

What is the difference between a Deputy and an Attorney?

Lasting Powers of Attorney (LPAs) and Deputyship Orders are legal mechanisms by which an appointed person can make decisions on behalf of a person who lacks mental capacity. The type of decisions includes dealing with their property and affairs and/or health and welfare.

LPA's can only be made by a person before they lose mental capacity. The individual, known formally as the donor, makes a fully informed choice about whom they want to appoint to act on their behalf if they lose mental capacity at some point in the future.

It is a useful preparatory step to take and allows an individual greater control to decide who they would like to act as their attorney such as a relative, or friend, or whether a professional should be appointed to act instead. The individual is also able to set out exactly which decisions they would like their chosen attorney(s) to make on their behalf and they can set out certain restrictions on their decision-making powers. Forms are completed and once executed the LPA is registered with the [Office of the Public Guardian](#).

An LPA for property and affairs can be used prior to the donor losing capacity unless that is specifically restricted. By contract an LPA for welfare can only be used when the donor no longer has capacity to make decisions in relation to their welfare.

A Deputy is the alternative option where there is evidence of a lack of mental capacity and no LPA has been executed and registered. A Deputy is appointed by the [Court of Protection](#). An application to the Court will need to be made by a third party on behalf of any individual who lacks capacity. A Deputy will be required where no other provision has been made to deal with an incapacitated person's affairs.

The application is made to the Court of Protection and is often presented by a third party such as a family member, friend, social services, or a professional advisor such as a solicitor. The application process is a formal one and requires the person making the application to file evidence on capacity. It is important to ensure that the evidence is presented in accordance with the Mental Capacity Act 2005 and that the person applying to be appointed as Deputy is suitable. There is a Deputy declaration which must be completed as part of the application and standards which a Deputy should meet as set out by the Office of the Public Guardian, the supervisory body.

Also read "[Is a Deputyship for life?](#)" which will provide more information on Deputyships and how to change or replace a deputy.

Kindly see the Office of the Public Guardian [blog](#) for anyone trying to navigate their way through any of their services, forms or guidance.