



Office of the
Public Guardian

OPG

Understanding our role and responsibilities

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What does OPG do?



Why are LPAs important?

- Someone you trust will have the legal authority to make decisions on your behalf
- Your attorney can make sure that your wishes and preferences are respected
- You have control over what happens to you if you lose mental capacity to make your own decisions.

LASTING POWER OF ATTORNEY

**Your voice.
Your decision.**



This LPA can only be
used if you have
lost mental capacity



Mental capacity

The ability to understand and make a decision when it needs to be made is called 'mental capacity'.

A person has the mental capacity to make a decision if they can:

- understand the information they need - for example, what the consequences will be
- remember the information for long enough to make the decision
- weigh up the options and make a choice
- communicate their decision in any way - for example, by blinking or squeezing a hand.



Understanding the terms

- The **donor** is the person making an LPA. They must have the mental capacity to understand what they are signing. They must be able to freely choose who they want to act on their behalf
- The **attorney** is the person who will have the authority to make decisions on behalf of the donor
- The **certificate provider** is the independent person who must check that the donor understands what they are signing and is not being forced into making an LPA
- The **witness** is the person who watches the donor and attorney sign the LPA.



Property and finance LPA

A property and finance LPA allows the donor to appoint someone they trust to make decisions including:

- Managing bank accounts
- Paying bills
- Collecting pensions and benefits
- Selling or renting out property



The donor can choose whether their attorney can act immediately, or if the attorney can only act when the donor has lost mental capacity to manage their own financial affairs.

Health and welfare LPA

A health and welfare LPA allows the donor to appoint someone they trust to make decisions about:

- Daily routine
- Care and living arrangements
- Medical treatment

The attorney can only act when the donor does not have mental capacity to decide for themselves.



Life-sustaining treatment

When making a health and welfare LPA, the donor will need to choose if their attorney has the right to make decisions about life-sustaining treatment. This may include consenting to or refusing treatment such as:

- Cardiopulmonary resuscitation (CPR).
- Artificial ventilation
- Chemotherapy
- Antibiotics.



If the donor does not want their attorney to make decisions about life-sustaining treatment, a doctor will need to make a best interest decision on their behalf.

Who can be an attorney?

Needs to be

- Donor's choice
- Aged 18 or over
- Able to understand the responsibility of becoming an attorney

Doesn't need to be

- Family member or friend of the donor
- Living in the UK
- A British citizen

Donors can appoint more than one attorney.

If there is more than one attorney, the donor will need to decide whether the attorneys must act **jointly** or **jointly and severally**.

Instructions and preferences

When a donor makes an LPA, they can choose to include instructions or preferences.

Attorneys *must* follow instructions.

Attorneys *should* take preferences into consideration.



Instructions and preferences can create problems. It can be easy to ask for something that the law won't allow, so donors should consider the wording carefully.

Deputyship

If a person lacks mental capacity to make their own decisions, the Court of Protection may decide to appoint a deputy.

Deputies receive a court order, which explains what decisions they can and can't make.

Deputies are typically appointed for Property and Finance. In some circumstances, deputies can be appointed for Health and Welfare.



Who can act as a deputy?

Lay person – usually a partner, family member or close friend



Professional – usually a solicitor or an accountant



Public authority – a specialist team within a local authority or health trust



Panel – a list of court-approved professionals

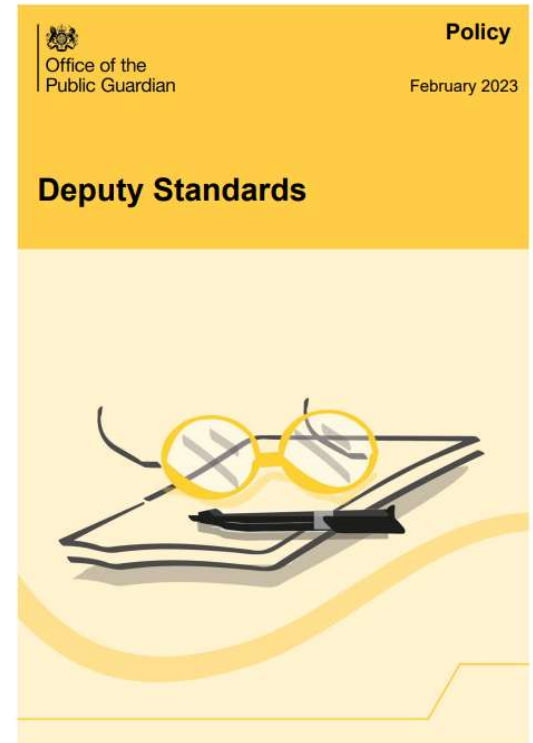


Deputyship supervision

When OPG receives a deputyship order from the Court of Protection, we start our supervision process. This includes

- Settling in call when the deputy is first appointed
- Visit from a Court of Protection (COP) visitor
- Ongoing support from a case manager
- Reviewing the deputy's annual report
- Checking that the deputy is following the expected standards.

OPG charges a one-off fee to set up the order on our system, and an annual fee to cover the cost of supervising the deputyship.



Making decisions

The Mental Capacity Act 2005 says that attorneys and deputies must make decisions in the best interests of the person they are acting on behalf of.

But what does this involve?

- Support their participation in decision-making
- Thinking about their past and present wishes, beliefs and values
- Taking the relevant circumstances into account
- Avoid making assumptions based on their appearance, medical condition or behaviour
- Consulting others – such as family members, close friends or professionals.



Difficult decisions

It's not always easy to make decisions on behalf of someone else. Attorneys and deputies should:

- Have open and respectful conversations with those involved in the decision
- Listen to the opinions of others
- Carefully weigh up the available options.

What happens if there is a serious disagreement over a significant decision that needs to be made?

- A formal 'best interests meeting' with all relevant parties
- Application to the Court of Protection for a one-off decision
- In serious circumstances, an application to remove the attorney or deputy.



What can you do?

- Check LPAs quickly and easily at **[View a lasting power of attorney - GOV.UK](#)**
 - Search OPG's register to see if a person has an attorney or deputy acting on their behalf - **[Search OPG's register - GOV.UK](#)**
 - Request an urgent search of OPG's register if you are making decisions about an adult at risk or acting on safeguarding concerns - **[Urgent enquiries - GOV.UK](#)**
 - Tell us if you have concerns about the actions of an attorney or deputy - **[Report a concern - GOV.UK](#)**
- 

Raising concerns

You can do this via:

Telephone: 0300 456 0300

Email: opg.safeguardingunit@publicguardian.gov.uk

Submitting an OPG130 form: [Report a concern about an attorney, deputy or guardian - GOV.UK](https://gov.uk)



Form
OPG130

Raise a concern about an attorney, deputy or guardian



Use this form if you're concerned that decisions made by an attorney or deputy are not in the best interests of the donor or client.

When can we investigate?

- If there are concerns about the donor's capacity to make, change or cancel their LPA
- If the attorney or deputy is not acting in the donor or protected person's best interests
- If the attorney or deputy ^{ASO} is misusing their authority
- If the attorney or deputy is failing to act, when a decision needs to be made

We can only investigate if the donor or client lacks mental capacity to deal with the concerns themselves.

Slide 19

AS0

Good if we could avoid using the term 'client'; 'protected person' is better.

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Helping us investigate

You can help us investigate concerns about attorneys and deputies by providing accurate, up-to-date information about:

- Mental capacity
- Financial circumstances
- Care assessments
- Specific dates of concerns or alleged abuse by the attorney or deputy



If you have supporting evidence, please share it with us.

What actions can OPG take? AS0



Apply to court to revoke the LPA or deputyship order



Apply to court to remove an individual attorney or deputy



Apply to court to check whether an LPA is valid



Make a referral to the police or a regulatory body, such as the Solicitors Regulation Authority



Suspend the LPA or deputyship order



Freeze bank accounts



Stop the attorney or deputy from acting during our investigation



Prosecute attorneys or deputies

Slide 21

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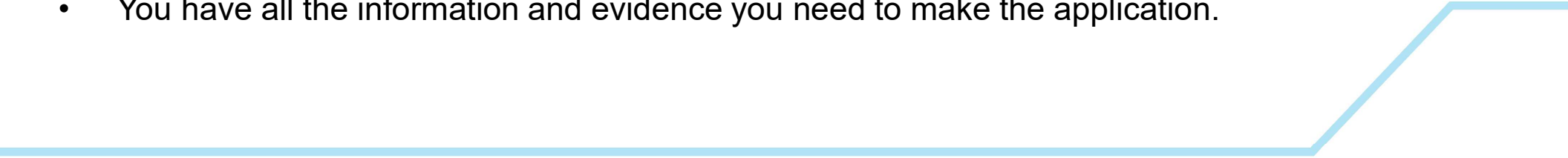
You might want to add a slide on the limitations of the Court of Protection - for example, to state that it is a civil court, is limited to dealing with concerns where individual's lack capacity, makes decisions on the basis of balance or probabilities, has no power to recover funds but can call in a security bond on a deputyship case.

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Can you help?

In some circumstances, it may be quicker and easier for you to make an application to the Court of Protection.

This is likely to be the case if

- An urgent decision needs to be made on behalf of an individual who lacks capacity to make the decision for themselves
 - There is conflict over the decision that needs to be made, or unwillingness by the attorney or deputy to make a decision
 - The individual is at risk of harm if a decision is not made in a timely manner
 - You have all the information and evidence you need to make the application.
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Q & A



Useful resources

OPG

The role of OPG - [About us - Office of the Public Guardian - GOV.UK](#)

Finding, searching and viewing LPAs - [Your questions answered: Finding, searching and viewing lasting powers of attorney \(LPA\) – Office of the Public Guardian](#)

Disclosing information to attorneys and deputies - [Medical disclosure information to attorneys and deputies - GOV.UK](#)

Court of Protection (COP)

The role of the Court of Protection - [Court of Protection - GOV.UK](#)

Making welfare applications to the Court of Protection - [Making a personal welfare application to the Court of Protection - GOV.UK](#)

Making urgent or emergency applications to the Court of Protection - [Make an urgent or emergency application to the Court of Protection - GOV.UK](#)

ADASS guidance on local authority applications - [COP application guidance for local authority staff | ADASS](#)

Mental Capacity Act (MCA) 2005

MCA Code of Practice - [Mental Capacity Act Code of Practice - GOV.UK](#)

MCA toolkit for health and social care professionals - [Making decisions: a guide for people who work in health and social care - GOV.UK](#)

SCIE MCA directory - [Mental Capacity Act Directory - SCIE](#)

39 Essex Chambers MCA resource centre - [Mental Capacity Resource Centre | 39 Essex Chambers](#)

BMA Best interest decision toolkit - [Best interests decision making toolkit | BMA](#)

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