



Power of Attorney, Appointeeship and Deputyship: A practical guide for families supporting teenagers and adults with FASD in England and Wales



Overview

When a child turns 18, the law treats them as adults. From that day, parents and carers no longer have the automatic right to make decisions on their behalf, and the young adult is assumed to be capable of making their own decisions about their money, their health and their daily life.

An individual with FASD may appear confident and capable, yet find it very difficult to manage money and bills, judge risk, understand consequences, remember appointments and deal with day-to-day life without support. Such hidden difficulties can leave those transitioning into adulthood and beyond extremely vulnerable and this guide is written with those vulnerabilities in mind.

This guide explains the key legal tools that allow families to continue supporting a young or vulnerable adult after they turn 18. It will cover Power of Attorney, Appointeeship and Deputyship explaining what they are, when they apply, who can use them, key features of them and practical considerations. It will also briefly explore concepts like 'mental capacity', the role of the Court of Protection and Deprivation of Liberty.

This guide aims to provide general information to help families in England and Wales understand the available options. The legal framework is different in Scotland and this guide does not apply to Scotland. It is not legal advice; rules and timescales can change, and every family's situation is different, so families should consider obtaining independent legal advice tailored to their circumstances.

THE KEY IDEA: MENTAL CAPACITY

Almost everything in this guide depends on one idea: mental capacity. This is a difficult concept in law, but in simple terms someone has capacity if they have the ability to make a particular decision at a particular time.

When does an individual lack capacity?

The Mental Capacity Act 2005 (the 'Act') is the main piece of legislation and it applies to individuals aged 16 and over. The Act starts with the assumption that everyone has mental capacity and if an individual is struggling, then they should be helped to make their own decision rather than have the decision made for them.

Under the Act, a person lacks mental capacity if they cannot do 1 or more of the following:

- understand the information relevant to the decision
- retain that information for long enough to make the decision
- use or weigh up that information as part of the process of making the decision
- communicate their decision in any way



Two points are important to understand:

First, capacity is assessed decision by decision. A person might be able to decide what to eat or wear, but not be able to decide about a complex financial matter; capacity is not "all or nothing".

Second, capacity can change over time. A person may be able to make a decision on a good day, or with the right support, but not on a more difficult day.

Two rules protect the person:

First, help must come first: before deciding that someone "lacks capacity," others must try to support them to make the decision themselves.

Second, an unwise decision is still their decision: making a choice that others consider foolish does not, by itself, mean a person lacks capacity.

Who assesses if an individual has capacity?

Deciding whether a person has capacity is called a capacity assessment. The Act is designed to empower those in health and social care to assess mental capacity themselves, rather than rely on expert assessments by psychiatrists or psychologists. Although, in cases involving complex or major decisions, a professional opinion from a GP, a consultant psychiatrist or psychologist is often appropriate. All assessors should consider the Mental Capacity Act 2005 Code of Practice (the Code) and the NICE Guidelines on decision making and mental capacity (the Guidelines).

Often, capacity assessments are carried out by social service safeguarding teams, the police, government agencies (such as the DWP), and medical professionals, such as GPs and those carrying out capacity assessments are not always specialists in a particular condition. In practice, most have never heard of FASD or have little understanding of FASD. This is significant for young people with conditions such as FASD.

The nature of FASD often means that a young person may be articulate and appear able yet manage tasks such as cooking or booking appointments only when an adult is guiding, supervising or prompting them. If the assessor does not understand the condition, they may wrongly conclude that the young person can cope alone, leaving them without the support they need. Assessors often do not have the skills, experience or knowledge to dig deeper to recognise that abilities are often superficial, and as a result they may not accurately assess capacity.

Where an assessor does not understand the young adult's condition, families can share reports and insist the assessor seek specialist input before reaching a decision. Paragraph 4.51 of the Code states that if the person has a particular condition or disorder, it may be appropriate to contact a specialist (for example, consultant psychiatrist, psychologist or other professional with experience of caring for patients with that condition). Contact your local FASD Alliance for details of FASD trained clinicians local to you.



