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# 11. Making financial decisions for someone who lacks capacity

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## Mental capacity

Mental capacity means that a person is able to understand and retain information and make a choice based on that information. Sometimes as a result of an illness, dementia, disability or accident there will be people who do not have the mental capacity to manage their finances without some level of support. Whilst the law assumes a person has capacity unless it can be proved otherwise, where there is a doubt that someone has the capacity to manage their finances, a medical professional or social worker will need to undertake a mental capacity assessment and make an evidenced judgement about this decision.

If a person does not have the capacity to manage their own finances, then arrangements will need to be made to authorise a representative to act on their behalf. This factsheet describes the options for managing a person's finances when they have property and/or savings and/or income other than social security benefits.

## Lasting power of attorney

A lasting power of attorney (LPA) is an arrangement that can be put in place with the individual themselves when they still have capacity to make their own decisions. It is a legal document that appoints one or more people to act on their behalf, if in the future they become unable to make their own decisions at the time they need making.

Lasting powers of attorney can also be used to give authority to someone else to make decisions, even if you still have the capacity to make these yourself. However, it can only be used if it has been registered with the Office of the Public Guardian. It continues to be valid when you can no longer make decisions.

There are two types of LPA:

- A property and affairs LPA that gives the attorney authority to make decisions about your financial affairs and
- A personal welfare LPA that gives the attorney authority to make decisions about your healthcare and personal welfare

Choosing an attorney is an important decision and you will need to find someone that you trust to act in your best interests. They need to understand your wishes and feelings about how you would like your money to be spent and how you would like to be cared for.

You do not have to use a solicitor to create the LPA; you can obtain the forms from the Office of the Public Guardian (OPG) and complete them yourself using the available guidance. [The forms can also be completed online.](#)

Alternatively, you can pay a solicitor to complete the form for you. Solicitors' fees for creating a LPA vary and so you may want to contact a few to compare fees. There is further information and a list of 'useful contacts' at this end of this fact sheet.

## The Court of Protection

If a person can no longer manage their affairs and has not granted a LPA, then an application to the Court of Protection may be necessary. The Court of Protection exists to protect the property and financial affairs of people who lack capacity, in addition to making decisions relating to their health and welfare. The court will make a decision about a person's capacity on the basis of the evidence provided. If a person is considered to lack capacity, they issue an order appointing a deputy to make ongoing decisions on behalf of the person in relation to their property and affairs.

The deputy must be someone who is trustworthy and who has the necessary skills to carry out their duties. It would usually be a family member or friend of the person, if they are willing to take on the role. If there is no-one willing or suitable to act on behalf of the person then the court can appoint a solicitor or an officer from the local authority. Professional deputies such as solicitors and the local authority will charge for their time and this is paid for by the person lacking capacity using their funds.

A deputy has a duty to follow the principles of the Mental Capacity Act (2005), which include always making decisions in the person's best interests. A record must be kept of any major decisions such as selling a property or making a major investment. The court may require the deputy to provide some form of security, such as a guarantee bond, to cover any loss as a result of their behaviour. There may be a requirement to make regular reports to the Office of the Public Guardian (OPG), the organisation with responsibility for monitoring the work of deputies.

To apply to become a deputy, an application must be made to the Court of Protection using the relevant forms. The application process involves providing the court with detailed information regarding the circumstances and finances of the person without capacity. Further guidance can be obtained from the Court of Protection (see 'useful contacts'). The Court of Protection may be able to assist you with the completion of the application. Alternatively, a solicitor can make the application on your behalf or the solicitor can apply in their own name, but there will be charges for these services. There will be other fees payable to the court which can be recovered from the person's assets at a later stage if necessary.

The court will not appoint a deputy if the person has already appointed an attorney to manage their affairs. Similarly if a person has no property or savings and their only income is social security benefits then a deputy is not usually needed. This is because benefits can be managed by an appointee, a person authorised by the Department for Work and Pensions.

**Please note** that where a person lacks the capacity to make financial decisions, the council will require a suitable representative with the necessary authority to act on the person's behalf in relation to certain financial matters, including the determination of care contributions and the deferred payment of care home fees. If the necessary authority has not been obtained by a suitable representative, then the council will take the steps necessary to put the required arrangements in place, including requesting a solicitor to act on behalf of a person where a property is involved.

Every effort has been made to ensure that the information contained in this fact sheet is correct. However, individual circumstances vary so it is always a good idea to get individual advice on your personal situation.

## Useful contacts

### Age UK

Telephone: 0800 678 1602  
Website: [www.ageuk.org.uk](http://www.ageuk.org.uk)

### Alzheimers Society

Email : [enquiries@alzheimers.org.uk](mailto:enquiries@alzheimers.org.uk)

### National Dementia Helpline

Telephone: 0300 222 11 22  
Website: [www.alzheimers.org.uk](http://www.alzheimers.org.uk)

### Court of Protection

Telephone: 0300 456 4600  
Website: [www.gov.uk/court-of-protection](http://www.gov.uk/court-of-protection)  
Email: [courtofprotectionenquiries@justice.gov.uk](mailto:courtofprotectionenquiries@justice.gov.uk)

### GOV.UK

Website: [www.gov.uk/make-decisions-for-someone](http://www.gov.uk/make-decisions-for-someone)

### Office of the Public Guardian

PO Box 16185  
Birmingham  
B2 2WH

Email: [customerservices@publicguardian.gov.uk](mailto:customerservices@publicguardian.gov.uk)

Telephone 0300 456 0300

Website: [www.gov.uk/government/organisations/office-of-the-public-guardian](http://www.gov.uk/government/organisations/office-of-the-public-guardian)

To ensure services provided by the council are accessible, information is available upon request in a variety of formats including large print, Braille, CD, memory stick or as an MP3 file. We can also provide help for British Sign Language users and provide information in languages other than English. Please ask for details or telephone 01253 477477.

## Solicitors

Solicitor	Address	Telephone
Berrys Solicitors	247 Church Street Blackpool FY1 3PB	01253 620022
Blackhurst and Budd	22 Edward Street Blackpool FY1 1BA	01253 629300
Cobains	201-203 Church Street Blackpool FY1 3PA	01253 290092
Roland, Robinson and Fenton	85-89 Adelaide Street Blackpool FY1 4LX	01253 621432
Southerns	Mackenzie House 66/68 Bank Parade Burnley BB11 1UB	01282 422711
Inghams	12 Queens Square Poulton FY6 7BN	01253 890545

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