting Powers of Attorney in order to make sure that the process is in place for making decisions on their behalf if they lose the capacity to do so. This factsheet also explains what happens when a court appoints a Deputy. It can be a confusing process and we suggest you read the glossary at the back of this Factsheet first. We advise you talk to a trusted friend, member of the hospice team or GP if you are struggling with the process. We invited the Office of the Public Guardian (OPG) to put together this factsheet to answer some key questions.

What is the Office of the Public Guardian (OPG)?

The OPG helps people in England and Wales to stay in control of decisions about their health and finance and make important decisions for others who cannot decide for themselves. OPG is responsible for:

- taking action where there are concerns about an attorney, deputy or guardian
- registering lasting and enduring powers of attorney, so that people can choose who they want to make decisions for them
- maintaining the registers of attorneys, deputies and guardians
- supervising deputies and guardians appointed by the courts, and making sure they carry out their legal duties
- looking into reports of abuse against registered attorneys, deputies or guardians

Glossary of Terms

We have provided a glossary of some of the terms used in this factsheet which may be unfamiliar to you.

Appointee: A person regulated by the Department of Work and Pensions who has the responsibility to act in the person's best interests by managing their welfare benefits in order to ensure that everyday bills are paid and to report any changes in circumstances to the DWP.

Attorney: The person chosen to act for someone else on an enduring power of attorney (EPA) or lasting power of attorney (LPA).

Best interests: Any decisions made, or actions taken, on behalf of someone who has lost mental capacity must be in their best interests. There are standard steps to follow when deciding on someone's best interests. These are set out in Section 2 of the Mental Capacity Act (MCA) code of practice.

Client: The person a deputy has been appointed to act on behalf of.

Deputy: A person appointed by the Court of Protection to support someone (the client) who lacks the mental capacity to make certain decisions themselves. A deputy is appointed if someone loses mental capacity and does not have a lasting power of attorney in place.

Donor: Someone who has created either an enduring or lasting power of attorney. They are referred to as donors because they have donated certain decision-making powers to someone else.

Mental capacity: The ability to make a specific decision at the time that the decision needs to be made. You can find a legal definition of mental capacity in section 2 of the MCA.

User: Anyone who makes use of OPG services. This could be LPA or EPA donors, attorneys, deputies, clients, partners or intermediaries. It also covers staff using OPG systems.

Court of protection: The Court of Protection is a court that deals with decisions or actions taken under the Mental Capacity Act.

Deprivation of Liberty Safeguards (DoLS): A Deprivation of Liberty Safeguard (DoLS) is part of the framework introduced by the Mental Capacity Act 2005 (MCA). A person who is being deprived of their liberty as a result of their care needs is entitled to legal safeguards. This is to make sure that the restrictions in place to keep them safe are appropriate and proportionate.

What are Lasting Powers of Attorney?

A lasting power of attorney (LPA) is a legal document that lets someone ('the donor') choose one or more trusted people ('attorneys') to make decisions on their behalf, should they lose the capacity to do so. The attorney/s does not have to be a family member.

There are two types of LPA:

- property and financial affairs, and
- health and welfare.

Visit the [Your Voice, Your Decision campaign site](#) to find out more information on the two types of LPAs.

How can someone create a Lasting Power of Attorney?

An LPA must be made by the donor themselves, though they can be supported to do so. To make an LPA a donor must:

- be over 18 years of age
- have the mental capacity to do so i.e. they must understand the information and the decisions they are making
- live in in England or Wales.

Residents in Scotland and Northern Ireland have their own systems. Find out more:

[Scotland](#)
[Northern Ireland](#)

What are the benefits of having an LPA in place?

Having an LPA means that the donor can have decisions made for them (which reflect their present wishes and feelings) by someone they trust, should they be unable to make those decisions for themselves due to loss of mental capacity.

For example, with a property and finance LPA, an attorney can manage bank accounts, pay household bills, and deal with pensions.

With a health and welfare LPA, the donor may have specific wishes about healthcare which they can rely on their attorneys to fulfil.

If a person loses mental capacity and there is no LPA in place, then they can apply for a deputyship.

What is the process of applying for an LPA?

Firstly, the donor needs to choose which LPA they want to make, either health and welfare, property and finance, or both.

The donor then needs to choose their attorneys – they can have more than one and need to decide how multiple attorneys can act if they need to do so.