APPOINTEESHIP

WHAT IT IS: An appointeeship is an official authorisation from the Department for Work and Pensions (DWP) to allow one person (or an organisation) to manage another person's welfare benefits or state pension where that person cannot manage the benefits themselves. The person appointed is called an appointee.

KEY POINTS: An appointee can deal only with the person's benefits. It does not give control over their wider money, savings, property or other financial affairs. For anything beyond benefits, a power of attorney or a deputyship (below) would be needed.

HOW TO APPLY: Parents, carers or a local council can apply to the DWP. The process generally runs as follows.

- The applicant completes an application form (form BF56).
- The DWP then checks whether an appointee is genuinely needed and whether the applicant is suitable, and may visit and interview them.
- If the young adult is able to agree to the applicant acting for them, the DWP will seek their consent first.
- If the DWP approves the application, it sends a confirmation (form BF57); the applicant is not the appointee until this is received
- The arrangement is usually reviewed every few years.

PRACTICAL CONSIDERATIONS: Keep clear records; consider a separate bank account used only for the benefits; notify the DWP of any change in circumstances; and, where broader financial help is needed, consider combining the appointeeship with an LPA or deputyship.

POWER OF ATTORNEY

A Power of Attorney is a legal document in which a person (the donor) chooses someone they trust (the attorney) to help make decisions or act on their behalf.

The most important point is that a young adult can make a power of attorney only if they are able to understand and agree to it (have mental capacity), and only once they have turned 18. It is the young adult's choice, and cannot be put in place without them. Families may find it helpful to discuss it before the young adult's 18th birthday, but it cannot be put in place until then.

There are two kinds:



GENERAL (ORDINARY) POWER OF ATTORNEY - THE SHORT-TERM OPTION

WHAT IT IS: A legal document that authorises the attorney to deal with the donor's money and property, either for specific tasks or more generally.

KEY POINTS: It operates only while the donor still has capacity and ends automatically if the donor later becomes unable to make decisions. It must be created by deed which is a formal written document that must state that it is a deed and be signed in the presence of a witness who also signs it. The donor can cancel an ordinary power of attorney at any time (while they have capacity) by making clear to the attorney, ideally in writing, that it has ended. A formal deed of revocation is good practice for certainty but is not legally required

HOW TO APPLY: It takes effect as soon as it is signed, does not need to be registered with any official body, and can be cancelled by the donor at any time.

PRACTICAL CONSIDERATIONS: Often used to allow someone to help with a specific task of short duration. However, it can be used to help an adult manage banking or bills for a short time, while the family waits for the longer-lasting option below to be set up.

LASTING POWER OF ATTORNEY (LPA) - THE LONG-TERM OPTION

WHAT IT IS: A more formal legal document that continues to operate even if the donor later loses the ability to make decisions.

KEY POINTS: There are two types:

A PROPERTY AND FINANCIAL AFFAIRS LPA covers money matters such as managing a bank account, paying bills and managing benefits; it can be used while the donor still has capacity (with their agreement), or drafted so that it starts only if they lose capacity in future.

A HEALTH AND WELFARE LPA covers decisions about medical care and daily life, and can be used only once the donor is unable to make the decision themselves.

HOW TO APPLY: An LPA must be made on the prescribed statutory form LP1F for property and financial affairs and LP1H for health and welfare. It must be registered with a government body called the Office of the Public Guardian (OPG) before it can be used, and registration can take up to 20 weeks, so it is sensible to start early.

PRACTICAL CONSIDERATIONS: The donor must have mental capacity when they make an LPA. Consider naming a "replacement" attorney in case the first is unable to act, keeping certified copies available (banks and others will need to see the document), and review the arrangement regularly.



DEPUTYSHIP AND COURT OF PROTECTION

The options above depend on the young adult being able to choose someone (a power of attorney) or only covers state benefits (an appointeeship). Where a young adult has no mental capacity in law and cannot make ongoing decisions for themselves, and there is no LPA already in place, the Court of Protection becomes relevant.

