



# Lasting Power of Attorney and Deputyship



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# Mental Capacity

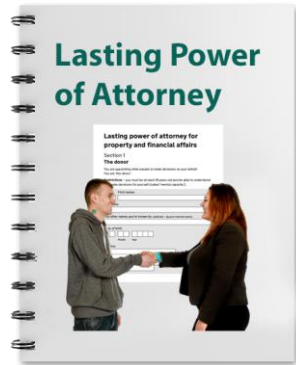
**Mental capacity** means you can

- understand information
- remember the information
- think about the information
- and then make a choice



Some people can make some decisions but not others, for example – a person might decide where they want to live but they may not understand how to sign a tenancy agreement

A person's mental capacity can change over time – on some days they may be able to make a decision, on other days they may not



# Lasting Power of Attorney (LPA)

A **Lasting Power of Attorney** is a legal document – it lets someone make decisions for you



The person who needs help is called the **donor** - the **donor** must have mental capacity when the LPA is made



The person who helps and makes decisions is called the **attorney** - **attorneys** must always act in the donor's best interests

The **Office of the Public Guardian** must check and approve the lasting power of attorney before it can be used



# There are 2 types of LPA

## 1 Homes and finance (money)

This can be used when the donor has capacity and they agree, or when the donor loses capacity

For example

- paying bills
- managing bank accounts
- looking after their home
- signing a tenancy agreement





## ② Health and welfare (care)



This is only used when the donor can't make decisions

For example

- choosing where the person lives
- agreeing to medical treatment
- daily care decisions (e.g. choosing what clothes to wear)





# Deputyship

The **Court of Protection** chooses a deputy to help someone who cannot make decisions

This happens when a person can't make decisions and does not have a Lasting Power of Attorney (LPA)

Family, friends or professionals can apply to be a deputy

A deputy can make decisions about

- money
- property
- and sometimes health and care

**The Office of the Public Guardian (OPG)** checks on deputies and makes sure they are doing their job well





# LPA and Deputyship differences

## Lasting Power Attorney

- a person chooses their attorney
- It is made while they have capacity
- It is quicker and cheaper
- the person keeps more control



## Deputyship

- the Court appoints a deputy
- it is used when a person does not have capacity
- It is more expensive
- The Office of the Public Guardian checks the deputyship every year
- There is a fee every year



# Who can be an attorney or deputy



- they must be **18** or older
- they must be someone you trust
- they can be family, friends or a professional
- they must act in the person's Best Interests
- they must keep the person's money separate and keep good records



# Things attorneys and deputies cannot do



- they cannot take the person's money



- Deputies cannot make choices that help them and not the person they support

- they cannot stop the person from seeing family or friends – unless it is unsafe



- they cannot ignore what the person wants

- they must follow the Mental Capacity Act 2005

# Attorneys and deputies must act in the person's Best Interests



They must always ask themselves **what would this person want?**

- think about what the person likes and wants
- talk to family, friends and carers to understand the person better



Choose the **least restrictive option** – this means, **do the thing that gives the person the most freedom and control**



Keep the person involved in decisions as much as possible

Write down important decisions so there is a clear record



# Your rights



You should be included in all decisions about your life

People must listen to what you want



You should be treated with respect

You can ask questions if you are not sure about something



You can have support to help you understand information



# How to get support

You can ask for support from

- family
- friends
- support workers
- social workers
- or advocates





# Safeguarding roles



## Office of the Public Guardian (OPG)

- registers Lasting Powers of Attorney
- checks and supervises deputies
- looks at worries if someone may not be acting correctly
- can ask the Court of Protection to remove an attorney or deputy if needed



## Court of Protection

- decides if a person has capacity
- can appoint deputies to help someone who cannot make decisions
- can make important decisions for a person
- can cancel or change a deputyship
- can make urgent decisions when needed