

7-minute briefing on

Giving someone else control of your financial affairs

1. Why does someone else need to have control?

Being next of kin has no legal authority – there has to be a formal process to give someone lawful access to another person's finances or make decisions on their behalf. This does mean giving power to someone else – this power can protect (lots of people get it right), or it can be a means of abuse in itself (gives an opportunity to abuse that power). When thinking about granting any access or control over your finances to someone else, make sure it is someone you absolutely trust and are sure about. Because it is such an important decision, the person must have the mental capacity to appoint an Attorney in the first place. Otherwise a court must decide.

2. What types of authority?

There are 4 ways to do this, each has different powers:

Appointee – this means someone else must make sure a person's benefits (including state pension) are paid to them; it only applies to the Department for Work and Pensions (DWP)

3rd party mandate – banks may offer this as a temporary way of having a limited access to a person's bank account or similar to support them

Deputyship – the Court of Protection decides who should act for the person as a deputy, where they lack capacity to appoint an Attorney themselves, or an appropriate Attorney is not available

Lasting Power of Attorney (LPA) – this grants power for someone to act on behalf of a person, in line with the person's wishes where they have been able to express them, and certainly in their best interests, in relation to their Health and Welfare and/or Property and Financial Affairs

3. Legal position of LPA and deputyship

LPA can be used to carry out the wishes of the person directly while they still have capacity to make such decisions but cannot enact them (perhaps due to physical or practical restrictions). The Attorney cannot and must not take over decision-making while the adult still has capacity, especially where the action is not what the person themselves wants – this is an abuse of the power.

LPA for finance does not equal LPA for health and welfare and vice versa – they are separate powers – practitioners must clarify what is held and ask to see evidence.

It is for the Attorney to decide the point at which the person lacks capacity in relation to a decision, so they can step in to safeguard the rights of the person. There are clear responsibilities on anyone acting on someone else's behalf under these powers – Attorneys must be fully aware of these.

Acting in someone's best interest means thinking about what is proportionate / appropriate for that person around any decision to be made. Deputy / LPA is not a paid position – while expenses can be claimed in the role it has to be considered what is 'reasonable' and justifiable.

4. Top tips for Attorneys to get it right

- Read the guidance so you know what your responsibilities are
- Keep money separate from your own – have clear records
- Gifting – know what you can or can't and why
- Good practice – see and share bank statements with the person
- Remember the person still has to pay rent/ care fees / bills
- Avoid cash transactions – harder to evidence / track, less accountable – keep receipts
- With property – can sell / rent but income is counted as the person's income – gifting proceeds has to be reasonable and justifiable

5. What can go wrong?

Having support with your finances can be a real protection from others abusing or taking advantage of you. However it can be a significant power to grant to someone else, and like any power, it can be abused and used itself to abuse. For example:

- Those with legal authority spend the money as if it were their own: e.g. "I'm getting the money in the will" as a reason for using it – but the person is still alive now
- Charging lots of money for expenses which are not in proportion to what the Attorney or Deputy is doing
- Not paying the bills of the person e.g. for care, heating, food – running up debts
- Giving away large sums of money or signing over property, depriving the person of wealth or their personal items

6. Who to report it to?

LPA is a legal power, but it has to be used in the right way – if you have a concern:

- Report concerns about LPA or Deputies to the Office of the Public Guardian – their role is to investigate abuse of the power given and protect the person who lacks capacity
- Report concerns about appointees to the Department for Work and Pensions
- Report concerns about those with third party bank access to the relevant bank
- Report any of the above to the police, it may be a crime
- Report to the local authority as a safeguarding concern, especially where the person is at risk of or experiencing abuse or harm as a result (e.g. could lose their home because of debt)

Note: when the person dies, deputyship / LPA ends – responsibility / power moves to the executor.

7. Useful links

[Office of the Public Guardian - GOV.UK](#)

[Become an appointee for someone claiming benefits - GOV.UK](#)

[Help an adult at risk of harm - Norfolk County Council](#)

[Financial or Material Abuse | Norfolk Safeguarding Adults Board](#)