Money Matters

A guide about financial matters for family carers of adults with learning disabilities and/or autism.

FCSS
Hft's Family Carer Support Service

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Introduction

Throughout this guide, we use the umbrella term 'Local Authority'. This includes the five possible types of local authorities in England: County Councils; district councils; unitary authorities; London boroughs; and metropolitan districts (sometimes called metropolitan boroughs or city councils). We have created a glossary at the end of the guide to explain certain terms. The words included in the glossary are highlighted bold and in **purple** throughout the guide. Anything highlighted bold and in **black** is for emphasis only, and is not a glossary term.

Who is the guide for and who is it written by?

This guide is for family carers of an adult with a learning disability and/ or autism. It was written by the Family Carer Support Service, which is made up of family carers and people who consider themselves allies to family carers and their relatives. It has been reviewed by a range of professionals and family carers, who are referenced in the acknowledgements.

Why have we written this guide?

The bulk of what we do at FCSS is to support individual family carers on a 1:1 basis for as long as they need it. There has been a notable increase in the amount of people contacting us who are concerned about their relative's finances and how to manage them. We also have calls from families looking for advice on how to go about settling the finances of a deceased relative who did not have a Will in place at the time of their passing.

Supporting another person with their finances is far from straightforward. It requires a good understanding of the **Mental Capacity Act**, and the options available if your relative is found to lack **capacity** to manage some or all of their finances. Whether you, as the family carer, manage their finances as a **Lasting Power of Attorney** or Deputy, or their benefits as their **Appointee**, there is a lot of responsibility and administrative work involved. You become the main point of contact for everything finance related. Dealing with finances is particularly difficult when coming to terms with the death of a relative, especially when they didn't have a Will, as is the case for many people with learning disabilities. The aim of this guide is to provide practical information and key considerations relating to these matters.

What is covered in the guide?

Within this guide you will find information on:

- **Chapter 1** covers the main disability and carers benefits, and how to challenge decisions.
- **Chapter 2** is about **Appointeeship**, including; how to open a bank account to receive your relative's benefits, **Corporate Appointeeship**, and how to change Appointees.
- **Chapter 3** details Lasting Power of Attorney; what happens if your relative doesn't have one and has lost capacity to make necessary decisions, as well as how many attorneys' there can be.
- **Chapter 4** covers **Deputyship**; Property and Finance, and Personal Welfare. It includes information about **One-off Deputyship orders**, and what happens if there is no deputy in place when one is required.

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- **Chapter 5** is about banking and the **Mental Capacity Act**, and includes potential solutions around accessing bank accounts and getting cash to a relative who doesn't live with you.
- **Chapter 6** explains how to prepare financially for your relative's death, which can involve Mental Capacity Act decisions around **Will** making, and Intestacy Rules.
- **Chapter 7** details how to remember your relative in your Will, such as by using a **Wills Trust**.

Please note that due to the nature of some of the topics covered, such as banking, it is worth checking the products and hyperlinks mentioned with the appropriate organisations (banks in particular) at the time of reading, as names of products and links can change more regularly than other types of information. There may also be new options available to you, as the family carer and your relative.

The final chapter has information about our service, where you will find our contact details and opening times. If you would like to discuss your individual situation with us, please do get in touch.

The information in this resource is correct at the point of publication. It may be possible that rules, regulations and figures have changed since then. Do seek up-to-date information or get in touch if you are in doubt.

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Chapter 1: Disability Benefits

The purpose of a welfare system is to support people on a low income or if they live with a long-term health condition or disability. Sadly, the current system is often overly-complicated and difficult to navigate. In this chapter, we introduce the most common benefits for people with disabilities and family carers, explain entitlement, and how to appeal decisions.

Please note, work-related benefits are not covered in this guide.

1.1: What types of benefits are there?

The Department for Work and Pensions **(DWP)** is responsible for most benefits, however **Her Majesty's Revenue and Customs (HMRC)**, Local authorities, and the appeals service are responsible for processing some of them. All benefits fall within four categories:

1. **Contributory:** Awarded when a person has made enough National Insurance contributions, for example, State Pension or contribution-based Employment and Support Allowance (ESA).
2. **Non-Contributory:** These benefits are generally not **means-tested** or based on national insurance contributions, though income may affect them; for example, **Disability Living Allowance (DLA), Carers Allowance or Personal Independence Payment (PIP).**

3. **Other:** Awarded when a person meets the eligibility criteria; for example, Winter Fuel Payment or Maternity Allowance.
4. **Means-tested:** Eligibility for these benefits is related to a person's income, savings and capital; for example, Housing Benefit, Income Support and **Universal Credit (UC)**.

Further reading:
An outline of Government benefits: Benefits - GOV.UK (www.gov.uk)

A detailed benefits guide:
UK Benefits Guide: Everything You Need to Know in 2022 (householdquotes.co.uk)

1.2: What are the savings thresholds for means-tested benefits?

The limit for savings, known as the savings threshold, refers to how much capital an individual can have before means-tested benefits are affected. Generally, property; business assets; and personal possessions do not count towards capital. The guidelines are below, however the information may differ depending on the financial circumstances of your relative. It is worth checking this with a benefits expert if you think your relative's circumstances are complicated. See **Chapter 1.10** for how to find benefits advice.

The savings thresholds are as follows:

- If your relative is in **supported living** *and* receives **working-age** means-tested benefits, the lower threshold for savings and/or assets is £6,000. As a general rule, the upper threshold for savings and/or assets is £16,000, at which point your relative is not entitled to means-tested benefits.
- If your relative **lives in a residential home** *or* is in **supported living** and receives **pension-age** means-tested benefits, the lower threshold for savings and/or assets is £10,000. As above, the upper threshold is £16,000, however, the upper threshold for **Pension Credit** specifically has no limit.

1.2.1: What happens if my relative's savings reach the threshold?

Once you, as the family carer inform the DWP that your relative has reached these thresholds, you will receive regular requests for up-to-date statements to keep a check on their savings. If savings drop below these amounts, you will need to inform the DWP again.

Savings between £6000 and £16,000 are considered monthly income of £4.35 per £250 per month for Universal Credit, and £1 per month for non-disability related means tested benefits such as Housing Benefit, Income-related Employment Support Allowance, Job Seekers Allowance and Income Support. The amount calculated is then deducted from your relatives' monthly benefit payments.

For example:

If a person applies for a means-tested benefit with savings of £10,000, the first £6000 is discounted, leaving £4000 that can be considered by the DWP.

The £4000 is treated as providing a monthly income of £4.35 per £250.

So, to work this out:

We divide £4000 by £250. So, 4000 ÷ 250 = 16.

To give us the total monthly income amount, we then multiply £4.35 by 16.

So, 16 x 4.35 = £69.60.

The person's monthly income from savings is therefore £69.60. This figure then gets deducted from their monthly payment.

Further reading:

Savings and benefits information for disabled people:
Savings and benefits | Disability charity Scope UK

1.3: What is Disability Living Allowance (DLA)?

Disability Living Allowance (DLA) is a non-means-tested benefit for children under 16 years of age who have additional care and mobility needs; due to an illness or disability.

DLA was previously available to adults, but now is replaced by Personal Independence Payment (PIP). See **Chapter 1.4** below for more information).

If your adult relative was born on or before April 8th 1948, their DLA is not affected. If your relative was born after April 8th 1948 and is currently receiving DLA, technically they will at some point be asked to apply for PIP, but you don't need to do this unless their circumstances change or asked to do so by the DWP.

Unless they are self-funding, DLA cannot be claimed by those living in a residential home, however can be claimed and paid to family members for time spent away from the care home.

It consists of two components; personal care and mobility. The current weekly rates for each component are:

Care Component:

- **Low Rate:** £23.70 (requires help for some of the day);
- **Middle Rate:** £60.00 (frequent help or constant supervision during the day, supervision at night or someone to help while they're on dialysis);
- **High Rate:** £89.60 (help or supervision throughout both day and night, or they're terminally ill).

Mobility Component:

- **Low Rate** - £23.70 (the child must be 5 years or over and can walk but needs help and or supervision when outdoors);
- **High Rate** - £62.55 (the child must be 3 years or over and cannot walk/ can only walk a short distance without severe discomfort/ could become very ill if they try to walk or they're blind or severely sight impaired).

You can apply for DLA on behalf of your relative by downloading and printing the DLA claim form. If you don't have access to a printer, contact the DLA helpline and ask them to post one. If you need to appeal a decision, please see **Chapter 1.12**.

Further reading:
Government outline of DLA:
Disability Living Allowance (DLA) for children: Overview - GOV.UK (www.gov.uk)

1.4: What is Personal Independence Payment (PIP)?

Personal Independence Payment or 'PIP' is a benefit for people aged between 16 and pensionable age[1], living with a long-term health condition or disability[2]. PIP is a non-means-tested benefit, so savings and income do not affect your relative's eligibility to claim. It replaces Disability Living Allowance (DLA) for adults. See **Chapter 1.3** above for information on this.

PIP has two components; daily living, and mobility. The DWP uses a point scoring system to determine whether a person qualifies for either component. People can qualify for both, or just one (or neither). Based on their score for each component, they will be entitled to either a standard or enhanced rate.

Current rates are:

Daily Living Component;

- **Standard:** £60.00 per week
- **Enhanced:** £89.60 per week

Mobility Component;

- **Standard:** £23.70 per week
- **Enhanced:** £62.55 per week

[1] State Pension age: there are some circumstances where your relative can continue to claim PIP after the State Pension age, however, we recommend the rules on this in detail. Link: Personal Independence Payments (PIP) for over 65 | Disability Claims. Note on the link: be aware that although Attendance Allowance is mentioned here as the only other pension age disability benefit, it cannot be claimed by anyone having Local Authority funded care.

[2] Long-term health condition or disability: a physical or mental condition or disability that affects daily living or mobility (this must have lasted more than 3 months and be expected to last more than 9 months).

1.4.1: How is the Daily Living Component assessed?

The assessment asks about your relative's ability to complete the following activities:

1. Preparing and cooking food
2. Eating and drinking
3. Managing your treatments
4. Washing and bathing
5. Managing toilet needs or incontinence
6. Dressing and undressing
7. Communicating with other people
8. Reading and understanding written information

Each activity uses a point scoring system that gives options to choose from (known as descriptors) regarding the difficulty your relative has with each one.

For example:

7. Communicating verbally:
   a. Can express and understand verbal information unaided (0 points).
   b. Needs to use an aid or appliance to be able to speak or hear (2 points).
   c. Needs communication support to be able to express or understand complex verbal information (4 points).
   d. Needs communication support to be able to express or understand basic verbal information (8 points).
   e. Cannot express or understand verbal information at all even with communication support (12 points).

To choose the correct descriptor, you must understand what is meant by the legal term *'reliably'*. The explanation below can be found in Regulation 4(2A) of the Social Security (PIP) Regulations 2013[3], where you will also find the exact legislation for the other information in this section.

[3] https://www.legislation.gov.uk/uksi/2013/377/regulation/4

To be able to carry out an activity listed above reliably, your relative would need to be able to do so:

- safely, i.e. is there any potential danger to your relative or others;
- to an acceptable standard, i.e. are meals cooked adequately;
- repeatedly, i.e. how often can they cook in a day; and
- in a reasonable time period, i.e. do they need breaks while dressing?

In determining if your relative can do an activity repeatedly; and to an acceptable standard, the assessor must consider the impact on them. Can your relative repeat the activity safely, within a reasonable period of time and to the same standard, with consideration taken of symptoms such as pain, discomfort, breathlessness, fatigue and anxiety?

Whether or not your relative can do an activity will also be assessed based on:

- their ability whilst wearing or using any aid or appliance which they normally wear or use; or
- as if they were wearing or using any aid or appliance which they could reasonably be expected to wear or use.

If your relative cannot do an activity reliably as listed above, even with assistive aids or help, they are considered unable to do that activity.

If your relative can do the activity reliably, but only with assistive aids or help, then they cannot do it - this applies whether or not they actually have access to the aid needed. Make it clear that reliability depends on the use of an aid or help from a person, for instance, to enable safety or repetition of the task.

If they could do the activity reliably without assistive aids or help, but it’s not easy for them, unfortunately, they are considered to be able to complete the activity.

Help from someone is considered the same way as help from an aid, so include details of any supervision, prompting or assistance your relative needs to complete activities – even if they do not receive that help and therefore cannot complete the activities.

If someone has a fluctuating condition, it can be difficult to decide whether they can do an activity reliably, particularly when choosing a descriptor within the activity that best reflects your relative's capabilities. How often your relative needs help is important information and you should read up on fluctuating conditions before filling out the assessment.

Further reading:
How fluctuating conditions are handled for PIP assessments:
Independent Assessment Services - How are fluctuating medical conditions handled under Personal Independence Payment (PIP)? (mypipassessment.co.uk)

1.4.2: How is the Mobility Component assessed?

The **mobility component** is not only about physical mobility needs, such as how well your relative can stand or move around; it also covers planning and following journeys. As with the daily living component, the mobility component has a scoring system to determine who is eligible and under what rate.

To be entitled to the standard rate of mobility requires an award of at least eight points. Entitlement to the enhanced rate requires a score of twelve points or above.

The mobility activities descriptors and scores are as follows.

1. Planning and following journeys:
   a. Can plan and follow the same route unaided (0 points).
   b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress (4 points).
   c. Cannot plan the route of a journey (8 points).
   d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid (10 points).
   e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant (10 points).
   f. Cannot follow the route of a familiar journey without another person, an assistance dog or orientation aid (12 points).

This activity looks at your relative's ability to work out both a familiar and unfamiliar journey and to follow them safely, including coping with unplanned disruptions and changes such as a cancelled bus or a diversion, and if journeying by car, how well they cope with the beginning and end of the journey.

Two descriptors reference overwhelming psychological distress related to an enduring mental health issue or cognitive impairment. The causes of mental distress

could be related to physical concerns, such as anxiety about continence and access to a toilet.

2. Moving around:

a. Can stand and then move more than 200 metres either aided or unaided (0 points).

b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided (4 points).

c. Can stand and then move unaided more than 20 metres but no more than 50 metres (8 points).

d. Can stand and then move more using an aid or appliance more than 20 metres but no more than 50 metres (10 points).

e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided (12 points).

f. Cannot either, aided or unaided:
i. stand; or
ii. move more than 1 metre (12 points).

These descriptors focus on the ability to stand and move around. The DWP defines standing as being upright with 'at least one biological foot on the ground'. Movement means independently moving upright over varying distances on typical surfaces, such as tarmacked pavements, ‘reliably’ and in a ‘reasonable’ amount of time. See **Chapter 1.4.1** above for more information on these terms.

Factors such as the use of aids, appliances, fatigue and the impact of rest breaks are considered within the mobility assessment, however the dangers posed by traffic for example are covered by the daily living component. Unfortunately, matters such as where your relative lives or how far they are situated from public transport are not.

Further reading:

The regulations: The Social Security (Personal Independence Payment) Regulations 2013 (legislation.gov.uk)

The assessment criteria outlined:
PIP assessment guide part 2: the assessment criteria - GOV.UK (www.gov.uk)

1.4.3: How does my relative make a claim?

It is advisable to start a claim by completing an online form (where possible) or by telephone, because the DWP will backdate your first payment to the day the form was submitted or called to request the paper form; rather than when the paperwork is received. You can complete the form over the phone. The paper form should arrive within two weeks. The form requires detailed information so give yourself plenty of time to complete this thoroughly. If you can, read up on how to interpret the questions and how to answer in the right context using the guides linked at the end of this section.

Top Tips:

- Draft answers in pencil at first.
- Always use the detail boxes to give as much information as possible, and feel free to use spare paper - just make sure to number each answer according to the question it relates to.
- Include your relative's name and National Insurance number at the top of each spare page and securely staple it to the form once complete.
- Make a copy once completed - if you don't have a photocopier, there are scanning apps for mobile phones to make a digital copy.
- When listing health conditions, don't leave anything out because it's undiagnosed - note the symptoms and suspected diagnosis.
- When listing medications, don't leave out those medications your relative only has when needed (often referred to as 'PRN' medication), as all are relevant evidence.
- When phoning the DWP, note the date, time and name of the person you spoke to as evidence.

1.4.4: What sort of evidence will we need?

DWP assessors will not request information from your relative's GP, and are unlikely to have any specialist knowledge of their conditions. Therefore you, as the family carer, would be well placed to explain the impact of those conditions in your evidence. Submit evidence that focuses on how your relative's day to day life is affected, rather than just focusing on their diagnosis/disability.

Supporting letters, patient records or reports from care professionals that uphold the difficulties expressed are particularly helpful, but be aware that some professionals will charge a fee for this service. Evidence could come from several people, for example:

- GP (for patient records and summary of health)
- Support worker
- Occupational Therapist
- Psychologist
- Psychiatrist
- Hospital consultant or care coordinator
- Care provider

You could also include:

- a recent adult social care assessment;
- a care and support plan;
- a behavioural plan; and
- prescriptions.

Make sure that supporting evidence from professionals is written to show the difficulties that your relative experiences concerning the PIP criteria, rather than simply stating a diagnosis or listing symptoms or treatment. Just as PIP assessors will need educating about the impact of your relative's disabilities, healthcare professionals may need educating about how to provide PIP evidence. Give them a copy of the criteria to meet the condition 'reliably' (found in **Chapter 1.4.1** above) and the activity list, including descriptors. The evidence provider should also remember that the assessment is based on day to day experience, rather than the worst or best days.

Statements can all help demonstrate how you, as the family carer and others see your relative struggling with day to day tasks, and how they need your help that you may both take for granted. These could be from yourself as a family carer, friends or work/hobby related acquaintances from the present or recent past.

A seven-day diary helps demonstrate and note how often your relative struggles with these activities throughout the week. Although this may be time consuming, think of it as a mindfulness exercise to notice and write down as much as possible. It is advisable to condense this diary into a conclusion for the DWP; but make clear that the conclusion is based on observations made over a given period of time.

You may find it helpful to have a friend support you with filling in the form. It can be valuable to have an objective perspective on all of the caring and support tasks undertaken, or the daily challenges faced in your typical day without realising their impact.

You can submit evidence at any point during the process, so get as much as possible ready, but be careful not to miss the deadline. Don't stop gathering if there are other avenues to explore or new reports arise.

Remember to keep copies of everything for your records.

1.4.5: Does my relative have to attend a face to face assessment?

Once your form is received, the DWP will contact your relative to request an assessment. In the past these have tended to happen at your local assessment centre, but since the Covid-19 pandemic they are often over the phone. A home visit is also possible, so do request a reasonable adjustment if needed.

The paperwork your relative has provided will be referenced during this formal assessment.

1.4.6: How and when will we know the outcome?

The DWP will write to your relative with their decision on whether your relative qualifies for PIP and how much they will receive. The average timescale from starting a claim to your first payment is 12-14 weeks. Payments are made every four weeks. Please see **Chapter 1.12** for information on appealing a decision.

Further reading:

Clarification on the details of each activity (known as descriptors), definitions of terms, and some case law examples for tricky questions: Reliably | pipinfo

Designed with mental health applicants in mind, this guide includes some useful questions to capture the perspective of people who may have anxiety, depression, obsessive compulsions or other debilitating behaviours relating to their conditions: PIP mental health guide: Mental Health & Money Advice (mentalhealthandmoneyadvice.org)

How to prove eligibility for the enhanced rates of PIP: Enhanced PIP Benefits | Disability Claims

Articles and case studies on disability claims: Articles & Case Studies - Disability Claims | PIP Claim Assistance

Our PIP Tips:

Hft | Family Carer Support | Personal Independence Payment tips

These guides are the go-to for professionals. Subscription currently costs £19.95 per year for individuals, however benefits experts and other professionals (including ourselves at FCSS) may have access, so it's worth enquiring. Signing up for their email updates can be a great way to keep abreast of any benefits changes: Guides For Claimants (benefitsandwork.co.uk)

What type of assessment might you be offered: PIP assessments – 9 out of 10 are telephone or paper (benefitsandwork.co.uk)

Citizens advice can advise if your relative is eligible for further assistance. PIP can unlock some other benefits, especially if your relative is awarded the higher rates: Extra money and help PIP entitles you to - Citizens Advice

1.5: What is Universal Credit (UC)?

Universal Credit is a monthly means-tested benefit to support adults who are between working and State Pension age who have low to no income, with the cost of living. It acts as an umbrella for a range of awarded amounts that are all paid to your bank account in one go.

There is one advantage to Universal Credit in that it has no limit on hours worked. Unlike income support, where people can work a maximum of sixteen hours, Universal Credit operates on money earned instead of hours worked.

It replaces these six **'Legacy Benefits'**, as well as accounting for the loss of **Disability Premiums**, which could be attached to the old-style Legacy Benefits:

- Income support
- Job Seekers Allowance (JSA)
- Employment and Support Allowance (ESA)
- Housing Benefit
- Child Tax Credit
- Working Tax Credit

Disability premiums are additional sums added to specific existing benefits. There are three types:

- **Disability** premium
- **Enhanced** Disability Premium
- **Severe** Disability Premium

These premiums could be added to one of the following benefits, when a person also receives a disability-related benefit, such as PIP or **Working Tax Credit** with a disability element.

- Income Support
- Income-based Jobseeker's Allowance (JSA)
- Income-related Employment Support Allowance (ESA)
- Housing Benefit

Disability Premiums do not technically exist in Universal Credit, however an amount of 'transitional protection' can be awarded to people previously on the Severe Disability Premium when transitioning from a Legacy Benefit to Universal Credit. Unfortunately, this does not apply where people have had it awarded to their Housing Benefit claim. See the 'additional disability related elements' link below for more information on transitional protection.

The DWP intends to move everyone who is currently on Legacy Benefits to Universal Credit by 2024. If your relative is currently receiving any of the above benefits, they do not need to do anything unless their circumstances change or they are instructed by the DWP, but it is advisable to be prepared for the switch by saving a buffer of money if possible and keeping up to date records.

If circumstances have changed, you are required to report those changes and this will trigger a switch to Universal Credit. For information about what constitutes a change, and what to do to report a change, see **Chapter 1.11**.

If possible, consult a benefits advisor before switching. A claim for Universal Credit automatically voids entitlement to any of the Legacy Benefits previously received, even if the claim is unsuccessful, so seek advice. **Chapter 1.10** lists organisations and resources that can help.

Note also that if you begin to receive Carer's Allowance, your relative may partially or completely lose their entitlement to the Severe Disability Premium, even though their other Legacy Benefits are not affected. See **Chapter 1.6** for information on Carer's Allowance.

Further reading:

Details on the Severe Disability Premium: Severe Disability Premium - Turn2us

Additional disability related elements for Universal Credit applicants:
Health conditions, disability and Universal Credit - GOV.UK (www.gov.uk)

Details from Turn2Us on Transitional Protection:
What is Universal Credit (UC) transitional protection? - Turn2us

Details from Entitledto on Transitional Protection: Transitional element - Entitledto

Complex investigation of the Transitional Protection rules:
The transitional SDP amount | CPAG

1.5.1: Who can apply?

To claim, the person or couple applying must:

- live in the UK;
- be aged 18 or over;
- be under State Pension age (or one person must be, if in a couple); and
- have £16,000 or less in money, savings and investments.

They could be working part time, not working at all, self-employed, or volunteering. There are some instances where your relative could apply if they are studying, particularly if they are currently receiving PIP (See **Chapter 1.4**) or DLA (See **Chapter 1.3**). There are also exceptions for 16- and 17-year olds with disabilities (among other factors) to receive Universal Credit.

1.5.2: How much could my relative get on Universal Credit?

Anyone eligible for Universal Credit gets the 'standard rate' of income support for their age group. Your relative can receive it whether they are self-employed, employed part-time, unemployed and on disability benefits currently, or a mixture. Applications can be made as a single claimant, or if your relative lives with a partner or is married/in a civil partnership, they must apply as joint claimants. If making a joint application, eligibility is determined by both partners' circumstances and if the claim is successful, they receive one monthly payment.

Standard Rates:

- Single claimant aged under 25: £257.34 per month
- Single claimant aged over 25: £324.85 per month
- Joint claim as a couple, both aged under 25: £403.94 per month
- Joint claim as a couple, either aged over 25: £509.92 per month

Along with the standard rate, your relative may also be entitled to one or more of the following:

Additional Elements:

- Child element (per month):
  - First child born before 6 April 2017: £290
  - First and second children born on or after 6 April 2017: £244.58
    - Disabled child addition: £132.89
    - Severely disabled child addition: £414.88
- Childcare costs element (per month): 85% paid per month up to;
  - One child: £646.35
  - Two or more children: £1,108.04
- Carer element (per month): £168.81
- Limited capability for work-related activity (LCWRA) element (per month): £354.28
- Housing costs element (per month, amount is variable, see link below).
- Transitional protection (for people previously on Severe Disability Premium, detailed above in **Chapter 1.5**)

Further reading:
Details on the housing costs element: Housing costs and Universal Credit: Renting from a private landlord - GOV.UK (www.gov.uk)

1.5.3: How is the Limited Capability for Work-Related Activity (LCWRA) element assessed?

The assessor will first consider whether your relative has limited capability for working. If this is so, they will consider whether your relative has limited capability for work related activity also. If they are limited in both these areas, they won't be required to either look for work or to work.

The activities relevant to the mental, cognitive and intellectual aspects of having limited capability for work are as follows.

- Learning tasks
- Awareness of everyday hazards
- Initiating and completing personal action
- Coping with change
- Getting about
- Coping with social engagement
- Appropriateness of behaviour with other people

The activities relevant to the physical aspects of having limited capability for work:

- Mobilising unaided
- Standing and sitting
- Reaching
- Picking up and moving or transferring by the use of the upper body and arms
- Manual dexterity (using hands to complete tasks)
- Making yourself understood
- Understanding communication
- Navigation and maintaining safety
- Continence (control of bowel and/or bladder)
- Consciousness during waking moments

There is a point scoring system in which 15 points awarded in total for activities (physical or cognitive) that your relative struggles with or cannot do, amounts to an award for limited capability for work.

The second aspect that the assessor must consider if your relative is found to be unable to work is whether they are able to conduct work related activity, which may include preparing to work.

The activities relevant to having a limited capability for work-related activity:

- Mobilising unaided
- Transferring from one seated position to another
- Reaching
- Picking up and moving or transferring by the use of the upper body and arms
- Manual dexterity (using hands to complete tasks)
- Making yourself understood through speaking, writing, typing or other means unaided
- Understanding communication
- Continence (control of bowel and/or bladder)
- Learning tasks
- Awareness of hazards
- Initiating and completing personal action
- Coping with change
- Coping with social engagement
- Appropriateness of behaviour with other people
- Conveying food or drink to the mouth
- Chewing or swallowing food or drink

Your relative will be found to have limited capability for work and work-related activity if at least one point in the list above applies to them for the majority of the time or on the majority of the occasions that they try to carry out the activity.

1.5.4: How do we apply for Universal Credit?

Applications are made online by creating an account with Universal Credit and submitting a claim within 28 days. This can be done over the phone using the helpline number below, however you, as the family carer, should be aware that your relative's account will need to be managed online going forward, with the assistance of the helpline where needed.

After your relative has submitted a claim, a referral for a Capability for Work face to face assessment will be made, and a UC50 Capability for Work questionnaire will be posted to your relative or their representative. You can fill out the form online and print it out if this is easier - the paper copy should include a link to the digital version.

The completed UC50 questionnaire should be sent to the Centre for Health and Disability Assessments by the date requested. If your relative needs help with this, visit the link in further reading to contact the centre.

