

Support for Attorneys and Deputies

Attorneys and Deputies are people who are authorised to make decisions on behalf of another person. We have a dedicated team who can help you understand and manage your responsibilities as an attorney or deputy.

We have set out below answers to a few of the questions we are regularly asked about these roles.

If you have a specific question about your situation, contact a member of the team.

When do attorneys under a Lasting Power of Attorney need to start acting?

If the Lasting Power of Attorney (LPA) has not been registered with the Office of the Public Guardian (OPG), you will have no legal powers. The person who made the document (the donor) can register the LPA while he or she is mentally capable or the attorney can apply to register the LPA at any time.

There is no power to make any decision for the donor under the LPA during the registration process. If the LPA has been registered but not used for some time, you should tell the OPG when you begin to act under it, so that you can be sent relevant, up-to-date information about the working of LPAs.

Once the LPA has been registered with the OPG, and provided it is unrestricted, you will be able to act for the donor for the rest of their life (as long as the power is not revoked).

You will be able to act in the case of a registered LPA for property and financial affairs where the donor consents and the document specifically allows it to be used while the donor retains mental capacity, or alternatively because they have lost the capacity to deal with their property and affairs in whole or in part.

In the case of a registered LPA for health and welfare, an attorney is able to act only where the donor lacks mental capacity to make health and welfare decisions.

When do attorneys under an Enduring Power of Attorney need to start acting?

If you believe that the donor has lost mental capacity to look after their own financial affairs, then the attorneys are under an obligation to register the Enduring Power of Attorney (EPA) with the Office of the Public Guardian. Once the EPA has been registered, you will be able to act for the donor for the rest of his or her life.

There is also an option to act for the donor while they retain capacity, with their consent and prior to the registration of the EPA.

When do deputies need to start acting?

If you have been appointed as a deputy for someone, this is because the Court of Protection has deemed the person to lack capacity to make certain decisions for themselves. You will be under an obligation to start acting for the person straight away.

What actions can a financial affairs attorney or deputy make?

You will be able to do anything the donor could have done in relation to their finances and property, provided there are no restrictions which provides your authority (the LPA or Deputy Order). in the document. This might include:

- Buying or selling property
- Opening, closing or operating any bank, building society or other account
- Giving access to the donor's financial information
- Claiming, receiving and using (on the donor's behalf) all benefits, pensions, allowances and rebates (unless the Department for Work and Pensions has already appointed someone and everyone is happy for this to continue)
- Receiving any income, inheritance or other entitlement on behalf of the donor
- Dealing with the donor's tax affairs
- Paying the donor's mortgage, rent and household expenses
- Insuring, maintaining and repairing the donor's property
- Investing the donor's savings
- Making limited gifts on the donor's behalf
- Paying for private medical care and residential care or nursing home fees
- Applying for any entitlement to funding for NHS care, social care or adaptations
- Using the donor's money to buy a vehicle or any equipment or other help they need
- Repaying interest and capital on any loan taken out by the donor.

When acting in my role as an attorney or deputy, what do I need to consider?

When acting as an attorney or deputy, you must follow the principles set out in section one of the Mental Capacity Act 2005 and its Code of Practice.

These principles will determine how you act and support the person to make a decision. The principles are:

Principle 1 - It should be assumed that everyone has capacity to make their own decisions, unless it is proved otherwise.

Principle 2 - A person should have all the help and support possible to make and communicate their own decision before anyone concludes that they lack capacity to make their own decision.

Principle 3 - A person should not be treated as lacking capacity just because they make an unwise decision.

Principle 4 - Actions or decisions carried out on behalf of someone who lacks capacity must be in their best interests.

Principle 5 - Actions or decisions carried out on behalf of someone who lacks capacity should limit their rights and freedom of action as little as possible.

Will I be supervised in my role?

The powers of a deputy are very similar to those of an attorney, but the supervision regime is very different.

An attorney faces no proactive scrutiny unless the donor had requested it in the LPA document, or complaints are made about the attorney to the OPG. Whereas deputies are under an obligation to report to the OPG on an annual basis to detail the funds that they have spent, and the decisions which they have made. The OPG will scrutinise the accounts and provide regular support and guidance to the deputy.

Meet our team



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