

## **North Somerset Council**

### **Adult Social Services and Housing Solutions:**

Power of attorney, deputyship, and appointeeship:

Practice guidance



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## 1. Document information

|                                    |  |
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## 2. Aims and audience

The *Power of attorney, deputyship, and appointeeship: policy and practice guidance* will provide adult social service practitioners with:

1. an outline of power of attorney, deputyship, and appointeeship including
  - a. What these terms mean and how they differ
  - b. Situations where attorneys exceed their remit
  - c. Situations where attorneys and others may be in dispute about an outcome
  - d. Situations where attorneys act as sole decision makers.
2. information and guidance in relation to mental capacity and power of attorney, deputyship, and appointeeship.
3. guidance on what we would expect to see in relation to evidencing power of attorney, deputyship, and appointeeship, how to ask for and check the evidence, and where to record it.

## 3. Power of attorney

When someone makes a power of attorney, they appoint someone, or others, to act on their behalf.

The person making the power of attorney is called a 'donor or donee.' The person appointed to act on their behalf is called an 'attorney.'

To appoint a power of attorney, the donor must have capacity to make the decision for themselves.

A power of attorney gives the attorney[s] the legal authority to deal with third parties, such as banks or local authorities, on the behalf of the donor. Some types of power of attorney also give the attorney[s] the legal power to make decisions on behalf of the donor. For example, where they should live, or whether they should see a doctor.

There are three types of power of attorney to be aware of: lasting power of attorney, enduring power of attorney, and ordinary power of attorney.

## Lasting Power of Attorney

A lasting power of attorney (LPA) is a legal document that lets a donor appoint others to support them to make decisions or, make decisions on their behalf. The lasting power of attorney must be registered with the [Office of the Public Guardian](#) before attorneys can start making decisions.

A donor can appoint more than one attorney. Where there is more than one attorney they must act either 'jointly' or 'jointly and severally.' Severally means separately or individually.

To act 'jointly' attorneys must always make decisions together on all affairs.

Joint and several attorneys can act together but may also act independently if they wish. Any action taken by any attorney alone is as valid as if they were the only attorney. However, if there was a disagreement between the joint and several attorneys regarding a complex situation / significant decision, a Court of Protection application may be required.

There are two types of lasting power of attorney. The responsibilities will vary depending on whether the attorney[s] are the donor's:

- property, and financial affairs attorney[s] and/or
- health and welfare attorney[s].

These lasting power of attorney roles are separate. People may apply for one, or both, depending on their circumstances. Attorneys can only make decisions related to the type of power of attorney they have been appointed to by the donors.

Power of Attorney for property and affairs comes into effect as soon as it is registered regardless of mental capacity (unless the LPA specifies otherwise), whereas a person with LPA for health and welfare can only decide on behalf of someone who lacks capacity to decide for themselves.

### **Property and financial affairs attorneys**

Property and financial affairs attorneys are responsible for helping to manage, or managing, things like the donor's:

- money and bills
- bank and building society accounts
- property and investments
- pensions and benefits.

The attorney[s] must:

- manage the donor's finances in the donor's best interests.
- keep the donor's finances separate from their own unless they have a joint bank account or own a home together.
- keep accounts of the donor's assets, income, spending, and outgoings.

This type of attorney can sometimes make decisions when a person still has capacity, but only if the LPA documentation states this and the donor gives permission. Otherwise, the attorney can only make decisions when the donor does not have mental capacity to make them for themselves.

If the attorney acts contrary to the wishes or best interests of the donor considerations must be made as to whether this should be reported to the Court of Protection.

### **Health and welfare attorneys**

Health and welfare attorneys can make decisions about the person's:

- daily routine, e.g. washing, dressing, eating
- medical care
- living arrangements, e.g. whether they live at home or move into a care home.

Attorneys can only make decisions when the donor does not have mental capacity to make them themselves. In addition to this, attorneys may not be able to make

decisions if the donor has made an advanced decision or has been sectioned. An advanced decision is a legal statement about which medical treatments a person does not want. Although they can decide where a person will live, this type of attorney cannot authorise a deprivation of the donor's liberty (DoLS), this can only be authorised by the relevant 'Supervisory Body' or the Court of Protection, depending on whether it is in a care home / hospital or in the community.