The attorney must be over 18 and could be a relative, a friend, a professional or partner. It is important for the donor to have those discussions with their attorneys, so they are aware of the role and duties of an attorney.

If there is more than one attorney, the donor must decide if they make decisions:

- together or separately (jointly and severally) – which means attorneys can make decisions on their own, or with other attorneys
- together (jointly) – which means all the attorneys must agree on the decision. Attorneys who are appointed jointly must all agree, or they cannot make the decision
- jointly in respect of some matters and jointly and severally in respect of others, which means that there are some decisions which can only be made jointly and agreed unanimously, whilst others can be made separately by the deputies as set out in the deputyship order

An LPA can be made online or using paper forms, but either way, the donor needs to get other people to sign the forms in person, including attorneys and witnesses. Information is available here: [Information on making an LPA and further guidance on completing the LPA forms](#).

The forms you initially need to complete are called COP forms (standing for Court of Protection). You will need to start with COP 1, which you can access [here](#).

Once the forms are completed, the LPA needs to be signed before they are sent to the Office of the Public Guardian (OPG) to be registered. The donor must sign the original document, along with the attorneys, witnesses and a certificate provider.

A certificate provider is someone who confirms the donor is making the LPA by choice and they understand what they're doing. Both witnesses and certificate providers must be 18 or over. Attorneys can witness each other's signature but cannot witness the donor signature or sign as the certificate provider.

Once the LPA is completed and signed, the application needs to be sent to the OPG. The donor can apply to register the LPA if they're able to make their own decisions or the attorney can apply to register it for them, and the donor notified. The original forms need to be sent to OPG along with the fee. It costs £82 to register each LPA unless a reduction or exemption is applicable.

What are the proposed changes being introduced?

The Ministry of Justice (MoJ) and OPG are exploring options to modernise the LPA process to improve safeguards, increase access and achieve sustainability for the OPG while keeping LPAs affordable for all.

In order to achieve these aims, legislative change is required. Any changes the OPG take forward following consultation will be based on the evidence available, including responses to the consultation. At the moment there is not a set timeline for when any changes will come into effect.

What is a Deputyship and the role of the Court of Protection in Deputyships?

Deputy court orders are the written confirmation of directions issued by a Judge giving one or more people (called 'deputies') authority to make decisions for someone (the 'client' or 'person') who lacks mental capacity. A deputyship order therefore enables a deputy to act for the client or person. Deputy court orders can be issued for:

- Property and financial affairs
- Personal welfare
- Both property and financial affairs and personal welfare

What is the role of the Mental Capacity Act when applying for Deputyship?

The Mental Capacity Act 2005 (MCA) is the legal framework which sets out how a deputy is appointed.

The Mental Capacity Act Code of Practice is an accompanying guidance which deputies must have regard to and follow when carrying out the duties of their role. One of the key principles is that any duty or decision must be in the best interests of the client. The MCA also defines what lack of mental capacity means and sets out five rules about mental capacity that deputies must follow:

- the person should make decisions for themselves unless you can show that they're unable to make them
- you need to give the person all the help they need to make a decision before deciding they can't make that decision
- if the person makes what seems to be an unwise or odd decision, that doesn't mean they lack capacity to make it. (Many people make unwise decisions from time to time.)
- any decision you make for the person must be in their best interests
- anything you do on behalf of a person who lacks capacity should restrict their basic rights as little as possible

Why would a deputy need to be appointed?

A deputy may need to be appointed if the client lacks mental capacity and cannot make decisions for themselves, and an LPA is not in place. Once a deputyship order is issued, it allows the deputy to act in the best interest for the client. However, it must be noted there are limitations. For example, the deputy cannot demand treatment that a medical team does not believe is in the person's best interest.

Who can be appointed a deputy?

Anyone over 18 can apply to the Court of Protection to become the deputy for someone who needs help making decisions, although applying doesn't mean they'll automatically be chosen. In some instances, the Court of Protection can appoint a panel deputy.

– from a list of approved law firms, charities and unregulated deputies if no one else is available. They can also be a professional deputy or a public authority deputy.

If someone wants to become a property and affairs deputy, they need to have the skills to make financial decisions for someone else. The court can appoint two or more deputies for the same person. When applying, the court needs to know how deputies will make decisions if there is more than one, this is either:

- together (joint deputyship), which means all the deputies must agree on the decision
- together or separately ('jointly and severally'), which means deputies can make decisions on their own or with other deputies
- jointly in respect of some matters and jointly and severally in respect of others. This means that there are some decisions which can only be made jointly and agreed unanimously, whilst others can be made separately by the deputies as set out in the deputyship order.

