

Making decisions

Carers often have to make decisions for the people they care for including looking after their money. The law aims to protect people who cannot make decisions.

Being an Agent

You can be appointed as an Agent if the person you care for needs help collecting their benefits perhaps because they are ill or have a disability. Benefits are now paid directly into a bank account or Post Office card account. A second card can be issued for a Post Office card account so that you can collect money on behalf of the person for whom you care. You would need to contact the bank or building society regarding *their* types of accounts and *their* rules about the withdrawal of cash by a second person.

Being an Appointee

An Appointee has greater responsibility for the finances of the person they care for than an Agent. An appointee is not only responsible for collecting benefits, but also receives payments in their own name on behalf of the person they care for and must ensure that the money is used appropriately for their welfare. To become either an agent or appointee you need to apply in writing to the Department of Work and Pensions.

Mental Capacity Act 2005

This new law came into force during 2007. The Act supports people in making their own decisions about their finances and their health and welfare. It aims to protect people who lack the capacity to make particular decisions. There is guidance on how to assess whether a person lacks capacity and is unable to make decisions and how to make decisions for someone else which are considered to be in their best interests.

The Act introduces two new Lasting Powers of Attorney replacing the present system of Enduring Powers of Attorney.

Lasting Power of Attorney (LPA)

Lasting Power of Attorney enables someone who currently has mental capacity (the Donor) and can make decisions, to appoint another person (the Attorney) to make certain decisions about them, if, at some time they become unable to make decisions for themselves, (they lack capacity).

There are two types of Lasting Power of Attorney:

A property and affairs LPA makes decisions about financial matters. This is similar to the existing Enduring Power of Attorney. It can be used while the Donor is still able to make decisions (has capacity) unless the Donor specifies that it can't.

A personal welfare LPA is appointed to make decisions, which affect the Donor's health and personal welfare. For example, day to day decisions about the Donor, where they live or if they need to have an operation. This LPA can only be used once it has been decided that the Donor no longer has the capacity to make decisions on these issues.

If the Donor wants to make decisions about medical treatment, this can only refer to the refusal of life sustaining treatment and not about a request for particular treatment to either prolong or end life. For more information about Advance decisions and Living Wills, which look at medical treatment and how the Mental Capacity Act deals with them, please contact the Public Guardianship Office. Details are given below.

Enduring Power of Attorney (EPA)

If the person you care for already has an EPA, which was in place before this part of the new Act became law in October 2007, then this is still valid. A personal welfare LPA can be added to the EPA.

Ill Treatment and Wilful Neglect

Within the Mental Capacity Act, there is a new criminal offence of ill-treating and wilfully neglecting someone who lacks capacity. This offence can lead to imprisonment or a fine.

For further information and guidance for Carers and Professionals on the assessment for mental capacity, acting in a person's best interests and personal liability or responsibility when restraining someone who lacks capacity please contact the Public Guardianship Office.

The Court of Protection and the Public Guardianship Office

The Court of Protection deals with setting up and administering the system of Lasting Power of Attorney and resolving disputes.

The Public Guardianship Office provides information and advice about setting up Lasting Power of Attorneys, how much it will cost and resolving disputes.

The information for this factsheet is taken from guidance provided by the Public Guardianship Office and is not a full statement or interpretation of the law. For further information about the Act and guidance leaflets please contact:

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