

Lasting Powers of Attorney and Deputyship Orders

What are they and how can they help?

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Lasting Powers of Attorney

What are they?

Lasting Powers of Attorney

- Legal documents authorising one or a couple of named people to look after your affairs
- Two types: Finance & Property and Health & Welfare
- Can be taken out separately, but having both covers all aspects of ones life.
- Must be over the age of 18 to take these out
- Must be deemed to have mental capacity

- Documents are taken out by a donor who appoints attorneys to act on their behalf
- Can appoint more than four attorneys, but caution is needed here
- No specialist knowledge or training needed
- Your attorneys can be anyone, including spouse or children or even friends or even a trust corporation
- Attorneys can be anyone, but there are exceptions:
 - Must not be bankrupt or subject to a debt relief order
 - Must be over the age of 18
 - Issued by the Office of the Public Guardian

- Do you trust them? If not, they should not be one of your attorneys.

- Do they know you well? If not, they should not be one of your attorneys.

How your attorneys can act

Lasting Powers of Attorney

- Three options:
 1. Jointly Only
 2. Jointly and Severally
 3. Jointly for some decisions, jointly and severally for other decisions

When can your Attorneys start acting?

Lasting Powers of Attorney

- Two options:
 1. As soon as the document is registered
 2. Only once you have lost mental capacity

Optional Extras

Lasting Powers of Attorney

- Replacement Attorneys
- Notifiers
- Preferences and Instructions

Health & Welfare .v. Finance & Property

Lasting Powers of Attorney

- Cover different aspects of life
- Content of documents largely the same
- Which should you choose?

Life Sustaining Treatment

Lasting Powers of Attorney

- Two options:
 1. Give your attorneys the authority to consent or refuse treatment on your behalf; or
 2. Do not give attorneys the authority to consent or refuse treatment on your behalf.
- What does this mean?
- What will it allow my attorneys to do?

What to know...

Lasting Powers of Attorney

- Will the Lasting Powers of Attorney affect my Will?
- Can I cancel them? If so, when?
- What if my attorneys insist on taking over?
- What protection do I have?
- What happens if I change my mind or my Attorneys cannot act?
- How long will this take to put in place?
- What is the cost?

Deputyship Orders

What is it?

Deputyship Order

- Covers those who have already lost capacity
- Can be taken out for those under the age of 18
- Proposed deputy must be over the age of 18
- Two types: Finance order and Health order
- The Person, to whom the Deputyship order relates, must be deemed to have lost capacity by a registered professional
- Issued by the Court of Protection

- Proposed deputy must apply to the Court of Protection, rather than being appointed by donor
- Deputy can be a family member or friend, or even a professional deputy - always need some form of justification as to why you are applying for such an order
- Application process more thorough than that of LPA's
- Long process, compared to LPA's, can also be more costly. Can take a minimum of 6 months.
- Stringent yearly procedures

How do I apply?

Deputyship Order

- Always seek independent legal advice
- Initial application form required, along with a capacity assessment to be completed by medical practitioner/social worker/psychologist/approved mental health professional/nurse/occupational therapist
- Must ensure one of the above is happy to certify on capacity!
- Only apply when necessary. If there is a time when the person has capacity (fluctuating capacity), consider Lasting Powers of Attorney

What to know...

Deputyship Order

- In order to apply, the person who wishes to apply needs to know all financial information relating to the person who lacks capacity, including:
 - Bank account numbers, the bank provider and value in the account
 - National Insurance Number (if applicable)
 - Details of any investments
 - Details of any inheritance due to the person
 - Details of any land or property or business assets
 - Details of any source of income received by that person, including where from, how much and how frequently
- The Court of Protection needs to know all of this information so that they can accurately monitor that persons finances in the yearly reporting

Application process and post application administration

Deputyship Order

- Applications can take in excess of 6 months for the order to be granted
- There are various stages in order to apply, but this is a simplified version (there are multiple smaller steps in between):
 1. Complete & submit application form
 2. Notify those who need to be notified of the application
 3. Take out insurance
 4. Order granted
- Once granted, there are yearly reporting procedures, with justification being required for any money paid out on behalf of the person to whom the application relates.
- Visits by a Court of Protection visitor may take place, with either the appointed deputy or a visit to the place of residence of the person whom lacks capacity
- Receipts must be kept for at least a year, but longer is preferable.

How much does it cost?

Deputyship Order

- Application fee of £365
- Mental Capacity Assessment (if the person has not already had one) - dependent, but can exceed £150
- Annual Supervision fee of £320
- One off assessment fee of £100 for becoming a new deputy
- Legal fees are usually capped at £850 plus VAT and disbursements, but should additional work be required, this may be subject to additional charges, which would need to be assessed by the Court of Protection
- Security Bond - dependent on value of assets
- **These figures are subject to change

Health & Welfare

Deputyship order

- Finance & Property order is more commonly granted, but an application can be made for a Health & Welfare order
- Court of Protection takes a strict view on granting the Health & Welfare order
- Court of Protection usually prefers a collaborative approach to the health needs of the incapacitated person and deems this the best way forward, rather than having one of two people as the only people able to make/approve of decisions regarding someone's health needs.

Difference between Lasting Powers of Attorney and a Deputyship Order

Lasting Powers of Attorney and Deputyship Orders

- Both Lasting Powers of Attorney and Deputyship Orders can cover finance & property and health & welfare, but deputyship order is more commonly only for finance & property
- The main difference is, with Lasting Powers of Attorney, the donor is choosing someone they trust to act as their attorney. For deputyship orders, someone is applying for that role
- Lasting Powers of Attorney can be used to cover the donor even if they have full capacity, whereas a Deputyship order is only for someone who has lost capacity already

When should I start future planning?

Lasting Powers of Attorney and Deputyship Orders

- If there is no deputyship order in place for Finance & Property matters, there would be no one able to deal with the financial affairs of the person who lacks capacity
- Residential homes may refuse entry to that person without formal documentation in place to manage their finances and ensure that any bills are paid
- Provides a child who lacks capacity with financial stability
- Can also ease the minds of parents/guardians, knowing that bills can be paid and finances discussed

But remember....

Lasting Powers of Attorney and Deputyship Orders

- Whilst these documents can be completed online/in person, it is always wise to seek independent legal advice before taking on such a role
- It is always wise to be fully aware of all implications, should anything go wrong
- Attorneys and Deputies can be investigated for any alleged misuse of funds or misuse of their position - this could potentially lead to criminal sanctions
- So please always know what you are agreeing to before signing any paperwork!

Questions...?

Lasting Powers of Attorney and Deputyship Orders

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