Bolton Council

Power of Attorney, Deputyship and Appointeeship Guidance

Adult Social Care

Contents

Introduction

This guidance provides information on the legal frameworks that enable others to act on behalf of adults who may lack the capacity to manage their own affairs. It explains the roles and responsibilities associated with power of attorney, deputyship, and appointeeship, and outlines when and how these arrangements apply.

The document aims to:

- Define each arrangement and highlight key differences.
- Explain the process of applying for an Appointeeship
- Provide practical steps for verifying legal authority and recording evidence.
- Offer guidance on best practice, safeguarding considerations, and compliance with the Mental Capacity Act 2005.

Deciding Whether an Individual Has Mental Capacity to Manage Their Own Finances

Decisions about an individual’s mental capacity should never be made by a single staff member. A robust assessment requires a multi-disciplinary approach, involving social care, medical, and legal professionals to ensure accuracy and compliance with the Mental Capacity Act.

The decision about a person lacking mental capacity should specifically relate to their ability to manage their finances. It should not be assumed that because a person has mental capacity or lack of mental capacity with respect to one area of their life, that it will equate to another area of their life.

Staff should be aware that if there is any dispute regarding an individual’s mental capacity to make a decision about managing their financial affairs, then this would have to be resolved ultimately by a court of law.

If an individual does not have mental capacity to manage their finances, they cannot:

- Set up or manage direct debits and standing orders for recurring payments
- Borrow money, such as taking out loans or overdrafts, or sign agreements for credit
- Use debit or credit cards, whether in person or via contactless
- Access bank or building society accounts, including online and mobile banking platforms to open bank accounts

- Take any actions or decisions relating to their money or property or make decisions relating to gifting their assets

If a person does not have capacity to manage their finances, they may already have a power of attorney in place. If a person does not have a power of attorney, no one has authority to manage their finances until a deputy is appointed by the Court of Protection, or an appointeeship is in place to manage benefits via the Department for Work and Pensions

Power of attorney

When an individual creates a Power of Attorney (POA) , they formally appoint one or more people to act on their behalf. The person granting this authority is known as the 'donor', while the appointed individual is called the 'attorney'.

To grant a power of attorney, the donor must have capacity to make the decision for themselves and be 18 years of age or older. A power of attorney gives the attorney the legal authority to make the relevant decision and deal with third parties, such as banks or local authorities, on the behalf of the donor.

Different types of power of attorney give the attorney different decision-making powers to act on behalf of the donor. For example, where they should live, or whether they should see a doctor. There are three types of power of attorney to be aware of: lasting power of attorney, enduring power of attorney, and ordinary power of attorney.

1) Lasting Power of Attorney

A lasting power of attorney (LPA) is a legal document that lets a donor appoint others to support them to make decisions or, make decisions on their behalf. The lasting power of attorney must be registered with the Office of the Public Guardian before attorneys can start making decisions.

A donor can appoint more than one attorney. Where there is more than one attorney they must act either 'jointly' or 'jointly and severally.' Severally means separately or individually. To act 'jointly' attorneys must always make decisions together on all affairs. Joint and several attorneys can act together but may also act independently if they wish.

Companies and organisations can use an online service to check who the attorneys are on a valid lasting power of attorney.

Any action taken by any attorney alone is as valid as if they were the only attorney or are appointed on a joint and several bases. However, if there was a significant disagreement between the joint and several attorneys regarding a complex situation / significant decision, a Court of Protection application may need to be made by them to resolve the matter.

There are two types of lasting power of attorney. The responsibilities will vary depending on whether the attorney[s] are the donor's:

1) LPA for Property and Finance which would appoint property, and financial affairs attorney(s) and/or

2) LPA for Health and Welfare which would appoint health and welfare attorney(s).

These lasting power of attorney roles and responsibilities are separate. People may apply for one, or both, depending on their circumstances. Attorneys can only make decisions related to the type of power of attorney that they have been appointed under, by the donors.

A lasting power of attorney for property and affairs comes into effect as soon as it is registered regardless of mental capacity (unless the LPA specifies otherwise), whereas a person with LPA for health and welfare can only decide on behalf of someone who lacks capacity to decide for themselves.

An attorney can be removed by the donor as long as the donor has mental capacity and the LPA has been registered. The appointed attorney can choose to cease acting under the LPA themselves by renouncing their role, if they have the mental capacity to do so. For more information on Power of Attorney, https://www.gov.uk/manage-lasting-power-attorney

2) Enduring Power of Attorney

Before 1 October 2007, individuals could create an Enduring Power of Attorney (EPA) to manage their property and financial affairs. While new EPAs can no longer be made, any EPA created before this date remains valid. However, if the donor has been assessed as lacking capacity to manage their affairs, the EPA must be registered with the Office of the Public Guardian (OPG) before it can be used.

Any decisions made under an EPA must be made in the best interests of the donor and the donor should be consulted before making a decision on their behalf when possible.

An EPA (as well as an LPA) will cease when the donor dies or when the attorney declares themselves as bankrupt or the attorney chooses to cease acting under the EPA.

Further information on EPAs can be found at Enduring power of attorney: acting as an attorney: Overview - GOV.UK

3) Ordinary Power of Attorney

An ordinary power of attorney is a short-term arrangement that only covers property and financial matters. It is often used when someone needs temporary help, such as during a hospital stay, a holiday, a property sale or if they find it difficult to go out.