How is a deputy appointed?

Once it is checked that all requirements are met to become a deputy, application forms need to be sent to the Court of Protection and the application fee is paid. The Court of Protection will then check:

- whether the person needs a deputy or some other kind of help
- there are no objections to the appointment of the deputy

The appointment of a deputy incurs an annual fee, so if the person is only in receipt of benefits and owns no property or assets it may be better to have an appointee who is regulated by the Department of Work and Pensions to oversee a person's welfare benefits.

You can find out about the role of an appointee here.

When/if a deputy is appointed, OPG will help carry out the required responsibilities.

Is there a cost?

The cost for each LPA is £82. If both property and finance and health and welfare LPAs are made, then this would be £164 in total.

These costs are based on the user completing and submitting the forms to OPG themselves. If you have complex financial affairs, you may want to seek legal advice and support when creating an LPA. It can be helpful to contact the Law Society to check the specialism of the solicitor before instructing them. However, do note that this can incur significant costs.

The application fee to become a deputy is £365. The fee needs to be paid twice if you're applying to become both types of deputy. You'll also need to pay £485 if the court decides your case needs a hearing.

The court will tell you when you need to pay this. After the deputy has been appointed, an annual supervision fee must be paid depending on what level of supervision the deputyship needs.

Fees include:

- £320 for general supervision
- £35 for minimal supervision – this applies to some property and affairs deputies managing less than £21,000

A £100 assessment fee is also required if you're a new deputy.

The OPG will tell you how and when to pay your assessment and supervision fees. For all fees associated with deputyships, the fees should be paid from the funds of the person who has lost capacity, rather than the deputy themselves. Remissions and exemptions also apply to deputyship fees.

You can apply for a reduction if you earn less than £12,000 per annum. You might also be able to apply for an exemption if you're on certain benefits, such as income support.

Is there help available with the LPA and Deputyship process? Do families have to pay for this help? Is there any financial support available for this?

Yes, there is help available with costs under a remissions and exemptions scheme.

- for LPAs, if the donor's annual income is less than £12,000 or they receive certain benefits, they can apply for an exemption or reduction of fees
- for deputyships, you can apply for an exemption or reduction of the fee if the person you're a deputy for gets certain benefits or has an annual income below £12,000

You might not have to pay a deputyship application fee depending on the type of deputy that you are applying to be and how much money you (or the person you're applying to be a deputy for) has.

Guidance is available online about [how to apply for remissions and exemptions](#).

Deputies will be supervised by the OPG which is authorised to contact deputies to check they are acting effectively and in the best interests of the person concerned. The OPG will also give advice and support.

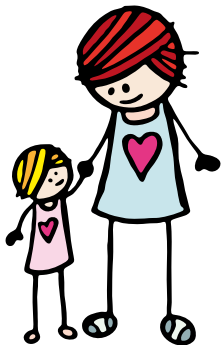
What can a deputy do?

The deputy will be sent a court order from the Court of Protection which includes information on what a deputy should do or what authority they have, whether it be general or specific. The Code of Practice sets out more details on what deputies cannot do.

When the deputy has this, they can start acting on the person's behalf. Deputies must submit a report to the Public Guardian each year explaining the decisions they've made as a deputy, if required to do so as part of their court order. For private individuals acting as deputy a surety bond will be required to act as an insurance to protect the client's funds. There is a podcast available online providing information on [acting as a deputy](#).

How long will the deputyship order last?

In most cases a deputy will continue to act in their role until their order is changed by the Court of Protection. It may be set up for a specific period of time, or it may come to an end due to the death of the person for whom they are acting. In a small number of cases the court will set an expiry date on the order.



Together for Families Helpline & Live Chat 10am-4pm,
Monday to Friday

0808 8088 100

info@togetherforshortlives.org.uk

www.togetherforshortlives.org.uk



Follow Together for Short Lives on Twitter @Tog4ShortLives



Like Together for Short Lives on Facebook at
www.facebook.com/togetherforshortlives



Follow Together for Short Lives on Instagram
@togetherforshortlives

Together for Short Lives is a registered charity in England and Wales (1144022) and Scotland (SC044139) and a company limited by guarantee (7783702). Published 10/22. Next review 10/23.