
Powers of Attorney -v- Deputyship Orders: What's the difference?

Powers of Attorney and Deputyship Orders both help someone act on your behalf if you have lost capacity to make your own decisions.

But the two documents – and the roles they give to your Attorney or Deputy – are different in many ways.

Powers of Attorney

Powers of Attorney are formal legal documents, which let you (called the 'Donor') appoint one or more people to make decisions on your behalf (called your 'Attorneys'). These are useful documents if you need extra support in the future, or if you lose mental capacity and become unable to make decisions for yourself. This might be, for example, because you have an acquired brain injury or are living with Dementia.

Until 1 October 2007, one of the most common types of Power of Attorney was an Enduring Power of Attorney (EPA). EPAs only relate to decisions about Property and Finance however, and do not allow your Attorneys to make decisions for you about Health and Care.

Further, EPAs are registered with the Office of the Public Guardian (OPG) only if your Attorneys have reason to believe that you are, or are becoming, mentally unable to manage your affairs. Registration takes around 8 weeks, and this can cause problems if you need your Attorneys to act for you a short notice, or if you simply need a bit of help managing your money but have not lost mental capacity to do so.

Although you can no longer make new EPAs, if you made one in the past, your Attorneys can still register and use your EPA to make decisions for you if you lose capacity. However, it is still advisable to ask a solicitor to check over your EPA if you have one. This is because you will need to consider making a Lasting Power of Attorney for Health and Care. Many people also chose to make new Finance Lasting Powers of Attorney because these documents are more flexible, and your existing EPA may need to be reviewed in any case, as it will have been made some time ago.

Since 1 October 2007, EPAs have been replaced with Lasting Powers of Attorney (LPAs). There are two types of LPA, Property and Finance and Health and Care.

Unlike the old EPAs, you can structure your Property and Finance LPA so that it can be used by your Attorneys, at your request, at any time after it has been registered, even if you are still able to make decisions for yourself. This means that it is far more flexible than the old-style EPAs and most people choose to make their Property and Finance LPA in this way because it is the most practical.

While you still have mental capacity, your attorneys can only act under the Property and Finance LPA **with your consent**. If you later lose capacity, they can continue to act on your behalf for all decisions covered by your Property and Finance LPA. This is useful if you are able to make your own decisions but there's another reason you want your attorneys to help you. For example, if you're away on holiday, or if you have a physical condition that makes it difficult to visit the bank, talk on the phone or sign documents.

On the other hand, the Health and Care LPA can only be used by your Attorneys if you no longer have mental capacity.

We recommend that all LPAs are registered with the OPG as soon as everyone has signed them. This is so they can be used at short notice in the future, and so you can rest assured that the OPG have seen the documents and confirmed they are sound. Registration straight-away can also avoid arguments between family members later on, if someone has been left out as an Attorney, for example. This is because you can formally notify people of the registration. Whilst you have capacity to make decisions, you will also have capacity to explain your reasons why you have appointed the people you have to be your Attorneys.

Whoever you appoint as your Attorneys either under your EPA or LPA, they will have a duty to act in your best interests when making decisions on your behalf. When selecting your Attorneys therefore, you must choose people you trust. The rules that your Attorneys must follow if they need to make decisions for you are set out in the Mental Capacity Act 2005.

You can revoke all or part of your EPA or LPAs at any time, provided you still have the mental capacity to make the decision to do so. If you wish to revoke all or part of a Power of Attorney, please contact us.

If you are an Attorney

As an Attorney, you will not be formally supervised or monitored by the Office of the Public Guardian or the Court of Protection. That said, we still recommend that you keep good records of the decisions made and actions taken in your role as Attorney, as you could be called upon to produce records of your decisions. This means that

if your actions are ever queried, you will be able to show what decisions you have made and why.

You have been trusted by the person making the EPA or LPA to act in their best interests and must always do so. If anyone believes that you are not acting correctly, or are making bad decisions, they can lodge a concern with the Office of the Public Guardian. The OPG will then investigate the concern to see whether there is any cause for concern.

If you are found to be acting outside your authority as an Attorney and/or not acting in the best interests of the person for whom you act, then the OPG can ask the Court of Protection to revoke your appointment and replace you with someone else.

Deputyship Orders

If you don't have an EPA or LPA and become unable to make decisions for yourself, then it may be necessary for someone to go to Court on your behalf, to ask the Court to make an Order appointing a person to be your Deputy instead.

A Deputy is similar to an Attorney, in that a Deputy can make decisions for you, but a Deputy's powers are far more restrictive than those of an Attorney. Further, who gets to be your Deputy is a decision made by the Court, whereas with an EPA or LPA, you have kept control over the person or people who should make decisions for you in the future.

The process of applying for a Deputyship Order is a lengthy one and can therefore cause some delays to your loved ones being able to make decisions on your behalf. It can therefore be difficult if your Deputy needs to act for you at short notice, although expedited applications are available in some situations.

The person applying for a Deputyship Order to make decisions for you must serve formal notice on a specific set of people, including you, even if you have lost capacity and cannot understand what this means. The people who have been notified then have the right to object to the appointment if they think it is inappropriate, although there are strict grounds on when and how a person can object.

If you are a Deputy

If you are a Deputy for someone, you will also likely be supervised by the Court in carrying out your duties and you will need to report to the Court, keeping records of all decisions and transactions you have made on behalf of the person who has lost capacity. In some cases, a Court official might even come and visit you to make sure that you are carrying out your duties correctly.

For the first year of your Deputyship, you will be supervised to a "general" level. Court of Protection visitors will contact and/or come and see you to check that you

understand your duties, have the right level of support and are carrying out your duties correctly. Visits will be arranged with you in advance and you will be told the reason for the visit.

After the first year, if you are managing less than £21,000 **and** are deemed not to require this general supervision, you will be subject only to “minimal” supervision. Otherwise, the general supervision will continue.

The Court of Protection is there to help you do the best job as Deputy. They can be contacted by you for guidance at any time and will give you advice and support where needed.

The Key Differences

The table below sets out some of the key similarities and differences between Attorneys and Deputies:

Question	EPA	LPA	Application for Deputyship
Can I make one for myself?	✗ not since 01.10.2007	✓	✗
Can I make one for someone else?	✗	✗	✓
Can I choose who is appointed?	✓	✓	✗
Do I have to tell anyone I'm making one?	✓	✗ not since 01.07.2015	✓
Do I have to be told if someone else is making one about me?	n/a	n/a	✓
Do I have to register it for it to be used?	✓	✓	✓
Can I revoke it?	✓	✓	✗
Will the person appointed be supervised?	✗	✗	✓
Can the Court remove the person appointed?	✓	✓	✓

How We Can Help

For more detailed information about acting as an Attorney under EPAs, LPAs or acting as a Deputy under a Court Order, you can view and download relevant [factsheets](#) from our website.

Alternatively, get in touch on 01904 866139 or hello@rochelegal.co.uk to speak with one of our reassuring experts about the option that is right for you and your family.

If you'd like more information call **01904 866139**
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