This type of power of attorney only applies while the person (the donor) has mental capacity. It ends immediately if they are assessed as lacking capacity or when the type of decision or action that it is used to cover, comes to an end. Unlike other types, it does not need to be registered with any authority, but it may need to be prepared by a solicitor and may need to be signed by the donor and witnessed by an independent person, to create a valid legal document

If the donor has concerns about how their attorney is acting, they can cancel the arrangement at any time. To do this, they must issue a formal notice of revocation, witnessed by another person, and inform any financial institutions involved. In most cases, the Council would not need to be involved beyond providing advice or signposting.

Undertaking a capacity assessment before accepting that the attorney is the appropriate decision maker

Any person holding lasting power of attorney is bound by the Mental Capacity Act 2005 (including its statutory principles) as are professionals.

A lack of capacity for a specific decision must be evidenced in relation to health and welfare decisions before the person holding LPA for health and welfare can act on a person's behalf. For property and affairs decisions, the person holding LPA can make decisions on behalf of the donor as soon as it is registered, providing they have the person's consent, unless the LPA specifies that it only comes into effect once the person loses capacity.

For day-to-day decisions it may be appropriate for the attorney to do this by themselves, for more complex or contentious specific decisions, professional support to complete a capacity assessment is likely to be required.

If we are involved in the decision-making process, it should:

- Request evidence of the capacity assessment for the specific decision, or
- Complete the relevant capacity assessment, or
- Prompt or recommend that the appropriate professional carries out the assessment

It is important to note that mental capacity can be regained such as following a stroke or when the loss of capacity is on account of a hospital stay or treatment that is impacting capacity temporarily.

Further information on checking mental capacity can be found at Make decisions on behalf of someone: Checking mental capacity - GOV.UK

Decision making when someone lacks mental capacity and there is no power of attorney.

Department for Work and Pensions (DWP) appointeeship

A person can apply for the right to deal with the benefits of someone who cannot manage their own affairs because it has been proved they lack capacity to do so. Only one appointee can act on behalf of someone who is entitled to benefits from the Department of Work and Pensions. An appointee can be:

- an individual – e.g. a friend or relative
- an organisation or representative of an organisation – e.g. a solicitor, or the Council.

We may act as a corporate appointee for individuals who receive care and support from the Council and are unable to manage their own welfare benefits. As an appointee, we are responsible for making and maintaining any benefit claims and spending welfare benefits in the person's best interests.

We will only assume this role as a last resort, where no suitable family member or representative is available, or where there are concerns about financial abuse. Each referral must be considered individually to see if the Council acting as appointee is suitable.

Further information can be found at Become an appointee for someone claiming benefits - GOV.UK

It falls to a deputy or an attorney under an LPA for finances to manage benefits in the first instance. If this is not applicable, family members like the individuals' children, siblings or spouse may be suitable to act, if there are no concerns or history of financial abuse. If none of these options are available, then Bolton Council should be considered and the relevant team contacted with a referral for the individual.

Who determines the appointeeship

It is the Department for Work and Pensions that decides whether a benefit claimant lacks the capacity to manage their own income and identifies a suitable person to act on their behalf.

If we think an appointee is not managing someone's benefits properly, we will look at what steps to take from a safeguarding perspective. This could include asking the DWP to pause benefit payments while we follow safeguarding procedures. We will only ask the DWP to revoke an appointeeship if it is not being managed in the best interests of the person receiving benefits.

Duties and responsibilities of an appointee:

- ensuring correct benefits and allowances are claimed for the person
- completing the necessary claim forms for all benefits
- ensuring all benefits and allowances are used for the welfare of the person
- informing the DWP about any changes in circumstances
- repaying any overpayments of benefits

Ending the appointeeship

An appointeeship may be ended for any of the following reasons:

- Someone else is found who can take on the role and is the least restrictive option for the person;
- The person moves out of Bolton Council's area, so their case is passed to the new local authority;
- The person becomes more independent and can manage their own money again; or
- The person regains the ability to manage their benefits after recovery, for example, after illness, substance dependency, or a stroke.
- It also comes to an end if a deputy is appointed or after an LPA is registered

Court of Protection deputyship

A deputy must be 18 years old or over. Deputies are usually close relatives or friends of the person who needs help making decision. A deputy is required to have the skills to make financial decisions for someone else.

There are two types of deputyships - property and affairs, and health and welfare.

- A property and affairs deputy can make decisions about someone’s property and financial affairs.
- A health and welfare deputy can make decisions about someone's personal welfare.

A deputyship application can only be made if a person does not already have a power of attorney in place and they have been assessed as lacking the capacity to manage their property and financial affairs, and/or their health and welfare.

A deputy is usually a family member or someone who knows the person well. If no suitable person is willing and able to act as deputy, the Court may appoint a deputy who is independent of the family e.g. solicitor.

If no willing or suitable person can be found, a panel deputy can be allocated by the Court. A panel deputy is a person appointed by the Court of Protection to make decisions on behalf of individuals who lack the mental capacity to manage their own affairs.

Panel deputies are chosen from a list maintained by the Office of the Public Guardian (OPG) when no suitable individual is available to take on the role - Panel deputies working in the north of England - GOV.UK

Deciding whether an application needs to be made for a Court of Protection deputyship

An application for a Court of Protection deputyship will be needed if any of the following apply:

- The person owns any property e.g. house or flat
- The person needs to end a tenancy agreement or enter a new tenancy
- Has income other than benefits e.g. private pension
- Has assets other than backdated benefits
- Has money held in a bank or building society account that they need access to particularly if the sums held are over £20,000

If none of the above applies, consideration will need to be given to the appropriateness of applying for appointeeship.

Key Information and Revision History

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1.0	February 2026	Combined former Appointeeship Policy, Setting up an Appointee Guidance and Management of Property and Affairs into one document. Revised referral form added to Appendix 2 and revised Income and Expenditure Form added to Appendix 3	Cheryl Kellett

Approval

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