

# Appointeeship, Deputyship, Lasting Power of Attorney

**A brief overview**

# Appointee

- This is a very limited role and probably one many of you already have.
- It concerns benefits and being the person to manage benefits and communication with the Department of Work and Pensions (DWP) on behalf of someone who lacks capacity to do so.
- There is no external monitoring.
- An appointee must abide by the rules set out by the DWP.
- There is no fee to become an appointee.
- Most of the time this is all you will need to be able to act on your child's behalf concerning their finances.

# Deputy

- To become a court appointed Deputy for someone you must be over 18 and the person concerned must lack capacity (under the Mental Capacity Act) to make financial decisions. They must also lack capacity to be able to decide to give you financial powers.
- There are two types of Deputy – financial and welfare
- The application to the court can take several months to complete
- A person will need to have a formal Mental Capacity Assessment that demonstrates they lack capacity for the purposes of the order.

# Financial deputyship

- Manage money from sources other than benefits as well as benefits
- Accountable to the court of protection and overseen by the office of the public guardian
- Annual report required re decisions made, income and expenditure
- Deputyship for property and affairs can be applied for from age 16.
- There are fees for the cost of applying and ongoing supervision by the office of the public guardian (payable by the person)
- Reasonable expenses can be claimed but a deputy cannot be paid.
- There is no automatic right to sign a tenancy agreement and this must be applied for separately to the court of protection in the same way an appointee can apply to sign a tenancy.

# Health and Welfare Deputyship

- This gives responsibility for making decisions about medical treatment and how a person is cared for
- In most cases deputyship is not required as decisions can be made applying the 5 main principles of the Mental Capacity Act and by way of a Best Interest Decision
- Where health and welfare deputyship might be required it will be for
  - A particularly complex decision
  - There is dispute about a decision
  - A person needs ongoing decision making, i.e. regular significant decisions relating to the health and welfare
  - BUT it must be remembered that any decision must still adhere to the Mental Capacity Act

# Power of Attorney

- The person must have capacity to agree to Lasting Power of Attorney
- They select who they would like to act on their behalf if they lose mental capacity in the future
- As with deputyship there is LPA for health and welfare and for finance
- Health and Welfare LPA gives your attorney the ability to make decisions about your personal care and daily routine, medical care, moving into a care home and life sustaining treatment
- Finance LPA gives your attorney the ability to manage your bank account, sell your home, pay your bills and to collect benefits or a pension

# 5 Main Principles of Mental Capacity

- 1 – A Person is assumed to have capacity unless it is proven that they lack capacity
- 2 – A person is not to be treated as unable to make a decision until all reasonable practicable steps have been taken to give them the opportunity to demonstrate capacity
- 3 – A person should not be treated as though they can't make a decision just because that decision is unwise
- 4 – Any decisions made on a person's behalf must be in their best interests
- 5 – Any decision made must be the least restrictive option

# Office of the public guardian

- Helps people stay in control about decisions relating to their health and finance
- They help with LPA and Deputyship
- If there are concerns about a deputy or attorney they will take action to resolve
- They supervise deputies to ensure that they are fulfilling their role correctly
- 0300 456 0300 or email [customerservices@publicguardian.gov.uk](mailto:customerservices@publicguardian.gov.uk)



# Further information

- <https://www.gov.uk/become-deputy>
- <https://publicguardian.blog.gov.uk/2021/09/29/applying-to-become-a-deputy/?msclkid=7037626aa93011ecacc090679d625415>
- <https://www.gov.uk/government/publications/deputy-guidance-how-to-carry-out-your-duties/sd4-how-to-be-a-health-and-welfare-deputy-web-version?msclkid=83095083a93411ecae3340b8ae90fe60>
- <https://www.gov.uk/power-of-attorney?msclkid=0aa54a5fa93511ec82372483d90354a3>
- <https://www.gov.uk/government/organisations/office-of-the-public-guardian/about>
- <https://solicitors.lawsociety.org.uk/>