

Mental Capacity

Factsheet



What is mental capacity?

Every day we make decisions about lots of things in our lives. The ability to make specific decisions is called **mental capacity**. Some people have difficulties making decisions either some or all of the time. The reason for this could be because they have:

- Dementia
- A mental health problem
- A brain injury or stroke
- A learning disability
- Or for some other reason

There is a law to help and support people when they are unable to make decisions (whether that's some or all of the time). It means people must be supported to make their own decisions where possible and it gives guidance to carers on how to make good decisions for the person if they cannot do so themselves. This is called the Mental Capacity Act. It also enables people to plan ahead for a time when they may lose capacity.

If you are helping a relative or friend to manage their financial affairs because they are no longer able to do this themselves, you must get the proper legal authority.

This factsheet provides information on how to do this. For example, a husband may normally manage the couple's finances with benefits being paid into a joint account. If the wife becomes incapable then the husband must seek the legal authority to manage his wife's finances.

There are a number of ways in which someone can be given the authority to make decisions about money matters on behalf of someone who lacks capacity to make these decisions for themselves.

Appointee

You should apply to become an appointee to manage state benefits such as retirement pension and attendance allowance.

An appointee is the person who is appointed by the Department for Works and Pensions (DWP), to act on behalf of someone who is receiving state benefits and is unable to manage their benefit affairs because of mental incapacity (or severe physical disability).

There is no requirement for medical or professional evidence but a representative of DWP will usually visit the benefits claimant to satisfy themselves that they are unable to manage their finances and to assess the suitability of the proposed appointee. The appointee's powers are legally limited to state benefits.

To become an appointee, you should contact your local DWP office and tell them that you want to manage the benefits of your relative/friend because they are no longer capable of doing it themselves. If you live in County Durham, please contact The Pension Service on telephone number 08007317898 or 08007310469.

The DWP will visit you as the person wishing to be the appointee and complete the appointee form (BF56). They

will also visit the person you want to be appointee for. As an appointee you will be asked about the bank account you want the benefits to be paid into. If you are accepted as the appointee you will be given a form BF57 to confirm your appointment.

As an appointee you can only manage the DWP benefits. If as an appointee you want to manage other money and bank accounts, you will need to take further action.

Enduring Power of Attorney (EPA)

An EPA allows people to choose and appoint someone (an attorney) to manage their financial affairs. It may say that the attorney can only act if the person has lost the capacity to manage their own affairs. If this is the case, then the EPA must be registered with the Office of the Public Guardian.

An EPA had to have been created before October 2007. An EPA can still be registered after 1 October 2007, but no new EPAs can now be created.

Lasting Power of Attorney (LPA)

An LPA allows people to choose and appoint someone (called an attorney) to make financial decisions if in the future they lack capacity to make these decisions for themselves. LPA forms have to be certified and then registered (for a fee) with the Office of the Public Guardian, before they can legally be used, unregistered LPAs don't give any powers to the attorney.

Forms to make and register an LPA are available from the Office of the Public Guardian (where you can also get guidance on filling in the forms) and from legal stationers. They are all downloadable from www.justice.gov.uk/forms/opg

A person can register their LPA with the Office of the Public Guardian while they have capacity or the attorney can register it when capacity is lost. Until it is registered it does not give the attorney any powers to take decisions.

Following registration the attorney can then manage the person's financial affairs in line with the powers given in the LPA.

Council officers, in their official capacity, are not permitted to act as an attorney for a service user.

Deputy

If the person you care for has not appointed or is unable to appoint an attorney, then you may need to apply to the Court of Protection to be appointed as a **deputy**.

A deputy is a person appointed by the Court of Protection to deal with a specific issue or range of issues to help a person who lacks capacity and who has not made an EPA or LPA with the necessary powers.

Finance deputies are appointed to look after the finances of the people who lack capacity and who need to make a range of financial decisions.

Application forms are available from the Office of the Public Guardian, and fees are charged for the process. You can also get guidance on filling in the forms. They are all downloadable from www.justice.gov.uk/forms/opg

The Court will decide whether it thinks you are suitable to be a deputy. In most cases the application can be decided on the information given in the forms, without any formal hearing. The Office of the Public Guardian is responsible for supervising and supporting deputies. There are fees for the costs of the application process and for ongoing supervision and these are recoverable from the resources of the person whose finances are being looked after.

We can act as a deputy when there is no one else able or willing to take on the role.

Deputy and Appointee Team

We have a Deputy and Appointee Team (DAT) that can manage the financial affairs of people who do not have the mental capacity to look after their own affairs and have nobody else able to take on the role (for example a family member or close friend). The Deputy and Appointee Team will only take on a referral in this instance.

We can:

- Provide advice and guidance to our service users and their families on applying to be an appointee or deputy or LPA
- Apply to DWP to be made a corporate appointee for an individual
- Apply to the Court of Protection to be made finance deputy **and charges for this service will apply**
- Open a bank account which will be managed by the team on behalf of a service user
- Pay bills (from service user funds)
- Ensure service users have enough money for their day to day needs
- Deal with DWP and/or Court of Protection/Office of the Public Guardian when necessary

We can not:

- Manage the financial affairs of anyone who is mentally capable of doing this for themselves or who has a family member or other representative that is able to do so.
- Physically deliver cash directly to service users although arrangements will be made with carers to deliver cash
- Give debt or money management advice – an agency such as Citizens Advice Bureau may be able to help
- Get involved in family conflict

We can help people who can receive help will have been assessed by a social worker/care coordinator to confirm that they do not have the mental capacity to deal with their own finances as part of the normal care and support assessment process and there is no one willing or able to help them.

Useful contacts

Deputy and Appointee Team

Tel: 03000 268 219

Pension Service

Tel: 0800 731 0469/0800 731 0464

www.thepensionservice.gov.uk

Office of the Public Guardian

Tel: 0300 456 0300

www.justice.gov.uk/about/opg

Citizens Advice Bureau

See Yellow Pages for details of local offices

www.citizensadvice.org.uk



locate

Care and support in County Durham

This free online resource provides a wealth of information and services making it easier for you to make plans now and in the future.

www.durhamlocate.org.uk

Please ask us if you would like this document summarised in another language or format.

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