

## Acting on Someone Else's Behalf (*ref 24*) New Rules brought in by The Mental Capacity Act

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### Introduction

The *Mental Capacity Act 2005*, which came into effect in October 2007, reformed the existing law and introduced a new framework for dealing with the affairs of people who lack capacity.

Our *Factsheet, The Mental Capacity Act (ref 22)* gives an explanation of the legislation and the principles behind it.

Before the new *Act* came into force, the previous system enabled people to give others Enduring Power of Attorney (EPA). Any EPA validly created before October 2007 will remain valid. For information on how EPAs operate, check our *Factsheet, Receivership and EPA (ref 15)*.

### Appointing Someone to Act on Your Behalf

There are different ways in which another person can be legally appointed to act on someone else's behalf. Which one is appropriate will depend on whether you have legal capacity or not.

### You Have Capacity Now

If you are able to make a decision about who you want to handle your affairs in the future if you do become incapable, you can create a Lasting Power of Attorney (LPA). LPAs are legal documents in which you, the donor, give someone else the power to make decisions on your behalf.

There are two types of LPA:

#### 1. Property and Financial Affairs LPA

An attorney with this sort of power can act for the donor at any time (for example if the donor is too busy to deal with their own affairs) or where the donor lacks capacity. This will depend on whether the donor wants to include any restrictions in an LPA.

#### 2. Personal and Welfare LPA

This LPA can only be used once the donor lacks capacity to make decisions for themselves. This power can cover things like where the donor will live, what medical treatment they should receive etc. As with the other LPA, donors can put restrictions about where the donor should live, but not about medical treatment. Donors can include their wishes and feelings so that attorneys can be guided by this when reaching decisions.

These two LPAs are separate powers and can be given to different people.

## **You Have Capacity Now - Practicalities**

Finance LPAs have to be registered with the Public Guardian Office and a fee paid before they can be used.

An independent individual who has known you for at least two years (or a suitably qualified person) has to certify that in their opinion no undue pressure has been put on you to create the LPA. Sometimes this will need medical confirmation.

## **You Lack Capacity to Make These Sort of Decisions**

If you are not able to make decisions about your financial or personal affairs, someone else can apply to the Court of Protection to be appointed as your Deputy for the purposes of making particularly difficult decisions, resolving disagreements, or sorting out situations where ongoing personal welfare decisions have to be made.

Orders from the Court will usually be necessary for matters relating to the property and affairs of those who cannot make those specific financial decisions for themselves. A Deputy order of this sort sets out the Deputy's specific powers in relation to the person who lacks capacity. These powers may apply to any aspect of the person's life.

There are various restrictions on a Deputy's power and they way they have to act:

- a Deputy has no authority to act if they believe the other person has capacity to make that particular decision for themselves.
- There is no power to physically restrain someone; - unless it is necessary to prevent them coming to harm and the restraint is reasonable.
- A Deputy cannot refuse the provision or continuation of life-sustaining treatment for someone who lacks capacity. Only the Court can do this.

## **You Lack Capacity to Make These Sort of Decisions - Practicalities**

Prospective deputies usually need to pay a fee when they apply to the Court. In exceptional circumstances these court fees can be waived or reduced.

People need permission to apply to the Court when the request concerns personal welfare. Relatives and other people likely to be interested in the application have to be notified. Other people can object to the application. The Court of Protection will come to a decision around any such arguments, and can also decide on people's capacity if this is in doubt.

Full information and details of fees are available at [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk), 0845 3302900. All the necessary forms can be downloaded from their site.

If you require further information or have other queries contact Housing Options.

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