COURT OF PROTECTION

A specialist court that deals with decisions and disputes concerning people who may lack capacity (the 'Court'). It can resolve disagreements about whether someone has capacity or what is in their best interests, and can appoint someone to make ongoing decisions for a person who cannot.

DEPUTYSHIP

WHAT IT IS: Where a person lacks capacity, the Court of Protection can appoint a deputy to make decisions for them. A deputy is usually needed where there are continuing decisions to be made, rather than a single, one-off issue.

KEY POINTS: There are two types of deputyship:

Property and financial affairs (decisions about money and property); and

Personal welfare (decisions about medical treatment and care)

A deputy may be a family member, friend or professional; the Court considers whether the proposed deputy is suitable and what is in the person's best interests.

A deputy may act only within the powers the Court grants, must always act in the person's best interests, and must keep records and report as required. Depending on the circumstances, the Court may impose additional safeguards, such as insurance ('security bonds') and supervision.

HOW TO APPLY: Applying for a deputyship is more involved than making a Power of Attorney. Evidence about the person's capacity is central (given on a form called COP3), the Court will expect an explanation of why an LPA is not available or suitable, and only the powers actually needed should be requested. Families should also budget for application and supervision fees.

PRACTICAL CONSIDERATIONS: In practice it can be difficult to show that someone with FASD 'lacks capacity' in the legal sense, precisely because they may present as capable. Careful, condition-informed evidence is especially important here and a mental capacity assessment by an FASD informed assessor is often necessary.



DEPRIVATION OF LIBERTY - WHERE SOMEONE'S FREEDOM IS RESTRICTED

WHAT IT IS: Sometimes a person needs such a degree of supervision and restriction of their movement that, in law, it amounts to a deprivation of liberty. Following the Supreme Court's 2026 decision, whether this threshold is reached is judged by weighing all the circumstances — including the type, duration and effect of the restrictions, whether the person objects, how normal the arrangements are, and their purpose — rather than by a single fixed test.

KEY POINTS: Because this is a serious step, it must be formally authorised, must be the least restrictive option, and must be in the person's best interests.

HOW TO APPLY: In a hospital or care home, it is authorised through a process called the Deprivation of Liberty Safeguards (DoLS). At home, in supported living or in a shared-lives placement (for those aged 16 or over), only the Court of Protection can authorise it.

PRACTICAL CONSIDERATIONS: Where a Council’s assessment or decision is disputed, families can request the reasons in writing, use the council's complaints process, ask for an independent review. An application can be made to the Court of Protection to challenge a Deprivation of Liberty.

QUICK COMPARISON

Option	Who chooses it	What it covers	Does the person need to be able to agree?	Registration / approval
General (Ordinary) Power of Attorney	The young adult/adult	Money and property, short-term; ends if they lose capacity	Yes	None, effective once signed
Lasting Power of Attorney (LPA)	The young adult	(a) Money and property, or (b) Health and welfare; continues if they lose capacity	Yes, to set it up	Must be registered with the OPG, up to 20 weeks
DWP Appointeeship	Applicant applies to the DWP	Benefits only - not wider finances	Their consent is sought if they can give it	Approved by the DWP (forms BF56/BF57)
Deputyship	The Court of Protection appoints	(a) Money and property, or (b) Personal welfare, where the person cannot decide	No, used where the person lacks capacity	Court of Protection order



CHALLENGING A DECISION

Families are not powerless if they disagree with how matters are being handled, or where a decision under the Mental Capacity Act is disputed. The routes below run from the least to the most formal; some can be used at the same time.

Start informally: Get the assessment right and if you disagree with it, ask for the capacity assessment to be reconsidered by an appropriately qualified, condition-informed professional, ideally one who understands FASD, and insist it includes real-world observation, not just an interview. Put in evidence: diaries, examples, school and clinical reports, and a first-hand account of how the young person actually copes day to day.

Escalate formally: Use the organisation's complaints procedure, and consider negotiation or mediation. An independent advocate may help: an Independent Mental Capacity Advocate (IMCA) must be provided for certain NHS decisions about serious medical treatment or a move into hospital or a care home where the person has no one else appropriate to consult; and a Care Act advocate must be provided where the person would otherwise have substantial difficulty taking part in a care assessment or review, whether or not they lack capacity.

