

Guide for People who want help dealing with their financial affairs

Information sheet F5

You may also find the following sheets useful:

- C1: Access to care services
- C2: Moving into a Care Home
- F1: Paying for residential and nursing care
- F2: Guide for people who pay for their own care home placement
- F3: Guide for people moving into a care home who have a property
- F4: Guide for Third Party contributions

This information sheet explains about:

- Some general information on the Office of the Public Guardian
- Some general information on the Court of Protection
- Some general information regarding Power of Attorneys
- Some general information regarding Deputies for Property and Affairs
- Some general information regarding Appointees
- What if there is no one else that can deal with an individual's finances (who lacks capacity to do this themselves)

The role of the Office of the Public Guardian (OPG)

The OPG is an agency with responsibilities that extend across England and Wales (separate arrangements exist for Scotland and for Northern Ireland).

It supports the Public Guardian in the registration of Enduring Powers of Attorney (EPA) and Lasting Powers of Attorney (LPA), and the supervision of deputies appointed by the Court of Protection.

It also helps attorneys and deputies to carry out their duties, and protects people who lack the mental capacity to make decisions for themselves. It works closely with other organisations to ensure that any allegations of abuse are fully investigated and acted on.

The OPG also has responsibility for mental capacity policy, and provides guidance to public, legal and health professionals.

Court Of Protection

The Court of Protection deals with decisions about the property and financial affairs of people lacking capacity to manage their own affairs. Under the Mental Capacity Act 2005 the new court also deals with serious decisions affecting healthcare and personal welfare matters. These were previously dealt with by the High Court under its inherent jurisdiction.

The Court of Protection is a superior court of record and is able to establish precedent (it can set examples for future cases) and build up expertise in all issues related to lack of capacity. It has the same powers, rights, privileges and authority as the High Court.

When reaching any decision, the court must apply all the statutory principles set out in section 1 of the Act. In particular, it must make a decision in the best interests of the person who lacks capacity to make the specific decision. There will usually be a fee for applications to the court.

Lasting Power of Attorneys (LPA) and Enduring Power of Attorney (EPA)

Sometimes one person will want to give another person authority to make a decision on their behalf. A power of attorney is a legal document that allows them to do so. Under a power of attorney, the chosen person (the attorney or donee) can make decisions that are as valid as one made by the person (the donor).

The Enduring Powers of Attorney Act 1985, Act introduced the Enduring Power of Attorney (EPA). An EPA allows an attorney to make decisions about property and financial affairs. An EPA can only be used if the donor lacks capacity to manage their own affairs. The provision to make new EPA's ceased on 30th September 2007, however those already in place remain as valid legal documents.

The Mental Capacity Act 2005 replaces the EPA with the Lasting Power of Attorney (LPA). It also increases the range of different types of decisions that people can authorise others to make on their behalf. As well as property and affairs (including financial matters), LPAs can also cover personal welfare (including healthcare and consent to medical treatment) for people who lack capacity to make such decisions for themselves.

A lasting power of attorney is a legal document that allows someone to choose other people who they want to make decisions on their behalf including when they lack mental capacity to make the decision themselves.

It is 'completed' while the person still has capacity. It cannot be used before it has been registered with the Office of the Public Guardian. It can be used immediately after registration unless the person making the LPA has included a restriction that means that it cannot be used until they have lost capacity.

There are two types of LPA:

- Property and financial affairs (allowing an attorney to make decisions about paying bills, dealing with the bank, collecting benefits, selling your house, etc.)
- Health and welfare (allowing decisions on treatment, care, medication, where you live, etc.)

Property and financial affairs LPA's can be used both before and after the Donor loses capacity but has to be registered to be used.

Please note that the above is only some basic guidance on the role of a Power of Attorney. This is a complex area and you are advised to look into this in further detail and you may want to seek independent legal advice. For further information, you must follow the information and links below

Deputyship for Property and Financial Affairs

The court will appoint a deputy to manage a person's property and affairs (including financial matters) if a person who lacks capacity to make decisions about property and affairs has not made an EPA or LPA. In these circumstances an application to the court would be to deal with the following:

- for dealing with cash assets over a specified amount that remain after any debts have been paid
- for selling a person's property, or

- where the person has a level of income or capital that the court thinks a deputy needs to manage.

Anybody considered for appointment as a property and affairs deputy will need to sign a declaration giving details of their circumstances and ability to manage financial affairs. The declaration will include details of the tasks and duties the deputy must carry out. A Deputy must act in the best interests of the person they are becoming Deputy for and they must abide by the principles of the Mental Capacity Act 2005 and the Code of Practice accompanying the Act.

