

## Factsheet

# Managing my affairs if I become ill

There may be a time when you need someone to make decisions for you because of ill health.

This factsheet explains how you can prepare for someone you trust to manage your money or make decisions about your care and welfare in the way you would wish.



Call free on **0800 319 6789**

Visit **[www.independentage.org](http://www.independentage.org)**

## About Independent Age

Whatever happens as we get older, we all want to remain independent and live life on our own terms. That's why, as well as offering regular friendly contact and a strong campaigning voice, Independent Age can provide you and your family with clear, free and impartial advice on the issues that matter: care and support, money and benefits, health and mobility.

A charity founded over 150 years ago, we're independent so you can be.

The information in this factsheet applies to England only.

If you're in Wales, contact Age Cymru  
(**0800 022 3444**, [ageuk.org.uk/cymru](https://ageuk.org.uk/cymru))  
for information and advice.

In Scotland, contact Age Scotland  
(**0800 12 44 222**, [ageuk.org.uk/scotland](https://ageuk.org.uk/scotland)).

In Northern Ireland, contact Age NI  
(**0808 808 7575**, [ageuk.org.uk/northern-ireland](https://ageuk.org.uk/northern-ireland)).

In this factsheet, you'll find reference to our other free publications. You can order them by calling **0800 319 6789** or by visiting [www.independentage.org/publications](https://www.independentage.org/publications)

## Contents

---

1. What is mental capacity?	4
2. How is mental capacity assessed?	6
3. Challenging mental capacity assessments	8
4. Making best interests decisions	10
5. Arranging for someone to manage your financial affairs on your behalf	13
6. What is a power of attorney?	20
7. General power of attorney	22
8. Lasting power of attorney	25
9. What happens to existing enduring powers of attorney?	30
10. Ending or changing a lasting or enduring power of attorney	32
11. What happens if someone has lost capacity but has not set up a power of attorney?	35
12. Independent advocates	39
13. Advance decisions	45
14. Useful contacts	51

---

## 1. What is mental capacity?

---

Mental capacity means having the ability to understand, remember and use information so that you can make and express decisions about your life. If you are assessed as lacking mental capacity, it means you are no longer able to make and/or communicate a decision when you need to.

This might be a decision about an everyday thing, like choosing what to wear or when to pay a bill, or a more important decision like deciding whether to move into a care home. You may have the ability to make some decisions but not others.

Loss of mental capacity isn't always permanent. It could be temporary or it may change over time. If you lack mental capacity to make a decision at the time it needs to be made, someone else may need to make it for you.

Mental capacity is not solely based on your age, behaviour or health conditions. There could be lots of reasons for not having mental capacity, including:

- being unconscious as a result of an accident or illness
- suffering a stroke
- having a degenerative disease
- having late-stage dementia.

## The Mental Capacity Act

The Mental Capacity Act 2005 sets out how people who lack mental capacity should be protected and treated. There are five main principles that must be followed by someone who could make a decision on your behalf. They must:

- assume you have capacity, until it's shown that it's more likely than not that you don't
- take all practical steps to help you make your own decision before anyone decides you're unable to do so
- not treat you as unable to make a decision simply because you make an unusual, unwise or odd decision, or a decision they disagree with
- ensure any decision or action taken on your behalf is made in your best interests. See chapter 4 to find out more about best interests decisions
- consider less restrictive options. They should consider all options and try to choose the one that is in your best interests.

For more information, see the Mental Capacity Act Code of Practice ([gov.uk/opg/mca-code](https://www.gov.uk/opg/mca-code)).

## 2. How is mental capacity assessed?

---

A wide range of people may need to assess whether you have the mental capacity to make a decision. This includes family members and paid care workers who may make routine decisions, such as what you will eat or what clothes you will wear. If someone is assessing your capacity, they must be able to give reasons for why they've decided you lack or have capacity.

Sometimes a formal assessment by a professional (such as a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker) may be needed. For example, if there is a disagreement about whether you lack mental capacity, or if the decision that needs to be made is complex or will have significant consequences.

Anyone making a decision on behalf of someone else will need to take reasonable steps to be sure that the person lacks mental capacity. They can do this by following the Mental Capacity Act Code of Practice ([gov.uk/opg/mca-code](https://www.gov.uk/opg/mca-code)), which uses a two-stage assessment.

The first stage looks at whether the functioning of your mind or brain is impaired or disturbed in any way.

The second step looks at whether this impairment or disturbance means you're unable to make a specific

decision when you need to. You will be treated as unable to make a decision if, even with appropriate support, you can't do one or more of the following:

- understand the information you need to make a decision
- remember that information
- use or weigh up information as you make the decision
- communicate your decision in any way.

The assessment will need to consider:

- if it's possible that you could get your capacity back, whether the decision can be delayed
- if you understand what decision you need to make and why you need to make it
- if you understand the likely consequences of making, or not making, the decision.

Every effort should be made to help you to have capacity and communicate your decision.

