

ACTING AS A DEPUTY OR ATTORNEY

Jordans Solicitors LLP

By your side since 1925

What is an Attorney and Deputy

Attorneys and deputies are appointed to be able to make decisions on behalf of another when they are unable to make the decisions for themselves.

The key difference between an Attorney and Deputy is, an Attorney is chosen by the individual whilst they still have capacity via their Lasting Power of Attorney (LPA), whereas a Deputy is appointed by the Court of Protection for someone who has already lost capacity.

The Law

The Mental Capacity Act 2005 provides the legal framework for those (including Attorneys and Deputies) who are making decisions on behalf of those who lack the capacity to do so for themselves.

The MCA Code of Practice provides the practical guidance for decisions made under the Mental Capacity Act 2005 and is available on www.gov.uk/government/publications/mental-capacity-act-code-of-practice

What is Mental Capacity

Mental capacity means that you have the ability (capacity) to make decisions for yourself. When you are unable to do this, then you are said to lack mental capacity. This can occur due to illness, injury, mental health problems or a learning disability.

For someone to have capacity they must be able to:

- Understand the relevant information for the decision they are wanting to make, including any reasonably foreseeable consequences of making the decision
- Retain this information long enough for the decision to be made
- Balance the information provided to make the decision
- Effectively communicate their decision by any means – this can be via speech, sign language, muscle movements i.e., blinking

It is important that a person must be assumed to have capacity unless it is established that they lack it.

Other Key Legal Definitions

Court of Protection > Specialist Court that deals with all issues relating to those who lack capacity.
Office of the public Guardian > Government department responsible for supervising and keeping registers of Deputies, LPA's, Enduring Powers of Attorney, in addition to investigating complaints made in relation to Attorneys and Deputies.
Best Interest Decision Maker > Someone who is responsible for deciding what is in the best interests of another who lacks capacity.
Best Interest Decisions > Any act or decision made on behalf of someone who lacks capacity must be made in their best interests.



Guide Disclaimer

This guide is provided for information purposes only. We have done our best to ensure that the information contained in this guide is correct as of 07.01.2026. It applies only to England and Wales. However, the guide has no legal force, and the information may become inaccurate over time, due to changes in the law. Information within this guide may be over-simplified and the information contained within it does not constitute legal advice and we will not be liable should you rely on this information. Before you take any action, you should always seek legal advice from a professional with an in-date practicing certificate.

Types of Lasting Powers of Attorney

Health and Welfare Lasting Power of Attorney

Provides an attorney the power to make decisions about things like:

- Daily routine, for example washing, dressing, eating
- Medical care
- Moving into a care home
- Life-sustaining treatment

It can only be used when the individual is unable to make their own decisions.

Property and Financial Affairs Lasting Power of Attorney

Provides the attorney the power to make decisions about money and property, for instance:

- Managing a bank or building society account
- Paying bills
- Collecting benefits or a pension
- Selling your home

It can be used as soon as it's registered, with the individual's permission.

Duties of an Attorney

The Mental Capacity Act enforces that Attorneys must:

- Only make decisions that the Lasting Power of Attorney provides them with the authority to make.
- Ensure that they follow the statutory principles.
- Ensure that the decision that they are making are in the best interests of the individual they are making them for.
- Refer to the guidance in the Code of Practice.

Additionally, you should:

- Follow any instructions provided by the individual.
- Keep the affairs of the individual confidential.
- Do not take advantage and make decision that will benefit yourself.
- Keep records of accounting for income and expenses.
- Keep the property and money of the individual separate from your own.
- Unless given permission, you should not delegate any decisions.
- Do not relinquish the role as attorney without first informing the individual and the Court.

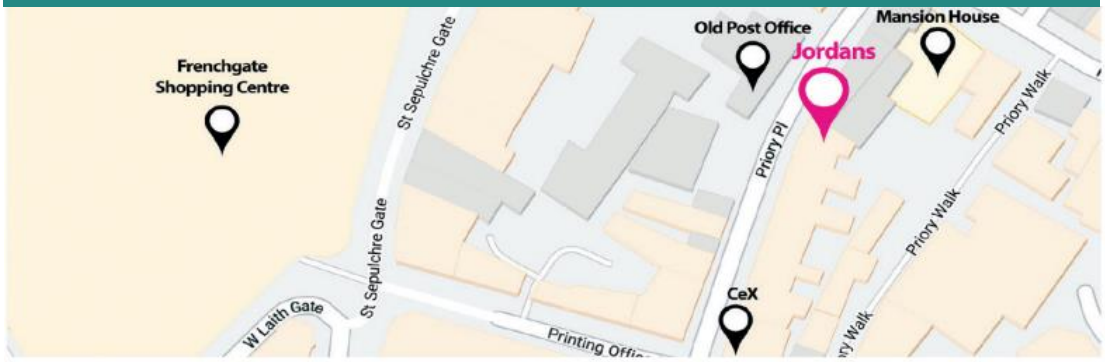
Duties of a Court Appointed Deputy

The Court will set out the amount of authority that you have within the order of appointment. You must:

- Never make decisions that are not authorised by the Court order.
- Always make decisions based on the best interests of the individual.
- Refer to the guidance in the Code of Practice and statutory principles.
- Annually submit an accounting report to the Office of Public Guardian.
- Have relevant insurance in place.
- Keep the property and money of the individual separate from your own.

Where can you find us

Doncaster



Kiveton Park - Sheffield



Our key promises:

- Direct Lawyer Contact
- Free Initial Assessment
- Flexible Openings*
  *Contact your local office for availability
- Clear Price Guarantee
- Same-day Response

Next steps

Take advantage of our **Free Initial Assessment** to find out what suits your needs. To get in touch, call us on **01302 365 374** or email your query to **info@jordansllp.com** to receive a response from one of our experts

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