



Hammersmith
& Fulham

Power of Attorney and Benefit Appointees

Citizens Advice

Hammersmith and Fulham

Bob is a 66 year old pensioner. He has had a bad traffic accident and he is in hospital for a long time

What practical issues would need to be dealt with?

Who would deal with them?

What we've learned so far

- If someone loses mental capacity or is otherwise incapacitated:
 - They may no longer be able to manage their own finances
 - There may be some pre-emptive actions that could help in the short term
 - But relatives won't be able to fully manage the person's money or property on their behalf

Benefits Appointee

- An appointee can deal with the **benefits** of someone who cannot manage their own affairs - because they are **mentally incapable or severely disabled**.
- So if you claim benefits and unable to manage you could ask someone to be an Appointee on your behalf.
- If you are the friend or relative of someone who is a benefit claimant but unable to manage you could apply to be an Appointee for that person.

Benefits Appointee

- Only 1 appointee can act on behalf of someone who is entitled to benefits from DWP.
- An appointee can be:
 - an individual, for example a friend or relative
 - an organisation or representative of an organisation, for example a solicitor or the local council

Benefits Appointee

- An appointee is responsible for making and maintaining any benefit claims.
- You must:
 - sign the benefit claim form
 - tell the benefit office about changes which affect how much the claimant gets
 - spend the benefit (**which is paid directly to you**) in the claimant's best interests
- If the benefit is overpaid, depending on the circumstances, you could be held responsible.

Benefits Appointee

- DWP will need to approve you as an Appointee.
- When you apply:
 - DWP visit the claimant to assess if an appointee is needed.
 - DWP interview you to make sure you are suitable as an appointee.
 - During the interview, you and the interviewer fill out an appointee application form (Form BF56)

Benefits Appointee

- If DWP agrees with the application you will be formally appointed to act for the claimant.
- You are not the appointee until this happens.
- Once you are authorised, DWP will monitor the situation to make sure it is still suitable for you and the claimant.

Benefits Appointee

- How you apply to be an appointee depends on which benefit(s) the person claims:
 - Attendance Allowance - contact the Attendance Allowance helpline
 - Disability Living Allowance - contact the Disability Living Allowance helpline
 - State Pension - contact the Pension Service
 - Personal Independence Payment (PIP) - contact the PIP new claims line
 - all other benefits - contact Jobcentre Plus

Benefits Appointee

- Contact DWP immediately if you want to stop being an appointee. Phone the benefit office that deals with the claim.
- Your appointment can be stopped by DWP if:
 - you do not act properly under the terms of the appointment
 - the claimant becomes able to manage their own benefits
 - you become incapable yourself - let DWP know immediately

What is Power of Attorney?

- Legal document
- Designates one or more persons (**attorneys**) who can make important decisions on your behalf (**donor**)
- Two types:
 - **Ordinary Power of Attorney**: only applies when the donor still has mental capacity
 - **Lasting Power of Attorney**: usually applies when the donor no longer has mental capacity

What is Mental Capacity?

- **Mental capacity is the ability to make decisions about your life and to communicate them**
- What sorts of condition could cause loss of mental capacity?
- Having a mental health condition or early-stage dementia doesn't necessarily mean someone can't make decisions for themselves.
- Who decides if you have mental capacity?

Ordinary Power of Attorney

- Only valid while you have mental capacity and are able to make decisions
- Typically used when you want to delegate certain financial decisions to your attorney e.g. if you are out of the country or in hospital
- You want someone to act for you while you're able to supervise their actions

Lasting Power of Attorney (LPA)

- A Power of Attorney that remains valid if you no longer have mental capacity and are unable to manage your own affairs
- Lasting Power of Attorney replaced the previous Enduring Power of Attorney system in 2007
- A Lasting Power of Attorney can only be set up while you still have mental capacity

2 Types of LPA

Finance & Property

- Decisions about:
 - Managing bank account
 - Paying bills
 - Collecting pensions etc
 - Savings & investments
 - Selling home
- Can apply before loss of mental capacity

Health & Welfare

- Decisions about:
 - Daily care
 - Medical care
 - Care homes
 - Life-sustaining treatment
- Can only apply after loss of mental capacity

Role of Attorney

- Attorney role is **POWERFUL** – needs to be someone you **TRUST**.
- Must always act in your best interests and according to your wishes.
- Can be more than one person. If more than one person, can be required to make decisions separately or together.

Who can be an Attorney?

- Must be over 18.
- Can be family member(s), friend or solicitor.
- Should not be paid care workers.
- Can claim expenses while acting as attorney but cannot charge for time spent in doing the role, unless the attorney is a solicitor.

How do you feel about...

- Having someone act as an Attorney for you?
- Being an Attorney for someone else?

Setting up a Power of Attorney

- Choose your Attorney(s) - and get their agreement
- Decide whether to use a solicitor or to DIY
- For LPA, make your application via an online form from the Office of the Public Guardian (you can fill it in online or by hand)
- Have your LPA signed by a certificate provider
- Register the LPA:
 - Costs £82 for each LPA (some exemptions/reductions)
 - Send to the Office of the Public Guardian
 - Can take up to 20 weeks

One person's experience

<https://youtu.be/Z-B0-0IAN0E/>

What if there's no LPA in place?

- Remember your spouse/partner would not automatically be able to deal with your bank accounts and pensions, and make decisions about your healthcare.
- They will need to apply to the Court of Protection who will:
 - decide whether you have mental capacity
 - appoint a **deputy** to make decisions for you
- It can be a long and costly process
 - Set up costs (may involve solicitor's costs)
 - Ongoing supervision costs
 - Some fee waivers/reductions

One Person's Story

“My Mum is deputy (via the Court of Protection) to my Dad who has advanced dementia. It is a very long, drawn out and quite intrusive process. It's also expensive. Mum will have to pay hefty yearly fees too. I just wish we'd managed to get Lasting Power of Attorney instead when Dad was more capable. He got ill very fast and we couldn't implement it”

Norma Desmond

Problems?

What sort of problems do you think could arise with Lasting Power of Attorney?

If there is a Problem..

If you are unhappy with the decisions that are being taken by the Attorney:

- For a **healthcare** issue, your local NHS Complaints Advocacy service can support you when making a formal complaint. Find out more from your local **Healthwatch**.
- For a **social care** issue, contact the local social services adult protection team.
- You can also raise your concerns with the **Office of the Public Guardian** who can investigate allegations of mistreatment or fraud and report these to other agencies (e.g. police or social services) as appropriate

Summary

- Think about what would happen if you (or a relative) lost mental capacity
- With a Lasting Power of Attorney (LPA), a trusted friend or relative can look after your affairs
- 2 types: Finance & Property and Health & Welfare
- You can only make a LPA while you still have mental capacity
- Choice of the right Attorney(s) is crucial
- Apply for LPA via the Office of the Public Guardian
- If there is no LPA in place, the alternative is costly and time-consuming
- If problems arise, there are ways to raise issues and make complaints

If you need more help

- There is an Age UK booklet which gives more detailed information about Lasting Power of Attorney
- The Alzheimer's Society is another useful source of information
- **Citizens Advice** can help you complete the forms:
 - Contact the advice line on 0808 278 7832
 - Or email advice@cahf.org.uk