

## **Guidance on Appointeeship, Power of Attorney and Court of Protection Receivership Orders**

### **What are the distinctions between Appointeeship, Power of Attorney and Court of Protection Receivership Orders**

#### **Financial Protection**

The prevention of financial abuse can be difficult, with evidence hard to glean and issues about consent complex. It is important to remember that such abuse may be a crime and to consult the Police.

#### **Court of Protection**

Where someone is incapable (lacks capacity) of managing their own property and financial affairs, an application can be made to the Court of Protection to appoint a 'Deputy' (previously known as Receiver). The person to be appointed can be a relative, a friend, the Director of Adult and Community Services or a solicitor.

All applications submitted to the Court must be accompanied by an Assessment of Capacity form (medical certificate) completed by the client's GP or consultant confirming the client's incapacity as well as outlining how the appointment of a deputy would benefit the client. In addition an application fee of £400 must also be paid.

In order for an application to be appropriate the client should have additional income (Occupational Pension / Trust Fund Income) or other assets (Savings / Property) in addition to any State Benefits being received.

#### **Lasting Power of Attorney**

The Mental Capacity Act allows people 18 and over to choose and appoint someone to make their health, welfare and/or financial decisions if in the future they lack capacity to make these decisions for themselves. This person is called an attorney and is appointed by a formal document called a Lasting Power of Attorney (LPA).

The LPA replaces the EPA (Enduring Power of Attorney).

There are two types of LPA:-

- A property and affairs LPA is for decisions about finances, such as selling the donor's house or managing their bank account and paying bills.
- A personal welfare LPA is for decisions about both health and personal welfare, such as where to live, day to day care or having medical treatment.

The person making an LPA is called the donor.

Before the LPA can be used it must be registered with the [Office of the Public Guardian](#). An unregistered LPA will not give the Attorney any legal powers to make a decision for the donor.

A property and affairs LPA can be used at any time after it is registered, unless the donor has said that it must not be used whilst they have capacity. However some people want their

attorneys to take over management of their finances even though they can still manage themselves but do not like dealing with money.

Enduring Powers of Attorney (EPAs) that have been created prior to the implementation of the Mental Capacity Act will continue to be valid whether registered or not so that attorneys can still meet the donor's expectations. An EPA must be registered with the [Office of the Public Guardian](#) (OPG) when the attorney thinks the donor lacks capacity to manage their own affairs, or is beginning to lack capacity to do so.

### **Appointee**

The Department of Work and Pensions can appoint someone else to receive a client's benefits and to use that money to pay expenses such as household bills, food, personal items and residential accommodation charges. An appointee should be someone who is regularly in contact with the client and could be a close relative or friend.

Where a client has no one who can take this on, it is possible in certain circumstances for an officer of the Council to become appointee.

### **Contact Info**

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- See more at: <http://www.devon.gov.uk/index/socialcarehealth/policies-procedures-guidance/assessment-elig-careman/caremanagement-policy/guidance-on-appointeeship,-power-of-attorney-and-court-of-protection-receivership-orders.htm#appointeeship>