### 3. Challenging mental capacity assessments

---

If you or a friend or relative disagree with the outcome of a formal capacity assessment, you might want to challenge it. For example, you might think you could have made a decision yourself but weren't allowed to. If you think decisions are being made for you without assessing your mental capacity beforehand, you can challenge this too.

Start by talking to the person who carried out the assessment. Ask them to explain why they believe you lack the capacity to make a decision and for any evidence they used to come to this decision. If a record of the assessment was made, ask for a copy of this. If you're not satisfied, you can ask them to review their decision. You may want the help of an independent advocate (see chapter 12).

If this doesn't help, you could ask for a second, independent opinion from someone with expertise in mental capacity assessments.

You could also consider making a formal complaint using the complaints procedure of the organisation involved. However, if the disagreement can't be resolved, you may need to apply to the Court of Protection and ask them to decide if you lack mental

capacity (see chapter 11). During the coronavirus (COVID-19) pandemic, there may be changes to how complaints are being handled. Read our factsheet **Complaints about care and health services** to find out more.

## 4. Making best interests decisions

---

Any decision made on behalf of an adult who lacks mental capacity must be made in their 'best interests'.

To do this, the decision maker must:

- not make any assumptions about you simply based on your age, appearance, condition or behaviour
- consider whether you might regain the ability to make the decision for yourself
- do everything they can to involve you in making the decision
- try to find out any past and present views, beliefs and values that might influence a decision you would make
- try to find out the things you would have taken into account when making the decision
- if practical and appropriate, speak to others interested in your welfare – such as your friends, relatives or carers – to find out what you would want to happen.

They should then weigh up all this information to work out what is in your best interests. They must also look for options that are less restrictive of your rights.

A best interests decision mustn't be based on the decision maker's feelings about what they would want for themselves in the same circumstances.

## Who can make a best interests decision?

Anyone acting on behalf of a person who lacks mental capacity can make a best interests decision. For small, daily decisions like what to wear or eat, this could be your family or a carer. For decisions about medical treatment or care, health or social care staff may need to be involved.

If someone has a lasting or enduring power of attorney or they are a court-appointed deputy, they must make the decisions on anything they've been appointed to deal with. They must also act in your best interests (see chapters 8, 9 and 11).

Sometimes a formal best interests meeting may be needed if it is a big decision, if there are multiple options or if there is any disagreement about what is in your best interests. The person leading the meeting should record what the decision was, how it was made and why they think it is in your best interests. It may also be useful for you, your family or your carer to keep a record. There must be a reasonable belief that the decision being made is in your best interests. This means the decision maker must be able to give reasons for their decision if it is later questioned or challenged. For this reason, it is best to keep clear records of actions taken and why.

## **If you disagree with a best interests decision made by a health or care professional**

It may help to first request any record made of the decision. If a formal meeting hasn't yet been held, ask for one to be arranged at a time you can be involved. You could also ask if the decision could be referred to another professional for a second opinion.

You could make a formal complaint to the organisation that employs the person or people who made the decision. Complaints should be made within 12 months of the decision or when you became aware of it. Read our factsheet **Complaints about care and health services** to find out more.

You could ask for an independent advocate to act on behalf of the person who lacks capacity (see chapter 12).

In some circumstances, it may help for an independent mediator to be appointed to support any ongoing discussions. You can contact the Civil Mediation Council (**07841 017905**, [civilmediation.org/mediator-search](https://civilmediation.org/mediator-search)) to find a mediator. You may have to pay to use their services.

If there is no other way of resolving the dispute, an application may need to be made to the Court of Protection so they can decide what is in the person's best interests. You can call our Helpline (**0800 319 6789**, [advice@independentage.org](mailto:advice@independentage.org)) to arrange to speak to an adviser to find out more about this process.

## 5. Arranging for someone to manage your financial affairs on your behalf

---

If you have mental capacity and can make your own decisions, there are ways you can organise your financial affairs so you can manage them more easily. This may suit you if you're physically unable to manage your money but still mentally able to check how another person manages it for you.

### **Set up a direct debit or standing order**

Setting up direct debits or standing orders on your bank account makes sure your bills, loans and subscriptions are paid on a regular basis without you needing to arrange this each time. This is a simple way of managing your finances without anyone else needing to get involved.

To set up a direct debit, contact the company that the payments are due to, and ask for a direct debit instruction form. You can sometimes set up a direct debit over the phone or on the internet. The company should tell you in advance how much they'll take and when.

A standing order is an instruction you give to your bank to regularly pay out a fixed sum of money to another account. This may be helpful if you are paying a person

or organisation on a regular basis, for example, if you give someone a regular amount of money to do your shopping. A standing order gives you more control than a direct debit, as you can start, stop or change the payment whenever you want.

## **Give someone access to your bank account**

You can instruct your bank or building society to give someone you trust access to your bank account – this is known as a third-party mandate. You can decide what you want them to be able to do, such as withdraw a maximum amount or check your balance. Speak to your bank about how to set up a third-party mandate – they may have a standard form for you to fill out. The mandate may become invalid if you lose mental capacity at any time after setting it up.