An application may need to be made to the Court of Protection to decide if:

- the advanced decision and the lasting power of attorney give different instructions
- there is any doubt or disagreement about whether care or treatment should be given
- there is an authorised DoLS in place which needs to be challenged
- disagreements between attorneys acting severally that cannot be resolved by a best interests meeting

### **Enduring power of attorney**

Before 1 October 2007, it was possible to make an enduring power of attorney (EPA) to manage someone's property or financial affairs. It is no longer possible to make a new enduring power of attorney. If an enduring power of attorney was made before 1 October 2007 it can still be used. However, if it has been assessed and proved that a donor lacks capacity with regards to managing their affairs the enduring power of attorney must be registered with the Office of the Public Guardian (OPG).

### **Ordinary Power of Attorney**

A third type of power of attorney is known as ordinary power of attorney. This option is usually for short term support and only covers property and finances. It is often utilised when a person needs cover for a temporary period (i.e., a hospital stay, a holiday, or if a person finds it hard to get out and about).

Ordinary power of attorney only applies when the donor has the mental capacity to give it and ceases if the donor is assessed and proved to be lacking mental capacity

around these decisions. Ordinary power of attorney never needs to be registered with the authorities.

In the event a donor has any concerns regarding the actions of an attorney, who has been donated ordinary power of attorney, the donor can seek to revoke it. A formal notice of revocation would be necessary and would need to be witnessed by another person. The donor could also inform the financial institutions to whom they have given permission for the attorney with OAP to liaise with during the period of the responsibility. Given this, is it unlikely that we would need to be involved in any revocation other than to give information and/or signposting.

#### **4. Who can make decisions when someone is assessed as not having mental capacity and there is no power of attorney?**

##### **Department for Work and Pensions (DWP) appointeeship**

A person can apply for the right to deal with the benefits of someone who cannot manage their own affairs because it has been proved they lack capacity to do so.

Only one appointee can act on behalf of someone who is entitled to benefits from the Department of Work and Pensions.

An appointee can be:

- an individual – e.g. a friend or relative
- an organisation or representative of an organisation – e.g. a solicitor or local council

Appointees are responsible for making and maintaining any benefit claims.

##### **Court of Protection deputyship**

A Deputy must be 18 years old or over. Deputies are usually close relatives or friends of the person who needs help making decision. A Deputy is required to have the skills to make financial decisions for someone else.



There are two types of deputyships, property and affairs, and health and welfare.

A property and affairs deputy can make decisions about someone's property and financial affairs.

A health and welfare deputy can make decisions about someone's personal welfare.

A deputyship application can only be made if a person does not already have a power of attorney in place and they have been assessed as lacking the capacity to manage their property and financial affairs, and/or their health and welfare.

A deputy is usually a family member or someone who knows the person well. Some people are paid to act as deputies, for example accountants, solicitors or representatives of the local authority. In addition, the Court can appoint a specialist Deputy called a Panel Deputy from a list of approved law firms and charities if no one else is available.

## **5. Undertaking a capacity assessment before accepting that the attorney is the appropriate decision maker**

Any person holding lasting power of attorney is bound by the Mental Capacity Act 2005 (including its statutory principles) as are professionals. A lack of capacity for a specific decision must be evidenced in relation to health and welfare decisions before the person holding LPA for health and welfare can act on a person's behalf. For property and affairs decisions, the person holding LPA can make decisions on behalf of the donor as soon as it is registered, providing they have the person's consent, unless the LPA specifies that it only comes into effect once the person loses capacity. For day-to-day decisions it may be appropriate for the attorney to do this by themselves, for more complex or contentious specific decisions professional support to complete a capacity assessment is likely to be required. If the Local Authority is involved in the situation / decision making process, it is appropriate to request evidence of the assessment of capacity for the specific decision, or to complete the relevant capacity assessment, or to prompt/recommend the appropriate professional

to complete the specific capacity assessment, before any best interest process is considered.

Please note that an attorney being involved with a person as a decision maker does not 'let us off the hook' if a proposed decision could have an impact upon that person's Human Rights. If we are made aware of the situation, as a Local Authority we have a positive duty to protect that person's human rights and investigate. [This is referred to as a 'positive obligation' within the Human Rights sphere.](#)

## **6. Process for evidencing and recording appointees, deputies, and power of attorneys**

When a family member, close friend, or professional (i.e., solicitor) reports that they are a person's attorney, appointee, or deputy, practitioners must verify this.

### **Appointeeship**

To verify appointeeship practitioners must ask to see their Form BF57 which confirms that a person has been formally appointed to act for a benefits claimant.