People can apply to become a Deputy for Health and Welfare – these are usually for one off decisions. Please see the information and links below for further information regarding Health and Welfare Deputies.

This is only a very brief outline of the role of Deputies appointed by the Court of Protection. If you are looking to make an application, you must follow the information and links below. This is a complex area and you may wish to seek further independent advice before any application

Appointees

If the only income of a person who lacks capacity is social security benefits and they have no property or savings, there will usually be no need for a deputy to be appointed. This is because the person's benefits can be managed by an *appointee*

Please note that this will not apply in the case where someone has a property – in this instance you should be reading the guidance under LPA/Deputyship

You can apply for the right to deal with the benefits of someone who can't manage their own affairs because they're mentally incapable or severely disabled.

Only one appointee can act on behalf of someone who is entitled to benefits (the claimant) from the Department for Work and Pensions (DWP).

An appointee can be:

- an individual, e.g. a friend or relative
- an organisation or representative of an organisation, e.g. a solicitor or local council

Appointee's responsibilities:

As an appointee you're responsible for making and maintaining any benefit claims. You must:

- sign the benefit claim form
- tell the benefit office about any changes which affect how much the claimant gets
- spend the benefit (which is paid directly to you) in the claimant's best interests
- tell the benefit office if you stop being the appointee e.g., the claimant can now manage their own affairs
- If the benefit is overpaid, depending on the circumstances, you could be held responsible.

Appointees are expected to act in the person's best interests. If the court does appoint a property and affairs deputy for someone who has an appointee, then the deputy would take over dealing with the clients' finances. As above appointees are limited in what they are able to do. For further information on becoming an appointee and the responsibilities involved; please follow the links below

What if there is no one else that can deal with an individual's finances (who lacks capacity to do this themselves)

There are situations where the Local Authority can deal with an individual's finances by making an application to the Court of Protection to become Deputy for Property and Affairs. There are certain criteria that should apply in order for the Local Authority to take on this role;

- The individual must have been assessed as lacking capacity to deal with their finances, using the criteria laid down in the Mental Capacity Act 2005 and the Code of Practice.
- There must be no appropriate family able or willing to deal
- If the individual has significant or complex capital assets – it may be appropriate for a solicitor or Panel Deputy to deal.
- Anyone wishing to discuss this matter further needs to speak to the clients' social worker in the first instance and they will then discuss this further with the Clients Finance Team.
- Social Workers who require further information regarding this matter can follow the guidelines on the internal website. The referral must be agreed by the Clients Finance Team before any Court documentation is completed

Further information relating to dealing with someone's finances

If you are reading this leaflet in conjunction with Information sheet F3 – please be aware that to apply for a deferred payment, if a client does not have capacity to deal with a deferred payment, then in order to sign on behalf of the client that person must have legal authority to do so. Please also note that if a client lacks capacity then it is a requirement that someone dealing with their finances are acting under the relevant legal authority to do so. If you sign our financial paperwork as dealing with a person's finances, then we will expect to see the relevant paperwork advising you have authority to do so.

Useful links

- Office of the Public Guardian - <http://www.justice.gov.uk/about/opg>
Phone 0300 456 0300
- Court of Protection - <https://www.gov.uk/court-of-protection>
Phone 0300 456 4600
- Power of Attorney forms - <http://www.justice.gov.uk/forms/opg/lasting-power-of-attorney>
Phone 0300 456 0300
- Become a Court Appointed Deputy - <https://www.gov.uk/become-deputy/overview>
Phone 0300 456 4600
- Become an appointee for someone claiming benefit - www.gov.uk/become-appointee-for-someone-claiming-benefits
State Pension enquiries: 08456 060 265
- The Law Society – find a law firm - www.lawsociety.org.uk/find-a-solicitor
Phone 020 7242 1222

Useful phone numbers

Age UK Bath & North East Somerset – independent information and advocacy for older people and their carers:

Phone: 01225 466135

Email: reception@ageukbanes.co.uk

Website: <http://www.ageuk.org.uk/bathandnortheastsomerset>

Carers' Centre Bath & North East Somerset - Expert help is available for carers who are struggling emotionally with their caring role, feeling isolated and in need of a friend or needing support when dealing with health and care planning:

Phone: 01761 431388

Email: info@banescarerscentre.org.uk

Website: www.banescarerscentre.org.uk

An **Emergency Duty Team** is available to help deal with crises in peoples' care, or with any welfare emergency involving adults, children and families that occurs outside normal office hours

Phone: 01454 615165

This information can be made available in other languages or formats (including large print, Braille, on CD) on request. Contact the Information Officer on 01225 477983 or email information_officer@bathnes.gov.uk

Information sheet created Jan 2014

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