

# Understanding Lasting Powers of Attorney and Deputyships



We know just how overwhelming it can feel when your child is about to reach adulthood with lots of things to consider. It is a lot easier than you think to put things in place to protect your young person's affairs and their future.

Below you can see a summary of how "Lasting Power of Attorneys" or "Deputyships" can provide you with the tools you need to navigate this important stage of your child/young person's life.

## 1. Why is it important to consider the issue of mental capacity for a child with an acquired brain injury (ABI) as they reach adulthood?

Once a child reaches 18, they are legally classed as an adult. This means that they will be treated as being able to make their own decisions in respect of their health and financial decisions unless it is deemed that they lack the mental capacity to do so. Their parents or legal guardians will no longer have the authority to act on their behalf. **Children with an ABI can often need more support than other children their age when making decisions** regarding their health or finances or they may not have the mental capacity to deal with these decisions at all.

## 2. What is mental capacity and how is it assessed?

Mental capacity is the ability to make a decision. This could be what food to eat, clothes to wear each day, or whether to consent to a type of medical treatment. **Mental capacity is "decision-specific", so an individual may have capacity to make certain decisions but not others.** The test for mental capacity is contained in the Mental Capacity Act 2005 (MCA 2005), and along with the supporting Code of Practice, sets out how the law should be put into practice when assessing a person's mental capacity.

If a child has an ABI it may be helpful to get a professional opinion regarding their mental capacity when they turn 18, so that informed decisions can be made about how best to support that child going forward in their life choices and decision-making. This could be provided by the child's GP, a solicitor, or other trained professional. Capacity can change over time, so it is important to keep this under review in the future.

## 3. What is a Lasting Power of Attorney (LPA)?

An LPA is a legal document that **allows a person to appoint another person to act on their behalf.** This person is often referred to as their 'attorney'. It is not possible for a person to sign an LPA until they are 18.

An LPA can last for a person's lifetime, so it is something that they will only need to do once. But, the person can choose to revoke the LPA in the future if they have the mental capacity to do so.

There are two types of LPA:

- Property and Finance LPAs: for decisions abouts finances, for example collecting benefits, dealing with bank accounts, running someone's day-to-day finances e.g dealing with shopping and bills and managing their property and investments; and
- Health and Welfare LPAs: for decisions about where a person should live and what care and medical treatment that person should receive.

A certificate of capacity must be completed by an independent third party at the time the LPA is signed, this person is often referred to as the 'certificate provider.' This person must be over 18 and must not be related to the individual making the LPA or any of the people being authorised to act

on the individual's behalf. They can either be someone who has known the person making the LPA well for over 2 years, such as a friend or a neighbour, or alternatively a professional such as a doctor or solicitor. By signing the LPA they are required to confirm that the person understands the purpose and scope of the power they are making.

If the person does not have the capacity to make an LPA, please see below for how this situation can be dealt with.

Once the LPA has been signed it must then be registered with the Office of the Public Guardian before it can be used. The Office of the Public Guardian is a government agency that is responsible for helping people plan for someone to make decisions for them if they are unable to do so in the future and also supporting people to make decisions for those that do not have the ability to make decisions for themselves.

There is an important difference between the two types of LPA. The Property and Finance LPA can be used by the authorised person whilst the individual has capacity, with their consent, but also if there comes a time when they no longer have capacity to manage their affairs themselves. However, the Health and Welfare LPA can only be used by the authorised person if the individual no longer has mental capacity.

When a child reaches 18, if they have mental capacity to make an LPA, they may wish to appoint their parent, guardian, or another individual as their authorised person for property and financial affairs, who would then be able to deal with their day-to-day financial matters on their behalf, with their consent. This would then mean that **the authorised person could, for example, help with day-to-day activities such as paying bills or going to the bank** to withdraw money on their behalf.

Likewise, if a child has mental capacity to make a Health and Welfare LPA when they turn 18, they could authorise a person to act on their behalf when speaking to medical professionals and consenting to treatment, if they lacked the capacity to do so in the future. This situation may, for example, occur if they sadly became unwell and did not have capacity to speak with the medical professionals themselves.

#### **4. What if your child does not have the mental capacity to make an LPA?**

If a person does not have capacity to sign an LPA, then either a lay individual (e.g a parent or guardian) or a professional (e.g a solicitor) can **apply to the Court of Protection** to be allowed to make decisions on behalf of that person.

Once appointed by the Court of Protection to make financial or welfare decisions, the authorised person is governed by the principles of the MCA 2005 and is required to provide an annual report to the Court of Protection which oversees their role.

An authorised person for health and welfare can only be appointed for an individual if the individual is over 16. The Court do, however, have the power to appoint an authorised person in respect of property and financial affairs for an individual who is under 16 if they consider that it is likely the person will still lack capacity when they reach 18.

#### **5. When and how to obtain further information about making an LPA**

If your child will soon be reaching adulthood and has an ABI and you would like further information or support, **please contact the Eden Dora Trust**, who will be able to put you in touch with a solicitor relevant to your personal circumstances to help you plan for the next stage of your child's future.