In instances where practitioners are seeking evidence as to whether someone has an appointee acting for them, and the documentation has not been provided promptly, or a request to see documentation is met with refusal, practitioners must contact the relevant Department for Work and Pensions team (i.e., PIP, Universal Credit, ESA) and seek verification from them.

In the event that a person is referred to the Court of Protection Team they will be able to check the benefits system to ascertain if an appointee is in place.

### **Last Power of Attorney and court appointed Deputies**

In the case of lasting power of attorney, verification can be achieved by seeing the original documentation. Verification can also be achieved by asking the donor or attorney to share their LPA [access code to check online](#). [Examples of registered lasting powers of attorney \(LPAs\) and additional guidance](#) should be consulted to inform the verification process.

If a deputy has been authorised by the Court, the deputy should have sealed copies of the Court Order (embossed seal) to prove its authenticity. Verification of deputyship can be achieved by seeing this document. [Examples of Deputy court orders and additional guidance](#) should be consulted to inform the verification process.

In instances where practitioners are seeking evidence as to whether someone has an attorney or deputy acting for them, and the documentation has not been provided promptly, or a request to see documentation is met with refusal, practitioners must apply to search the Office of the Public Guardian (OPG) registers. [Practitioners will need to fill in a OPG100 form to search the registers.](#)

### **Documentation and safeguarding concerns**

If you are making decisions about an adult at risk or are involved in a safeguarding investigation, you may need the documentation urgently. You can request an urgent search to check if someone has an attorney or deputy by emailing [OPGurgent@publicguardian.gov.uk](mailto:OPGurgent@publicguardian.gov.uk). The email must be structured using the email template outlined in [appendix one](#).

### **Recording LPA, deputyship and appointeeship**

Whilst checks are being undertaken practitioners must record that they are awaiting documentation on the person with care and support needs case notes on LAS (Liquidlogic Adults System). It must be recorded that the documentation has not yet been verified.

Once the documentation has been produced and verified the evidence must be saved to docs and noted in case notes. Practitioners must clearly state what the documentation has evidenced (i.e. does the document evidence lasting power of attorney? Is it LPA finance or LPA health and welfare? Is it held jointly or severally?)

Lasting power of attorney must also be added to relationships. Practitioners need to create the relationship and choose the type of lasting power of attorney via the drop-down menu for type of relationship, as shown below:

|                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                               |                    |                    |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------|--------------------|--------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | GROUP                         | UNRECORDED TEST    | Unknown            |
| MC                       | NK                       | EC                       | DP                       | NR                       | IC                       | KH                       | HM                       | AD                       | PA                       | IN                       | FA                       | Searched Relationships        | Name               | Age/Gen            |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="text" value=""/> | <b>Mrs Ot Test</b> | 73 years<br>Female |

Please click on the Add Relationship button to add relationships.

- ▶ Search - Search the system for related people
- ▶ Suggest - Suggest other relationships based on existing relationships

Other Relative of Client

- Partner
- Partner's Daughter
- Power of Attorney Health and Welfare
- Power of Attorney Health and Welfare For
- Power of Attorney Property and Finance Affairs
- Power of Attorney Property and Finance Affairs For**
- Putative Child
- Putative Mother
- Other

No decisions should be made on a person’s behalf until the correct documentation has been produced or found on the registers.

## 7. Accessibility

Council documents can also be made available in large print, audio, and other formats. Documents on our website can also be emailed to you as plain text files. Help is also available for people who require council information in languages other than English. Please email [asshsstrategyandpolicyteam@n-somerset.gov.uk](mailto:asshsstrategyandpolicyteam@n-somerset.gov.uk) ring 01934 888 888 for more information.

Below are some resources that can be shared with people who want to know more about LPA, deputyship and/or appointeeship. The documents include factsheets and easy reads from trusted sources (the Department of Health, mencap and ageuk).  
[An easy read fact sheet: People making decisions for you](#) - Department for Health  
[Factsheet 22 Arranging for someone to make decisions on your behalf](#) - ageuk  
[Appointees, deputies and power of attorneys](#) - mencap

## 8. Appendix one

### Email template

Dear OPG

I am requesting a search of the OPG registers to help safeguard an adult at risk. I cannot get the information from the individual as they do not have mental capacity.

Please search the OPG registers for any information about this person:

Name:

Date of Birth:

Address: