

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

Powers of Attorney and Deputyship Orders both give people the legal authority to act and make decisions on behalf of someone who has lost mental capacity.

However, there are a number of key differences between the two. In essence, Powers of Attorney are preparations for the future – made in advance of a loss of capacity. Deputyship Orders, on the other hand, could be seen as something of a last resort, made when a decision must be taken for someone else, but where no one has been granted the legal authority to do so.

This help guide gives an overview of these two legal tools, how they differ, and how each can be useful in different circumstances.

Powers of Attorney

Powers of Attorney are formal legal documents which let you appoint one or more people to make decisions on your behalf. A person who makes a Power of Attorney is often called the 'Donor' and the people appointed to make decisions are referred to as the 'Attorneys'.

Powers of Attorney are useful documents if you need extra support in the future, or as a way to prepare against the future possibility of losing mental capacity to make decisions for yourself. Losing mental capacity can be a consequence of many different life events; for example, it could result from living with Dementia or sustaining a brain injury.

There are different types of Power of Attorney. The two most types common are: [Lasting Powers of Attorney](#) and [Enduring Powers of Attorney](#).

Lasting Powers of Attorney

The most widely used Power of Attorney is the Lasting Power of Attorney (LPA). LPAs come in two different kinds. They are:

- Property and Financial
- Health and Welfare

Each kind of LPA will allow your Attorneys to make decisions about different aspects of your life. Often, Donors will choose to make both kinds of LPA, to allow their Attorneys to look after all aspects of their life should they lose mental capacity. The LPA document will also contain the specific terms of what your Attorneys can do under the Power.

Property and Financial LPAs

Property and Financial LPAs allow your Attorneys to make decisions for you over your money and property. It might allow them to pay your utility bills, collect your benefits, sell your home, and generally help you with your money.

It is also possible to structure your Property and Financial LPA to allow your Attorneys to use it at any time, at your request, provided it has been registered. This means it could be used even if you still have the capacity to make decisions yourself.

If you arrange your Property and Financial LPA in this way, whilst you still have mental capacity, your Attorneys will only be able to act **with your consent**. If you later lose capacity, they can continue to act on your behalf for all decisions covered by the terms of your LPA.

Most people choose to do this with their Property and Financial LPA because it is the most flexible and practical solution. It is useful if you can make your own decisions but there is another reason you want your Attorneys to help you. For example, if you're away on holiday, or if your health makes it difficult to visit the bank, talk on the phone, or sign documents.

Health and Care LPAs

Health and Care LPAs allow your Attorneys to make decisions about your health and wellbeing. This can include matters regarding your medical care, decisions about life sustaining treatment, care home decisions, and even your daily routine (such as what you should eat and wear). Unlike Property and Financial LPAs, Health and Care LPAs **can only be used** by your Attorneys if you no longer have mental capacity to make your own decisions.

Enduring Powers of Attorney

Since 1st October 2007, it is no longer possible to create new Enduring Powers of Attorney (EPAs). They have effectively been replaced by LPAs. However, any EPAs which already exist can still be used, so many of them are still in effect.

EPAs only allow Attorneys to make decisions on property and finance matters and cannot be used to for health and care decisions.

In addition, some EPAs (depending on their terms) can be used before they are registered with the Office of the Public Guardian (OPG). EPAs are only registered with the OPG if your Attorneys have reason to believe that you have become, or are becoming, mentally unable to manage your affairs. However, registration takes around 8 weeks, and this can cause problems if you lose capacity but need your Attorneys to act for you at short notice.

If you have an EPA, it is advisable to ask a solicitor to check it over. By definition, it will have been made some time ago and may no longer meet your intentions. LPAs also offer the possibility of appointing Attorneys to make decisions on health and care matters and can offer greater flexibility in relation to property and financial management as well.

Many people with EPAs choose to replace them with LPAs instead, to avoid some of the problems described above. If you have an EPA and are considering using an LPA instead, our separate [help guide](#): 'Replacing an Enduring Power of Attorney' contains more information.

When to make a Lasting Power of Attorney?

LPAs can only be made when the Donor has the mental capacity to do so. They must also be registered with the OPG before they can be used by the Attorneys. Both facts mean it is always better to make an LPA sooner rather than later. If you lose mental capacity before you have made an LPA, you will be unable to do so unless you regain mental capacity, which may be unlikely.

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.

Immediate registration can also avoid arguments between family members later, for example, if someone is angry, they have not been appointed as an Attorney. This is because you can formally notify people of the registration and, whilst you have capacity to make decisions, you will also have capacity to explain your reasons behind appointing your chosen Attorneys.

More information on LPAs can be found in our separate 'Lasting Powers of Attorney' [help guide](#).

The role of an Attorney

If you are a Donor, whoever you appoint as your Attorneys, either under an EPA or LPA, 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.

If you have been appointed as an Attorney, you will not be formally supervised or monitored by the OPG 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.

It can be useful to know more about an Attorney's role whether you are a Donor or an Attorney. If you would like more information on this, see our separate [help guide](#) about 'Acting as an Attorney'. Our 'Mental Capacity' help guide also contains more information on acting in a Donor's best interests.

Deputyship Orders

If you don't have an EPA or LPA and lose mental capacity, then it will create a situation where no one is legally authorised to make decisions for you. This can be problematic, so it may be necessary for someone to apply to the [Court of Protection](#) for a Deputyship Order. The court can issue a Deputyship Order to appoint someone whom the court deems suitable to act as a Deputy for you.

A Deputy is like an Attorney, in that they can make decisions on your behalf, but a Deputy's powers are far more restricted. Additionally, it will be the court that decides who should be appointed as your Deputy – in contrast to EPAs or LPAs where you have control over who should make decisions for you in the future. The process of applying for a Deputyship Order can be a lengthy one and this can result in difficulties for your loved ones, particularly if they need to act for you immediately. However, it is possible to make expedited applications for a Deputyship Order in some situations.

When applying for a Deputyship Order, the applicant must serve formal notice on a specific set of people. This includes the person who needs the decision made for them, even if they have lost capacity and cannot understand what this means. Everyone who has been notified then has the right to object to the application if they think it is inappropriate, although there are strict grounds on when and how a person can object.

The role of a Deputy

Deputies are generally placed under greater supervision than Attorneys. If you are acting as a Deputy, you will need to report to the Court of Protection, and keep 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.

In the first year of your Deputyship, you will be supervised to a 'general' level. Court of Protection visitors will contact you and/or visit you in person to check that you understand your role, have the right level of support, and are conducting duties properly. 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.

Deputies are charged fees by the Court of Protection for the expenses of this supervision. However, the court is there to help you do the best job possible as Deputy, in the interests of the person who has lost capacity. The court can be contacted for guidance at any time and you can also seek advice and support from specialist solicitors' firms, such as Roche Legal, where necessary.

For more information on acting as a Deputy, see our two separate [help guides](#) on 'Becoming a Deputy for an Elderly or Vulnerable Relative' and 'Acting as a Deputy'.

Comparing Powers of Attorney and Deputyship Orders

Here is a summary of the key similarities and differences between Powers of Attorney and Deputyship Orders:

	EPA	LPA	Deputyship
Can I make one for myself?	✓*	✗	✗
Can I make one for someone else?	✗	✗	✓
Can I choose who is appointed?	✓	✓	✗
Do I have to tell anyone I'm making one?	✓	✗**	✓
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?	✓	✓	✓

*not since 1 October 2007; **not since 1 July 2015

How Roche Legal can help

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Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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