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Accessing your child's trust fund when they reach adulthood

Applicable to England and Wales only





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About SCIE

The Social Care Institute for Excellence improves the lives of people of all ages by co-producing, sharing, and supporting the use of the best available knowledge and evidence about what works in practice. We are a leading improvement support agency and an independent charity working with organisations that support adults, families and children across the UK. We also work closely with related services such as health care and housing.

We improve the quality of care and support services for adults and children by:

- identifying and sharing knowledge about what works and what's new
- supporting people who plan, commission, deliver and use services to put that knowledge into practice
- informing, influencing and inspiring the direction of future practice and policy.

Written by Caroline Bielanska, 28 July 2024. Caroline Bielanska is a solicitor who specialises in Court of Protection and Lasting Powers of Attorney to help parents of young adults who need guidance on accessing a Child Trust Fund or Junior ISA on behalf of their child.

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Why can I not automatically manage my child's money?

Under the Mental Capacity Act 2005 (MCA), there is no automatic assumption that just because a person has a diagnosis or condition which might impact on their decision-making ability, that they lack mental capacity to make all decisions. Some people can make some decisions, even if they cannot make all decisions.

All effort should be made to help and support the person to make those decisions they are capable of making.

There is a very long-standing legal rule that if a person lacks mental capacity to manage their own money, then no-one is automatically entitled to access their money for them. A process exists to protect the person from unauthorised access to their money. This is important because when a person lacks mental capacity to manage their own money, they can be vulnerable to scams, theft, and fraud.

The MCA and its Code of Practice sets out how to support the person and how to work out if they lack mental capacity. The Ministry of Justice has published a toolkit for parents and carers of financial decisions for young people who lack capacity which contains more information about the MCA. There is also an easy read version of this publication.

Making finance decisions for young people: Parent and carer toolkit

<https://www.gov.uk/government/publications/making-finance-decisions-for-young-people-parent-and-carer-toolkit>

Could your child make a property and financial affairs lasting power of attorney (LPA)?

Your adult child may have mental capacity to make a property and financial affairs lasting power of attorney (a 'financial LPA') even if they do not have the mental capacity to manage their finances. This is a legal document which allows another person who they choose to manage their money.

Your child will need to communicate what they want and understand, retain, use and weigh the following during the period it takes to make the LPA:

- The form allows their chosen person(s) (called an 'attorney') to make financial decisions on their behalf
- Who they want to act for them
- If they appoint more than one person, how they want their attorneys to make decisions, for example, together or separately
- It must be registered with the Office of the Public Guardian (OPG) before their attorney(s) can use it
- Whether they want their attorney(s) to act immediately **or** only if they lack mental capacity to make financial decisions

- The scope of decisions which their attorney can make using the power - this will depend on the extent of their finances
- They can cancel the lasting power at any time, if they have mental capacity
- Their chosen attorney(s) must follow special rules set out in the MCA and its Code
- If they do not make a financial LPA, then no one can automatically access and manage their money for them
- They do not have to make a financial LPA if they do not want to.

The Mencap Trust Company has an easy read guide to making a financial LPA, with support tools, which you can access through this link:

Easy read guides for LPA:

<https://www.mencaptrust.org.uk/guides-lasting-power-attorney>

Further guidance and the financial LPA form:

<https://www.gov.uk/power-of-attorney/make-lasting-power>

The financial LPA will need to be registered with the OPG before it can be used. There is a fee for registering the power, but your child may qualify for an exemption from the fee. The exemption or reduction form must be sent at the same time as applying to register the LPA, and you must attach financial statements which show that your child qualifies.

See if your child can qualify for an exemption or reduction in the fee:

<https://www.gov.uk/government/publications/power-of-attorney-fees>

What if my child cannot make a financial LPA?

If your child cannot make a financial LPA, no one (even a caring parent) has an automatic right to access their money. If they have money or property other than income from DWP welfare benefits, then a Court order is required from the Court of Protection to allow you to manage their finances.

You will need to do this even if your child only has money in a Child Trust Fund or Junior ISA. Sometimes they might have other money or property which they are entitled to, for example an inheritance.

You may feel overwhelmed and frustrated that you have to go through this process when you need to get access to your child's money, but the process is there to protect all people who lack mental capacity from fraud, scams, and abuse. The application should be made online as it is the quickest and simplest way to get a Court order.

What if I don't know how much money is in the Child Trust Fund?

If your child is over 18 years of age and you do not know how much their Child Trust Fund is worth or where it is invested, you will need to ask for an order 'to investigate and report' when prompted during the online application process. You can estimate in Form COP1A what you think the value is likely to be and update the Court when you have the correct figure.

What type of order do I need?

There are three different types of order which the Court could potentially make:

1. The appointment of a 'property and affairs deputy' to manage finances on your child's behalf on an ongoing basis. This is the most likely.
2. The appointment of a property and affairs deputy limited to a set time-period. This will be appropriate where the money will not be used immediately but will be used up within an identifiable time-period. You will need to ask for this in your application and show why this is likely to be so.
3. A single order. This will only be appropriate where there is evidence that all the money is going to be immediately used for a specific purpose, for example, buying a specialist wheelchair. You will need to ask for this as an alternative to the deputyship when making the deputyship application.

The Court will decide what is the most appropriate order based on the evidence which you provide in support of your application.

If you want a time-limited deputyship or single order, you must complete a witness statement on Form COP24, setting out why this is appropriate.

Download Form COP24:

<https://www.gov.uk/government/publications/give-a-witness-statement-about-a-person-who-lacks-capacity-form-cop24>

Example of a completed Form COP24 witness statement requesting a time limited deputyship:

<https://www.gov.uk/government/publications/give-a-witness-statement-about-a-person-who-lacks-capacity-form-cop24>

How to apply to become a property and affairs deputy

The person applying ('the applicant') is usually the same person who wants to be the deputy ('the proposed deputy'). It is possible for more than one deputy to be appointed. For ease, this guidance will refer to the applicant as 'you'.

You can make your application without the help from a solicitor.

You can apply to be the deputy for your child before your child becomes an adult, but it is best to do this about six months before they turn 18 years of age. You must have a good

financial record (for example you must never have been bankrupt), and agree to take on the role, which requires you to follow the MCA and its Code of Practice.

Before you start your application

1. Obtain evidence your child lacks mental capacity to manage their own finances

Form COP3 (assessment of capacity) must be used and must be completed by anyone who believes themselves to be competent to form an opinion in line with the approach set out in the MCA. Although doctors and social workers can complete the form, so can anyone who knows your child well enough to form an opinion, which could include the person in charge of the placement where your child lives.

Completing Form COP3 will not usually be part of that person's job description and employment, so they must be willing to do this and may charge a fee for completing the form.

Download Form COP3:

<https://www.gov.uk/government/publications/make-a-report-on-someones-capacity-to-make-decisions-form-cop3>

Guidance is available for the person who is assessing capacity within Form COP3. Specific guidance on mental capacity to manage finances is available via the Empowerment Matters website:

<https://empowermentmatters.co.uk/resources/mental-capacity-act/>

2. Notifying your child of your intended application

You or someone on your behalf will need to see your child in person to tell them about the application, regardless of your child's particular difficulties in understanding the need for the application. This is required because a Court order is an interference in a person's life, and they must be told about it and given the opportunity to respond. There might be cases where your child has a view about who they would want to manage their finances, even if they lack mental capacity to make financial decisions.

You or someone on your behalf must complete, explain the application and give Form COP14PADep to your child.

Download Form COP14PADep:

<https://www.gov.uk/government/publications/tell-someone-youre-applying-to-be-a-deputy-of-their-property-and-affairs-form-cop14padep>

The application process requires that you tell the Court the following:

- What steps you took to explain the application to your child, for example if you explained it by using simple language, British Sign Language or Makaton, drawings, etc. You should try to explain to your child that you are applying to the Court for an order so you can manage their money because they cannot do so, and you will manage their money in their best interests.
- To what extent your child appeared to understand the information you gave them. For example, if they are able, they might ask a question.
- How your child responded when the application was explained to them, for example if they are able, your child might nod or give a thumbs up.
- If your child expressed their wishes and feelings regarding the application, for example if they are able, they might communicate that they are happy about it and want you to be their deputy.

If your child is able to agree to or disagree with the application and has any views about the application then this should be set out in Form COP14PADep and must be included with the application. You must wait 14 days after you have notified your child before making the application online.

3. Notifying at least three other people of your intended application

You must tell at least three people who have an interest in your child's life of your intention to apply to the Court for the appointment of a deputy. This gives them the opportunity to raise any concerns with the Court. In most cases, people will not raise any concern, but advance notice can prevent later arguments.

The people to be notified are usually three close family members such as your child's other parent, their siblings, grandparents, uncles, and aunts. Notification is done by completing Form COP15PADep and either giving it to those people, or sending it by first class post.

Download Form COP15PADep:

<https://www.gov.uk/government/publications/tell-other-relevant-people-that-youre-applying-to-be-a-deputy-of-someones-property-and-affairs-form-cop15padep>

The people notified can (if they want) return Form COP15PADep to you confirming their agreement or objection to the application. They may choose not to respond at all, in which case it will be assumed that they do not object. If any Form COP15PADep is returned to you, these must be included with your application.

4. Complete financial information on Form COP1A

Form COP1A sets out details of your child's finances and their situation. It asks lots of questions which may be irrelevant, but the form is designed to capture information about

people with a wide range of financial assets and circumstances. You just have to bypass questions that are not relevant.

The GOV.uk website has recently removed the need to complete and submit form COP1A, as it is possible to input the information directly online. If you have completed COP1A you can still upload this as part of the application process.

Download Form COP1A:

<https://www.gov.uk/government/publications/apply-to-make-decisions-on-someones-behalf-property-and-finance-form-cop1a>

The link also contains a sample of a completed Form COP1A, where the only asset is a Child Trust Fund.

5. Complete the deputy's declaration on Form COP4

You must carefully read, complete and sign Form COP4. You will be making important promises to the Court and will have to make decisions following the process set out in the MCA.

If you want to be a deputy with someone else, then they should also read, complete, and sign a separate Form COP4.

Download Form COP4:

<https://www.gov.uk/government/publications/apply-to-become-someones-deputy-make-a-declaration-form-cop4>

Starting your online application

The application can be made **14 days after** your child and the people who are interested in their life have been notified. If you don't make the application **within three months of notification**, then the Court will require you to notify everyone again.

Although it is possible to make the application by post, it takes longer to get the Court order. The application is best made online.

Apply online:

<https://www.gov.uk/become-deputy/apply-property-financial-affairs-deputy>

The online process requires you give lots of information and contains prompts throughout, including when to upload the various Court forms. If you want a 'one off' order or a 'time limited deputyship order' you should set this out when asked about 'other orders you are seeking'.

Each form must be separately saved as a PDF with the date, your child's surname, their initial, and number of the form. For example, '2April2024SmithJCOP1A'.

You will need to upload:

- COP1A - financial details (if it has been completed)
- COP3 - capacity evidence
- COP4 - deputy declaration for each proposed deputy
- COP24 - witness statement setting out additional information which is helpful for the Court to know
- COP14PADep - if your child has completed and returned this, or if someone other than you notifies your child
- COP15PADep - if anyone who has been notified has completed and returned these.

The Court fee and help with fees

Usually, the Court fee of £408 must be paid at the time of making the application. However, you do not need to pay the fee if you complete Form COP44A and either:

1. You need to access a Child Trust Fund and your child has savings of less than £4,250 **and** is in receipt of certain DWP benefits with an income of £1420 or less per month; or
2. Your child is not in receipt of certain DWP benefits but has a monthly income of £1420 or less, then you should write to the Court asking them to exercise their discretion because paying the fees will cause financial hardship. The letter can be uploaded online at the same time as making the application.

You must complete Form COP44A at the same time as making the application and attach financial statements in support to show that a fee is not payable.

Detailed guidance is contained in COP44B.

Fee details and application for an exemption:

<https://www.gov.uk/government/publications/court-of-protection-fees-cop44>

What happens next?

When the application is submitted, you will receive an immediate confirmation email with a summary of the information you have told the Court.

The application will be considered by the Court and you will be notified when the order has been made. The Court does not immediately send you the order as in most cases, you will first need to take out a security bond.

The security bond

The Court will usually require that you as a newly appointed deputy to take out a special form of insurance, known as a 'bond'.

The Court will provide the details of how to do this.

If the sum your child has is under £21,000 the Court will usually order a single premium payment. For larger sums, the premium is paid annually.

Receiving the Court order

Once the bond is set up, the Court will send the Court sealed order to you. This can take a little while to receive as the Court is not large and they have lots of orders to seal with a special stamp and send out.

The Court requires that you tell your child that you have been appointed and give them a copy of the Court order. Although your child may not understand this, the Court rules are applied to everyone in the same way, as there will be people who can understand.

Using the deputyship order

As a deputy, you will need to provide a copy of the deputyship order to the financial organisation where your child holds money. Every financial organisation has their own internal procedure.

Guidance on managing money:

https://www.mentalhealthlaw.co.uk/media/Banking_guidance_for_banks_3-4-13.pdf

Under welfare benefit law it is not possible for a deputy to be a different person from your child's DWP Appointee. Even if you are the deputy and Appointee, you will still need to let the DWP know you have been appointed. If the Court has made a single order, the terms will set out how you will be able to access the funds. It may be that the Court orders that the funds are to be paid into the account where your child's DWP benefits are paid. This must be a separate account to your own financial account, as the money belongs to your child.

The role of the Office of the Public Guardian (OPG)

The OPG supervises all deputies to ensure they make decisions in the best interests of the person they have been appointed to act for. This might feel like an interference in you and your child's life, but it is not personal to you - it is necessary because sometimes deputies do not act as they should.

You will be contacted by the OPG within a few weeks of your appointment to make sure you know how to carry out the role.

You must make decisions in your child's best interests, have regard to the MCA, its Code of Practice and follow the standards set by the OPG, which you are expected to follow for the duration of your appointment.

The Code of Practice:

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Details of the standards you are expected to follow:

<https://www.gov.uk/government/collections/opg-deputy-standards-documents>

On the anniversary of the Court order, you must complete an annual report for the OPG.

Register to complete the OPG report online:

<https://complete-deputy-report.service.gov.uk/>

It is possible to complete the account in paper format if this is easier for you. The account forms can be found here:

<https://www.gov.uk/government/publications/deputy-annual-report-accounting-for-your-actions>

OPG fees

The OPG charge for its service, but there are no fees payable if your child is in receipt of Universal Credit, Income-based Jobseeker's Allowance or Income-based Employment and Support Allowance.

If they are not in receipt of one of these, they may instead qualify for a 50% discount on fees if their income is less than £12,000 per year.

The OPG require claimants to complete Form OPG120 with documentary evidence in support.

Apply for a reduced fee for your OPG deputy fees:

<https://www.gov.uk/government/publications/deputy-fees-remission-or-exemption>

Further OPG guidance

The OPG publishes guidance. These are most useful for a deputy:

- How to carry out your duties as a deputy:
<https://www.gov.uk/government/publications/deputy-guidance-how-to-carry-out-your-duties>
- Making gifts: <https://www.gov.uk/government/publications/giving-gifts-a-guide-for-deputies-and-attorneys> and Practice Note 7:
<https://www.gov.uk/government/publications/public-guardian-practice-note-gifts>
- Investing as a deputy: <https://www.gov.uk/guidance/investing-for-someone-as-their-attorney-or-deputy>.



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