Raise safeguarding concerns: (can be used at any time). If the young adult may be at risk of abuse or neglect, including financial abuse, the local authority must make safeguarding enquiries under s.42 Care Act 2014. Concerns about a care provider's standards can also be reported to the Care Quality Commission.

The Court of Protection: This is the specialist court for disputes about whether someone has capacity and what is in their best interests, including where they should live, their care, and contact. If a disputed capacity assessment cannot be resolved informally, this is the court that decides it. It is also where a deprivation of liberty is challenged (under section 21A of the Mental Capacity Act 2005 for a DoLS authorisation, or by a section 16 application in other settings). Legal aid for a DoLS challenge is not means-tested.

The High Court: Where a person has capacity but remains vulnerable to exploitation or undue influence, the High Court's inherent jurisdiction may offer protection. It is facilitative, not dictatorial: it cannot impose decisions on a capable adult, and its purpose is to free them from external pressure so they can decide for themselves, protecting rather than overriding their autonomy (L (Vulnerable Adults with Capacity: Court's Jurisdiction), Re [2012] (Court of Appeal (Civil Division), 28 March 2012, Case No: B4/2011/1277)).

Judicial review: This is a narrower route, used to challenge how a public body reached a decision, for example a refusal to provide a particular package of care, rather than the merits of a best-interests decision itself. Legal advice should be sought.

The Office of the Public Guardian: Deals with the misuse of an attorney's or deputy's powers. If you think someone is misusing their authority or acting against the person's



interests, raise it with the OPG through its "Report a concern about an attorney, deputy or guardian" route (an online form, or paper form OPG130). The OPG can investigate and, if needed, apply to the Court of Protection.

Complain to the Ombudsman: Where the complaint is about how a public body behaved, delay, ignoring evidence, or failing to assess properly, and the organisation's own complaints process has been exhausted, you can complain to the Local Government and Social Care Ombudsman (council social care) or the Parliamentary and Health Service Ombudsman (NHS).

KEY TAKEAWAYS

Families should begin planning before their teenager turns 18. Discuss the options together and identify who could help with decisions. Powers of attorney can be signed only from 18, but the conversation can begin earlier.

Good records should be kept from the teenage years onward. Assessments and reports should be gathered in one place, because many support decisions are made by panels that rely heavily on written evidence, so a clear paper trail is important.

The least restrictive tool that meets the need should be used. An appointeeship for benefits only; a power of attorney (general for now, LPA for the long term) where the young adult can choose someone to help with money, property, health or welfare; and a deputyship for ongoing decisions the young adult has no mental capacity to make.

Throughout, the young adult should remain at the centre, support them to make their own decisions wherever possible, record their wishes and feelings, and keep arrangements under review. Where something appears to be wrong, families should challenge assessments that miss the full picture and raise concerns with the bodies above.



GLOSSARY OF TERMS

Appointee: a person or organisation approved by the DWP to manage someone's benefits (and nothing else)

Attorney: the person chosen in a power of attorney to help make decisions

Best interests: the rule that when a decision genuinely has to be made for someone who cannot make it themselves, the law requires it to be made in their best interests — putting their needs, wishes and feelings first.

Court of Protection: the specialist court that deals with decisions and disputes concerning people who may lack capacity, and appoints deputies

Deputy: a person the Court of Protection appoints to make ongoing decisions for someone who lacks mental capacity under the Mental Capacity Act 2005

Donor: the person who makes a power of attorney and chooses someone to act for them

DoLS (Deprivation of Liberty Safeguards): the process used to authorise restricting someone's freedom in a hospital or care home

DWP (Department for Work and Pensions): the government department responsible for benefits

Lasting Power of Attorney (LPA): a registered power of attorney that continues to operate even if the person later loses capacity

Mental capacity: the ability to make a particular decision at a particular time.

Mental Capacity Act 2005: the main law covering decision-making for people aged 16 and over who may need help

Office of the Public Guardian (OPG) — the government body that registers LPAs and can investigate concerns about the misuse of powers

