

What are the protections available for a Deputy and an Attorney?

There are protections in place for both attorneys appointed under a Lasting Power of Attorney (LPA) and Deputies appointed by the Court of Protection.

Attorneys appointed under an LPA are chosen by an individual (the donor) while they still have mental capacity and grant them the authority to make decisions on their behalf when they lack capacity. The key protections include:

1. **Choice and Control:** The donor (who must be at least 18 years old) has the autonomy to select their attorneys, allowing them to appoint trusted individuals to act in their best interests.
2. **Safeguards:** LPAs require the signature of a certificate provider, typically a professional, to confirm that the donor understands the document's implications.
3. **Registration and Oversight:** LPAs must be registered with the Office of the Public Guardian (OPG), which monitors the actions of attorneys. The OPG can investigate concerns and works with other agencies such as social services and the police if they are not legally able to act. The OPG can apply to the Court of Protection to revoke and cancel an LPA, if the donor has lost capacity, where there is sufficient evidence that the donors' best interests are not being met.
4. **Insurance** – a policy can be taken out by the donor to protect against misappropriation, fraud, and theft.

In contrast, Deputies appointed by the Court of Protection are typically appointed when someone lacks capacity and has not executed an LPA (including, when required, those under 18). The protections for deputies include:

1. **Court Oversight:** Deputies are appointed by the Court of Protection, which provides ongoing supervision and can set out specific conditions and limitations on their authority.
2. **Annual Reports:** Deputies must submit annual reports to the OPG, detailing their decisions and financial management to ensure transparency and accountability.
3. **Professional Deputies:** In cases where a lay deputy might not be suitable, the Court may appoint a professional deputy, such as a solicitor or accountant, to manage financial affairs.
4. **Safeguarding Measures:** The OPG also supervise Deputies and can investigate concerns raised. Only the Court of Protection can remove or appoint a deputy.
5. **An insurance bond** must be put in place to cover a sum set by the Court of Protection on appointment.

In summary, while both LPAs and Deputyships aim to protect the interests of vulnerable individuals, the key difference lies in the timing of appointment and the level of control. LPAs prioritise an individual's autonomy by allowing them to choose their attorneys and set out any specific wishes. Deputies appointed by the Court of Protection are selected when capacity has been lost and are subject to more stringent court oversight to ensure proper safeguarding and protection of the individual's best interests.