

Appointees, deputies and power of attorneys

When considering how best to support your relative in managing their own affairs, you will hear of different ways in which you can provide that support. This factsheet describes the three main formal routes to supporting your relative: appointeeship, deputyship and power of attorney.

Which formal route you choose will depend on a number of things, including:

- What your relative needs support with, for example whether it relates to benefits only.
- Whether your relative has mental capacity

Appointeeship

If your relative does not have the mental capacity to manage their own benefits or finds it difficult to do so (for example because they find it hard to fill in forms or manage financial information) then you can apply to the DWP to become their appointee. As the person's appointee you can claim and manage your relative's benefits on their behalf. You would also be able to access information from the DWP in relation to your relative and their benefits.

Once the DWP receives contact from you (more information below), they will arrange to visit your relative to assess if an appointee is needed, and whether you are a suitable appointee.

If your application to become your relative's appointee is successful, the DWP will send you documentation to confirm that you are formally your relative's appointee. You are not the appointee until you have received this form.

It is important to note that appointeeship relates to managing a person's benefits, and the small amount of savings that may be associated with receiving those benefits.

The following link provides information about how to become an appointee.

<https://www.gov.uk/become-appointee-for-someone-claiming-benefits>

Power of attorney

If you are granted a power of attorney, then you can act and access information on another person's behalf. The person granting the power of attorney has to have the mental capacity to understand the implications of what they are doing and the power will only come into effect in specific circumstances such as when the person is out of the

country – for an ordinary power of attorney; or if the person loses their mental capacity to make certain types of decisions – for a lasting power of attorney.

Power of attorney – mental capacity

Mental capacity means the ability to make or communicate specific decisions at the time they need to be made. To have mental capacity you must understand the decision you need to make, why you need to make it, and the likely outcome of your decision.

Some people will be able to make decisions about some things but not others. For example, they may be able to buy and cook food, but be unable to understand and arrange their home insurance. Alternatively, their ability to make decisions may fluctuate.

Needing more time to understand or communicate doesn't mean you lack mental capacity. Assumptions should not be made that just because someone has a certain condition or disability, that they lack capacity. For example, having dementia does not necessarily mean that someone is unable to make any decisions for themselves. Where someone is having difficulty communicating a decision, an attempt should always be made to overcome those difficulties and help the person decide for themselves.

However, if there does come a time when you're unable to make your own decisions, you will have lost mental capacity and someone else may need to make decisions for you.

These could be decisions about:

- finances - paying your mortgage, investing your savings or buying items you need
- health and care - what you should eat, or what type of medical treatment you should have.

Different types of power of attorney

It's important to be aware that there are different types of power of attorney and you may want to set up more than one. This factsheet will explain:

- Ordinary Power of Attorney
- Lasting Power of Attorney
- Enduring Power of Attorney

Where a person lacks capacity then the Deputyship rules will apply – see below.

Ordinary Power of Attorney

An Ordinary Power of Attorney allows one or more person, known as your attorney, to make financial decisions on your behalf. It is only valid while you still have mental capacity to make your own decisions. You may want to set one up if, for example:

- you need someone to act for you for a temporary period, such as when you're on holiday or in hospital
- you're finding it harder to get out and about to the bank or post office, or you want someone to be able to access your account for you
- you want someone to act for you while you're able to supervise their actions.

You can limit the power you give your attorney so that they can only deal with certain assets, for example, your bank account but not your home.

It's important to remember that an Ordinary Power of Attorney is only valid while you have mental capacity to make your own decisions. If you want someone to be able to act on your behalf if there comes a time when you don't have mental capacity to make your own decisions, you should consider a Lasting Power of Attorney.

Lasting Power of Attorney

A Lasting Power of Attorney (LPA) is a way of giving someone you trust, your attorney, the legal authority to make decisions on your behalf if you lose mental capacity at some point in the future, or if you no longer want to make decisions for yourself.

There are two types of LPA: an LPA for financial decisions and an LPA for health and care decisions.

LPA for financial decisions

An LPA for financial decisions can be used while you still have mental capacity or you can state that you only want it to come into force if you lose capacity.

An LPA for financial decisions can cover things such as:

- buying and selling property
- paying the mortgage
- investing money
- paying bills
- arranging repairs to property.

You can restrict the types of decisions your attorney can make, or let them make all decisions on your behalf.

If you're setting up an LPA for financial decisions, your attorney must keep accounts and make sure their money is kept separate from yours. You can ask for regular details of how much is spent and how much money you have. This offers you an extra layer of protection. These details can be sent to your solicitor or a family member if you lose capacity.

LPA for health and care decisions

This covers health and care decisions and can only be used once you have lost mental capacity. An attorney can generally make decisions about things such as:

- where you should live
- your medical care
- what you should eat
- who you should have contact with
- what kind of social activities you should take part in.

You can also give special permission for your attorney to make decisions about life-saving treatment.

Enduring Power of Attorney

Enduring Powers of Attorney (EPA) were replaced by LPAs in October 2007. However, if you made and signed an EPA before 1 October 2007, it should still be valid.

You might already be using an EPA without having registered it, so that someone can act on your behalf. This is fine, until you become unable to make your own decisions relating to financial and property matters. Once this happens, your attorney must register your EPA before they can take any further action on your behalf.

An EPA only covers decisions about your property and financial affairs; an attorney doesn't have power under an EPA to make decisions about your health and care. You might want to consider setting up an LPA for health and care decisions to work alongside the existing EPA.

Deputyship

If a person does not have the mental capacity to grant a power of attorney, then the Court of Protection can appoint a deputy to make decisions and receive information about a person on their behalf.

There are two types of deputies:

- A financial affairs and property deputy deals with a person's finances, such as bills, benefits and pension;
- A personal welfare deputy deals with decisions concerning and person's health and personal welfare.

You have to apply to the Court of Protection to become a deputy. The Court will assess your suitability to be a deputy before appointing you. It can sometimes be harder to be appointed as a personal welfare deputy than a financial affairs and property deputy.

There are fees associated with being a deputy which can be deducted from your relative's bank account, or there are certain exemptions depending on your circumstances.

<https://www.gov.uk/become-deputy/overview>

If you have been appointed by the Court of Protection to manage the affairs of a person who lacks capacity, you should be able to access that person's information on their behalf. You will need to provide the organisation with copies of the appropriate paperwork to show that you have the necessary authority.

If you have any queries about any of the above information, contact the Learning Disability Helpline on 0808 808 1111 (Monday to Friday, 08:00 – 18:00).

Learning Disability Helpline

0808 808 1111

helpline@mencap.org.uk

We hope that you have found this factsheet useful. Whilst you are here, we have a small favour to ask. More people are using our service than ever before. We can't keep up with demand. We don't want to turn people away, and we want to keep on developing more information resources like this factsheet, but we don't have enough money to expand. So you can see why we need to ask for your help. We know that our information and advice can make a real difference to the quality of life of the people we support. If people using our service could help to support us, our future would be much more secure.

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