## **Set up a joint account**

You can set up a joint bank account with another person to give them direct access to your money. Both of you will be given a debit card to withdraw money from the account. You must completely trust this person to follow your wishes, as they can legally withdraw all of the money from the account without your permission. You may also be held liable for any debts the other person builds up on your joint account. Contact your bank if you would like to set up a joint account.

If you lose mental capacity, the bank can decide to restrict the other person's use of your joint account unless an attorney or deputy can legally act on your behalf (see chapters 8, 9 and 11).

## **Write a letter to your bank**

Your bank or building society may accept a letter from you asking them to allow someone you trust to have access to your account if you're unable to get to the bank – perhaps because you're in hospital. Ask your bank or building society if they offer this and, if so, how to organise it. However, because of the risk of fraud, some financial institutions may not accept a letter of authority and may ask you to set up a third-party mandate.

## **Get someone else to collect your benefits**

If your benefit is paid into a bank, building society or a credit union account, contact your account provider to ask if they can let you name a helper, such as trusted relative or a friend, to access your account on your behalf. You might have to fill out a third-party mandate form provided by your bank. This will allow someone to manage your day-to-day banking but not to close or open accounts or apply for an overdraft in your name. This should be a temporary measure. If you need someone to permanently collect or manage your benefits on your behalf, you could consider setting up an appointee (see below).

## **Set up an appointee to collect your benefits**

An appointee can manage your benefits on your behalf if you cannot manage them or act for yourself and haven't set up a lasting power of attorney for property and financial affairs (see chapter 6). They can only manage your benefits.

The Department for Work and Pensions (DWP) will appoint someone, such as a close relative, to receive your benefits on your behalf. They may call or visit them to check they are suitable.

Your appointee's responsibilities include:

- telling the benefits office about any changes which may affect how much you receive
- spending the benefits in your best interests
- paying back any overpaid benefits.



## To do

If you want to become an appointee for a friend or relative, contact the relevant benefit helpline:

### **Attendance Allowance**

Contact the Attendance Allowance helpline on **0800 731 0122**.

### **Disability Living Allowance**

Contact the disability benefits helpline on **0800 731 0122** (if you were born on or before 8 April 1948) or **0800 121 4600** (if you were born after 8 April 1948).

### **State Pension**

Contact your local pension centre or call the Pension Service on **0800 731 7898**.

### **Personal Independence Payment**

Contact the Personal Independence Payment new claims line on **0800 917 2222**.

### **All other benefits**

Contact Jobcentre Plus on **0800 055 6688**.

For more information on becoming an appointee, visit [gov.uk/become-appointee-for-someone-claiming-benefits](https://www.gov.uk/become-appointee-for-someone-claiming-benefits)



### Good to know

If you already have a DWP-approved appointee for a benefit, you can ask your local council if that person can also be your appointee for Housing Benefit or Council Tax Support (if you claim these).

## Post Office card accounts

If your benefits are paid into a Post Office card account, you can ask for someone to become your 'permanent agent' so they have access to your account as well. They will be given their own card and PIN so they can draw out cash and check your balance for you.

Benefit payments to Post Office card accounts will stop on 30 November 2021. You should look into other options, such as a bank, building society or credit union account. If you want to arrange for the payments to be transferred to another account, you can call the DWP on **0800 085 7133**. If you do not find an alternative option in time, you will not lose access to your benefits. You can contact the DWP to discuss your circumstances.



## Good to know

Don't give anyone your own card and PIN for your bank account, Post Office card account or any other account. This would go against security rules and you might not be protected if money goes missing.

## 6. What is a power of attorney?

---

A power of attorney is a legal document which lets you give someone you trust (the attorney) the authority to make decisions on your behalf. There are different types of attorney, including:

- general power of attorney (see chapter 7)
- lasting power of attorney (see chapter 8)
- enduring power of attorney (see chapter 9).

### **Best interests decisions**

An attorney must make decisions in your best interests. The Mental Capacity Act Code of Practice says this means your attorney must:

- do everything they can to involve you in making a decision
- try to identify the things you would have taken into account when making a decision, such as your culture and any religious beliefs
- not make any assumptions about you simply based on your age, appearance, condition or behaviour
- consider whether you might regain the ability to make decisions for yourself
- consider any past and present views, beliefs and values that might influence a decision you would make

- if appropriate, consult others who are interested in your welfare – such as your friends and relatives or anyone caring for you – to see what you would have wanted
- look for options that are the least restrictive of your rights.



### **Good to know**

If you have been granted power of attorney and want advice on how you should and shouldn't act, contact the Office of the Public Guardian (**0300 456 0300**, [gov.uk/opg](https://www.gov.uk/opg)).

## 7. General power of attorney

---

You can set up a general power of attorney if you need someone to act for you for a temporary period – for example, while you're in hospital or unable to take care of things because of ill health or if you're out of the country for some time. It's valid only while you have mental capacity. This is sometimes also called an ordinary power of attorney.

A general power of attorney allows one or more people you trust, like a relative, friend or neighbour, to deal with your affairs, such as money, finances and property. You are known as the donor and the person you appoint to manage your financial affairs is the attorney.

You can let your attorney manage your affairs with no restrictions, or give them specific powers. This is sometimes called a limited power of attorney. For example, you could state if you will only let your attorney:

- sell your property on your behalf
- have access to your bank account
- make payments for you
- withdraw money from your account
- set up or cancel direct debits from your account
- sign cheques on your behalf.

You must have mental capacity to set up a general or limited power of attorney, because you will need to decide how your attorney deals with your affairs and be able to supervise their actions. You can remove the attorney's powers if you think they're not managing your money in your best interests, or you no longer need their help. It's best to do this with a written statement called a letter or deed of revocation. You may want to get legal help to do this. Tell your attorney and any relevant banks and financial organisations that you're ending the power of attorney and note it on the power itself.

## **How do I set up a general or limited power of attorney?**

A general power of attorney can be set up using basic wording specified in the Powers of Attorney Act 1971. It's important to get the wording right when setting up a limited power of attorney, so ask a solicitor or another adviser – such as at your local Citizens Advice – to write the document for you.

You don't need to register a general or limited power of attorney with the Office of the Public Guardian or Court of Protection. It can be used once the document has been set up properly and signed.



## To do

To find a legal representative at your local Citizens Advice (if they have one), contact **03444 111 444** ([citizensadvice.org.uk](https://www.citizensadvice.org.uk)) to find your local office.

You might be able to get free initial legal advice through a Law Works legal advice clinic ([lawworks.org.uk](https://www.lawworks.org.uk)), or from the Disability Law Service (**020 7791 9800**, [dls.org.uk](https://www.dls.org.uk)).

To find a solicitor in your local area, contact the Law Society (**020 7320 5650**, [solicitors.lawsociety.org.uk](https://www.solicitors.lawsociety.org.uk)).

## What if I lose mental capacity?

A general or limited power of attorney becomes invalid if you lose mental capacity. If you want someone to be able to act as your attorney both now (with your permission) and in the future if you lose mental capacity, you could set up a lasting power of attorney for property and financial affairs instead (see chapter 8). A lasting power of attorney must be arranged while you still have capacity to make the decision.

## 8. Lasting power of attorney

---

A lasting power of attorney (LPA) gives someone you trust the legal power to help you deal with your affairs, or make decisions for you in the future, if you lose mental capacity. Lasting powers of attorney have replaced enduring powers of attorney (EPA), although you can still use an EPA in some circumstances (see chapter 9).

There are two types of LPA:

- **Property and financial affairs** – this lets the attorney make decisions about your money and property. This could include managing your bank account, paying bills, collecting benefits or pensions, or selling your house. It can be used as soon as it is registered, with your permission. Your attorney must keep their own money separate and keep accounts of how they use your money.
- **Health and welfare** – this lets the attorney make decisions about your personal welfare, care and healthcare. This could include decisions about your daily routine, medical care, moving into a care home or receiving life-sustaining treatment. It can only be used when you are unable to make your own decisions.

You can have the same attorney for both types of LPA, but you have to apply on different forms to set up each one.

Both types of LPA need to be registered with the Office of the Public Guardian (OPG) before the documents can legally be used.



### **Good to know**

The OPG works to protect people who lack capacity from abuse. Contact them for more information about their work (**0300 456 0300**, [gov.uk/opg](https://www.gov.uk/opg)).

The OPG produces a leaflet called What happens when I can no longer make decisions for myself?, which explains the benefits of setting up an LPA ([gov.uk/government/publications/who-needs-a-lasting-power-of-attorney](https://www.gov.uk/government/publications/who-needs-a-lasting-power-of-attorney)).



### **Good to know**

If you don't arrange an LPA and you lose mental capacity, the Court of Protection can appoint a deputy to look after your interests – see chapter 11. Some people prefer a court-appointed deputy because of the additional protection it offers. However, a deputyship is more expensive to set up and there's an annual fee. You may want to speak to a solicitor to decide which is best for you.

## **Who can be my attorney?**

Your attorney can be given complete authority over your financial affairs and your personal welfare, so it's important that you choose someone you feel you can trust completely to make decisions in your best interests.

Your attorney could be a family member, friend, spouse, partner or a professional such as a solicitor. A solicitor can charge a fee to take on this role.

An attorney must be over 18 and shouldn't be a paid care worker, except in exceptional circumstances. Your attorney won't get any money for their role, unless they're a professional, but they can claim back limited expenses, such as postage, certain travel costs

or photocopying costs. They should keep receipts and invoice you.

You may wish to appoint more than one person as an attorney. If you do this, you will have to say if your attorneys can make decisions on their own, if they can make some decisions on their own and others together, or if they must all agree on a decision. If you decide that your attorneys must act jointly on a decision, they must all agree or else the decision cannot be made.

### **How do I set up a lasting power of attorney?**

You need to complete an official form from the Office of the Public Guardian (OPG) and then register it with them. It can take around 10 weeks to register a lasting power of attorney (LPA). You will need to complete separate forms if you decide to set up both an LPA for property and financial affairs and an LPA for health and welfare. It costs £82 to register each LPA (so £164 for both) but you may pay less, or even nothing at all, if you're on a low income or receiving certain benefits.

You can specify exactly what decisions your attorney can or can't take on your behalf in your LPA form. This may be important if there is the potential for disagreements between family members or friends as to what decision might be in your best interests. You can also write down any important preferences or instructions to help the attorney carry out their role.

You, your attorney and a witness will all need to sign the form. You'll also need a certificate provider to confirm that you understand the LPA and haven't been put under any pressure to set it up. The certificate provider should be someone you know well or a professional, such as your GP or a solicitor.



### Good to know

The LPA forms can be filled out online, or you can download all the relevant forms – and guides on completing an LPA – from the OPG website ([lastingpowerofattorney.service.gov.uk/home](https://lastingpowerofattorney.service.gov.uk/home)).

The OPG also has detailed guides to help people who have been appointed as attorneys under an LPA, or who are thinking of taking on the role ([gov.uk/government/publications/how-to-be-an-attorney](https://gov.uk/government/publications/how-to-be-an-attorney)).

If you need to make an LPA during the coronavirus (COVID-19) outbreak, you can still do so, even if you're self-isolating. It may take longer than usual for your LPA to be registered with the OPG. Visit [gov.uk/guidance/making-and-registering-an-lpa-during-the-coronavirus-outbreak](https://gov.uk/guidance/making-and-registering-an-lpa-during-the-coronavirus-outbreak) for more information.

## 9. What happens to existing enduring powers of attorney?

---

Lasting power of attorney (LPA) has replaced enduring power of attorney (EPA).

An EPA allows an attorney to make financial decisions on behalf of someone who couldn't make such decisions. It can also be used while someone still has mental capacity, as long as they have given their permission to the attorney. You can no longer set up a new EPA, but if you already have one set up correctly, it remains valid. Alternatively, you can choose to cancel your EPA and set up an LPA for property and financial affairs.

If you have set up an EPA and you lose mental capacity, your attorney must register the EPA with the Office of the Public Guardian (OPG) to start using it, or to continue using it if they already had your permission to start using it. It costs £82 to register an EPA, unless you are on a low income or on certain benefits. You can find out more at [gov.uk/ending-power-of-attorney-duties/register-an-enduring-power-of-attorney](https://www.gov.uk/ending-power-of-attorney-duties/register-an-enduring-power-of-attorney) or contact the OPG (**0300 456 0300**).



## To do

If you have an EPA set up, you may also wish to set up an LPA for health and welfare to give someone the authority to make decisions about your health and care.

## 10. Ending or changing a lasting or enduring power of attorney

---

If you still have mental capacity, you can change or end your lasting power of attorney (LPA). You can end an enduring power of attorney (EPA) but you can't make changes to it – you'll need to cancel it and set up an LPA instead.

### Ending or changing your lasting power of attorney

To end your LPA, you'll need to send a written statement called a deed of revocation to the Office of the Public Guardian (OPG), along with the original LPA. To add a new attorney, you'll need to make a new LPA once you have completed the deed of revocation to end your current LPA. You'll need to use specific wording. The government website has detailed information about this ([gov.uk/power-of-attorney/end](https://www.gov.uk/power-of-attorney/end)) or call the OPG (**0300 456 0300**).

If you want to change your LPA by removing someone from it, you can make a partial deed of revocation. Again, you'll need to include specific information when writing this ([gov.uk/power-of-attorney/end](https://www.gov.uk/power-of-attorney/end)).

Send your completed deed with the original LPA to the OPG. You'll also need to inform your attorney that you're ending the LPA.

Your attorney can also end an LPA by stating that they no longer wish to carry out the role. To do this, they have to complete a form and send it to you, the OPG and any other attorneys involved ([gov.uk/government/publications/disclaim-a-lasting-power-of-attorney](https://www.gov.uk/government/publications/disclaim-a-lasting-power-of-attorney)).

## **Ending an enduring power of attorney**

If you still have mental capacity, you can cancel an EPA. Details of how to do this can be found at [gov.uk/use-or-cancel-an-enduring-power-of-attorney](https://www.gov.uk/use-or-cancel-an-enduring-power-of-attorney) or by calling the OPG (**0300 456 0300**). Your attorney can also end an EPA by stating that they no longer wish to carry out the role.

If you no longer have mental capacity, your registered EPA can only be revoked if the Court of Protection confirms the revocation. There are two forms to fill in and a fee of £365 for this. You may not have to pay if you're on a low income or on certain benefits.

## **Other ways a power of attorney can end**

Your power of attorney will end automatically if you die. It may also end if your attorney dies, loses mental capacity or is found to have abused their power, depending on whether there are other attorneys who can still act.

For an EPA or a property and financial affairs LPA, the power of attorney will end if you or your attorney become bankrupt.

For an LPA or a registered EPA, if you are the attorney for someone who has died, inform the OPG (**0300 456 0300**) of the death. You'll need to send them the power of attorney document and all certified copies, and a copy of the death certificate.

If more than one attorney was appointed to make decisions jointly and one attorney decides to stop acting, the remaining one can no longer continue acting as an attorney, unless specified in the LPA.

## 11. What happens if someone has lost capacity but has not set up a power of attorney?

---

If someone has already lost capacity but hasn't set up an enduring (EPA) or lasting power of attorney (LPA), the Court of Protection can appoint a deputy to make decisions on their behalf.

### **The Court of Protection**

The Court of Protection can make decisions about the property, financial affairs and/or healthcare and personal welfare of adults who lack capacity. It can:

- decide whether someone has the capacity to make a particular decision
- make decisions about financial and/or welfare matters for people who lack capacity
- appoint a deputy to make decisions for someone lacking capacity
- monitor how a deputy or attorney carries out their duties, and remove them if they fail to fulfil their duties
- hear cases where there are objections to registering an LPA or EPA and decide whether or not an LPA or EPA is valid
- protect people from abuse.

The court must follow the principles set out in the Mental Capacity Act 2005 and make decisions in the person's best interests (see chapter 4).

## **What does a deputy do?**

You can apply to the Court of Protection to be a deputy for someone who has lost mental capacity. A deputy is usually a relative or friend of the person, but professionals such as solicitors or council representatives can also apply.

A deputy has a similar role to an attorney. You might be responsible for property and financial decisions and/or health and welfare decisions. You'll get a court order which says what you can and cannot do, and you must make sure that you follow the five main principles of the Mental Capacity Act (see chapter 1). You will be supervised by the Office of the Public Guardian and you'll have to write an annual report explaining the decisions you've made as a deputy.

Your duty stops when the person has died or if you stand down. You won't have any involvement with the deceased person's estate.

## **Applying to become a deputy**

You will need to complete a number of forms when applying to become a deputy. This will include an Assessment of Capacity form, which requires a professional (such as a GP, psychiatrist or social worker)

to conduct a capacity assessment for the person you would like to become a deputy for.

You'll also need to formally notify the person you're applying to be a deputy for and anyone you think might have an interest in making decisions for that person (such as their relatives) about your application.

Finally, you will be asked to pay a £365 application fee when you submit your application to the Court of Protection. You'll need to pay the fee twice if you're applying to be both types of deputy.

If the Court of Protection decides to hold a hearing for your case, you'll need to pay another £485. More supervision fees will be required every year – these range between £35 and £320 depending on the level of supervision. If you're a new deputy, you'll also have to pay a £100 assessment fee.

If you're applying for a deputyship for property and financial affairs, you can usually claim back the application and supervision fees from the funds of the person whose deputy you're applying to be. Their finances can be assessed and they may be eligible for help to pay all or some of the fees, if their savings or income are low or if they receive certain benefits. If you're applying for a deputyship for health and welfare, your finances can be assessed and you may be entitled to help with application fees in the same circumstances.



### Good to know

The Court of Protection may not appoint a deputy for health and welfare because decisions about care and treatment can usually be made through the best interests decision-making process (see chapter 4). Call the Court of Protection's helpline on **0300 456 4600** or visit [gov.uk/government/publications/court-of-protection-personal-welfare-application-cop-gn4](https://www.gov.uk/government/publications/court-of-protection-personal-welfare-application-cop-gn4) if you're not sure whether to apply, because if you're turned down, you won't get your fee back.

## Reporting concerns about an attorney or deputy

If you're worried that an attorney or deputy isn't doing their job properly, contact the Office of the Public Guardian (**0115 934 2777**, [gov.uk/report-concern-about-attorney-deputy](https://www.gov.uk/report-concern-about-attorney-deputy)).

If you feel serious financial, physical or other forms of abuse are taking place, you should contact the police in an emergency or if a crime has taken place. You can also contact the council's adult social services department and ask to speak to the safeguarding adults team. Read our guide [Staying in control when you're older](#) for more information on safeguarding.

## 12. Independent advocates

---

Advocates can help older or vulnerable people to share their views, get information and access services, defend their rights and explore different options on issues including health, care and housing.

There are different kinds of advocate depending on the type or level of help you need.

### **Independent Mental Capacity Advocate**

An Independent Mental Capacity Advocate (IMCA) can help you if you lack mental capacity and don't have any family or friends who can support you, or it would be inappropriate or impractical to consult them. An IMCA must be involved when there are certain important decisions to make on your behalf. For example, if the NHS is proposing serious medical treatment, or the NHS or local council are suggesting you stay in a hospital for more than four weeks or a care home for more than eight weeks.

They may also be involved in reviews of your care or if there is a safeguarding situation where you need to be protected from harm.

The IMCA will aim to find out what you would consider if you were making the decision yourself, help you to make the decision where possible and ensure any decisions made on your behalf are in

your best interests. Ultimately, their role is to support and represent you in the decision-making process and ensure the Mental Capacity Act 2005 is being followed.

## **What does an IMCA do?**

The IMCA will meet you to gather as much information as possible about your wishes and what you would like to happen. They will also have the right to see your health and care records. They should represent your rights and past wishes (if known) to the professionals involved in your care and treatment. Any information or evidence they provide must be taken into account during the best interests decision-making process (see chapter 4). They can also challenge any decisions which may not be in your best interests.



### **Good to know**

If you qualify for IMCA support, you may also be eligible for a care and support advocate for other social care decision processes (see below).

## **Independent Mental Health Advocate**

If you're detained under certain sections of the Mental Health Act 1983 or you're under a Community Treatment Order, you will qualify for support from an Independent Mental Health Advocate (IMHA). You can contact an IMHA directly or ask a health or care professional to get in touch on your behalf. You must be helped to get an advocate.

An IMHA can give you information about your rights under the Mental Health Act and other aspects of your care and treatment. They can help you get your views and wishes heard by the people treating you. They can also help with appealing against a section. Mental health professionals must allow advocates access to relevant parts of your records, if they're given permission to do so.

IMCAs and IMHAs are independent. They are not employed by the NHS or councils.

## **Independent advocacy**

An independent advocate may be able to help if you:

- have mental capacity, but need help to communicate your needs and wishes; or
- have lost capacity, but don't qualify for IMCA services.

Independent advocacy is important because:

- your past wishes should be taken into consideration when important decisions about your care are being made. For example, you may have regularly said you want to stay in your own home rather than move into a care home. An advocate will help to ensure your wishes are taken into account by those involved in your care
- if you have dementia or other mental health problems you may not be able to deal with complex or detailed information, but you may be able to make one-off important decisions, such as where you wish to live. An advocate can help you to understand all the facts so you can make that decision
- it helps ensure that your rights, needs and wishes are taken into account by those involved in your care if there's a conflict of interest, such as a dispute among family members or between you and the professionals. An advocate will make sure your best interests are given the correct consideration.

## **Care and Support Advocacy**

Your council must arrange an independent advocate to help involve you in a care needs assessment or review, carry out a carer's assessment, and prepare or review a care and support plan and any safeguarding enquiries, if you meet the following two conditions.

The first is that you have substantial difficulty with any of the following:

- understanding information
- remembering information
- weighing up information to make a decision
- communicating your wishes, views or feelings.

The second condition is that you don't have an 'appropriate person' (like a friend or family member) to represent and support you.



### **Good to know**

Even if you have a family member or friend involved in supporting you, this doesn't mean they have to be your appropriate person. Speak to the social worker if you disagree with the decision they have made. Getting an advocate doesn't mean your family and friends can't still be involved, however.



## To do

Find a local advocacy scheme for older people by searching on the Older People's Advocacy Alliance website ([opaal.org.uk](https://opaal.org.uk)) or by contacting:

- your local Age UK (**0800 169 6565**, [ageuk.org.uk](https://ageuk.org.uk))
- the mental health charities Mind (**0300 123 3393**, [mind.org.uk](https://mind.org.uk)) or Rethink (**0300 5000 927**, [rethink.org](https://rethink.org)), which can help you find an advocate and may also provide an advocacy service.

For more information about advocacy, see our factsheet **Independent advocacy**.

## 13. Advance decisions

---

An advance decision is a way to refuse treatment or care, if there comes a time when you're unable to make and/or communicate your decision. You may have heard this referred to as a 'living will' or an advance decision to refuse treatment.

You can use an advance decision to refuse any treatment, including life-sustaining ones, such as artificial feeding, mechanical ventilation to help you breathe or cardiopulmonary resuscitation to restart your heart. You can't use an advance decision to refuse basic care that health professionals have a duty to provide, such as being offered food and drink by mouth, to ask for your life to be ended or to request certain treatments. Doctors decide the appropriate treatment for your condition and you decide whether you want it or not.

You could write an advance decision to make sure your doctors, other professionals and family are clear about any treatment or care you wouldn't want to receive in certain circumstances, if there comes a time when you can't make these views known.



### To do

Discuss any advance decisions to refuse life-sustaining treatment with your GP or healthcare professional, so you can think through all the possible consequences of refusing such treatment in different circumstances.

You may also wish to discuss it with your family and friends to get their perspective on your choices. Remember that the final decision is yours.

## Making an advance decision legally binding

If an advance decision is valid, it will be legally binding, which means a doctor or other health professional must follow it.

Your advance decision will be valid if:

- you have the mental capacity to make a decision about your future treatment when writing it
- you state which treatments you are refusing, and the circumstances in which you would refuse them.

If you want your advance decision to refuse life-sustaining treatment, it will also need to:

- be in writing
- state that you understand your life will be at risk by refusing the medical treatment
- be signed by you or someone on your behalf. This signature must be witnessed by someone else.

Your GP can also sign the advance decision. This will help the medical team treating you in the future to know you understood the implications of refusing certain treatment.



### **To do**

For more information about advance decisions, contact Compassion in Dying (**0800 999 2434**, [compassionindying.org.uk](https://www.compassionindying.org.uk)). They can also provide forms to help you to complete your advance decision.

## **Will a valid advance decision always be respected?**

There are some occasions when an advance decision will not be followed by doctors. This could be if:

- a decision needs to be made about a treatment that isn't mentioned in your advance decision
- your circumstances have changed and the doctor believes this would have affected your decision

- the doctor believes something has happened since you wrote the advance decision that may have affected your decision, for example, a new treatment has been developed.

## **If you already have a living will**

Living wills made before the Mental Capacity Act 2005 came into force in October 2007 are still legally binding, as long as they meet the conditions for a valid advance decision set out in the Mental Capacity Act. One of the key legal differences between a living will and an advance decision is that the refusal of life-sustaining treatment must be put in writing and must meet specific requirements to be legally valid. If you have an old living will, it's recommended that you create a new advance decision to make sure your wishes are legally binding.

## **Where should an advance decision be kept?**

You can ask for your advance decision to be kept in your healthcare records. This means it will be confidential, unless you decide to tell other healthcare professionals, family members or friends. Otherwise you should keep it in a safe place and make sure certain people, such as close family members or your GP, know where it is kept. It is important to inform people you trust, because your wishes might not be followed if people are unaware of your advance decisions.

## **How can I change or remove my advance decision?**

It's a good idea to regularly review and update an advance decision to make sure it reflects your changing health needs.

If you wish to withdraw your advance decision, you can do so at any time, both verbally and in writing, as long as you have mental capacity. You should then ensure the original written document is destroyed and that everyone who knew about its existence knows it has been cancelled. Healthcare professionals should make a note of this in your records.

## **How do advance decisions affect a lasting power of attorney?**

If you make an advance decision after setting up a lasting power of attorney (LPA) for health and welfare, your attorney can't give consent to treatment that you have refused in this advance decision.

However, if you made an advance decision before setting up an LPA for health and welfare and the LPA authorises your attorney to make decisions about the same treatment or decision, the attorney can overrule the advance decision.

## Advance statements

An advance statement lets you record your wishes about how you'd like to be treated if you lose capacity. Unlike an advance decision, it is not legally binding, but it does allow you to make more general statements about your health or care preferences. It must be taken into account if someone is deciding what's in your best interests (see chapter 4).

You can have both an advance decision and an advance statement. Your advance statement can help your family or health and care professionals to get a better picture of your wishes than they would from an advance decision alone.

If you have set up an LPA for health and welfare, an advance statement can help your attorney to understand your wishes.

For more information, contact Compassion in Dying (**0800 999 2434**, [compassionindying.org.uk](https://www.compassionindying.org.uk)).



### To do

For more information about making decisions about care and treatment at the end of your life, read our guide **Planning for the end of life**.

## 14. Useful contacts

---

If you're unsure about anything that you have read in this factsheet and would like to talk to someone about it, call our Helpline to arrange to speak to one of our advisers (**0800 319 6789**).

- To find out about independent advocates for people who need support to have their say, contact Older People's Advocacy Alliance (**[opaal.org.uk](http://opaal.org.uk)**).
- To find out about someone else managing your benefits, contact The Pension Service (**0800 731 7898**, **[gov.uk/contact-pension-service](http://gov.uk/contact-pension-service)**).
- To find out about advance decisions (living wills), contact Compassion in Dying (**0800 999 2434**, **[compassionindying.org.uk](http://compassionindying.org.uk)**).
- To find a solicitor and set up a power of attorney, contact The Law Society (**020 7320 5650**, **[solicitors.lawsociety.org.uk](http://solicitors.lawsociety.org.uk)**).
- If you're worried about the welfare of someone who does not have mental capacity, contact The Office of the Public Guardian (**0300 456 0300**, **[gov.uk/government/organisations/office-of-the-public-guardian](http://gov.uk/government/organisations/office-of-the-public-guardian)**).

Our publications cover England only. While we make every reasonable effort to ensure that our information is accurate at the time of publication, information can change over time. Our information should not be used as a substitute for professional advice. Independent Age does not accept any liability for any loss, however caused, arising from the use of the information within this publication. Please note that the inclusion of other organisations does not constitute an endorsement from us.

The sources used to create this publication are available on request. Contact us using the details below.

### **Thank you**

Independent Age would like to thank those who shared their experiences as this information was being developed, and those who reviewed the information for us.

## How did we do?

To tell us what you think of our information, contact us using the details below. We will use your feedback to help us plan future changes to our publications.

If you would like to be involved in helping us to develop our information products, you can join our Readers' Panel. For more information visit [www.independentage.org/readers-panel](http://www.independentage.org/readers-panel) or call us.

## Other formats

If you need this information in a different format (such as large print or audio CD), please contact us.

### Contact us

---

Call us 0800 319 6789

Email [advice@independentage.org](mailto:advice@independentage.org)

Visit [www.independentage.org](http://www.independentage.org)