It is possible to temporarily delegate another person to act on someone's behalf when communicating with Universal Credit, as their 'representative', as long as they can give explicit consent for this in writing, on the phone, or in person. More information about **Appointees, Lasting Power of Attorney** and other information sharing details can be found below, in further reading.

Universal Credit helpline (Monday to Friday, 8am to 6pm): 0800 328 5644

Relay UK (if you cannot hear or speak on the phone): 18001 then 0800 328 5644

Textphone: 0800 328 1344

British Sign Language (BSL) video relay service (use this to make a claim Monday to Friday, 8am to 4pm): https://dwpuc.signvideo.net/

How to use the video relay service: https://www.youtube.com/watch?v=Osx7FFxFpNY

A new claim made as or on behalf of anyone who claims they cannot work may need to be supported by medical evidence, such as a Statement of Fitness for Work from a GP (a 'fit note'). This must be submitted within eight days of the claim starting, so use the helpline number to find out if this is relevant for your relative. The fit note acts

as evidence until a Capability for Work assessment can be considered, which will usually be within 28 days of the application - unless in the case of exemptions. See **Chapter 1.5.5** below for more information on the assessment.

If you, as the family carer, want to submit something other than a fit note, it would be advisable to call the helpline number ahead of making a claim, and find out what they can accept.

If your relative lives with a partner or is married/in a civil partnership, they must apply as joint claimants, but will both need to create their own accounts which can then be linked.

Please note that if your relative is receiving other benefits that will be replaced by Universal Credit, those payments will stop when they or their partner first apply - not when the payments start. Your relative will not be able to make a new claim for the benefits that have stopped.

You could ask Citizens Advice for help, as they provide an application assistance service that could help you to navigate the process for your relative.

Note that once a claim has been accepted, there is a three-month waiting period before your relative will receive the Limited Capability for Work element of Universal Credit, despite the standard elements commencing immediately. The period begins after your relative has provided evidence that they have limited capability to work. There are certain exceptions to that rule, which are detailed in the link from Citizens Advice below.

Further reading:

Help from Citizens Advice with applying for Universal Credit:
Contact us about applying for Universal Credit - Citizens Advice

Centre for Health and Disability Assessments:
Home - Health Assessment Advisory Service (chdauk.co.uk)

Temporarily representing your relative:
Universal Credit consent and disclosure of information - GOV.UK (www.gov.uk)

1.5.5: Does my relative have to attend a Capability for Work face to face assessment?

The information your relative provides in the questionnaire will be used to decide whether they need to attend a face to face assessment. This could be over the phone, via video or in an assessment centre. You or your relative can request a reasonable adjustment if your relative cannot get to the assessment centre, however medical evidence may need to be provided, and they may request an at home visit instead. See further reading below for details.

The assessment is an in-person version of the application form, and so is looking to obtain the same answers relating to physical and mental health. However, the questions asked will be more casual and conversational, such as asking about hobbies and favourite places to go. A common question is 'How did you get here today?' if attending an assessment centre. Do not worry if you think that your relative may have difficulty answering these questions; if the reasons for that are explained in the written assessment, then the difficulty will make sense to the assessor.

If your relative is over State Pension age and has been receiving a disability benefit such as PIP or DLA, or is terminally ill, they won't have to attend the assessment. There are a few other exceptions, which are detailed in the link below.

Further reading:

Who has to attend the Capability for Work assessment:
Universal Credit Limited Capability for Work - Entitledto

Contacting the assessment organisers: Contact Us -
Health Assessment Advisory Service (chdauk.co.uk)

1.5.6: As a carer, how would Universal Credit work for me?

Universal Credit, as a sliding scale system, can support your income whether you are earning or not. It can provide you with a basic rate, any child or dependentrelated elements needed, the carer's element, the housing element and the work-related activity elements if you yourself have a disability.

If you are a disabled carer, you won't be able to get the Carer element as well as a limited capability element; the DWP will award you whichever element is the highest

monetary amount. The same applies to each member of a couple, except when you are both eligible for the Limited Capability for Work-Related Activity element as well as the Carer element. Only one member of the couple can receive the Limited Capability for Work-Related Activity element, but the other member can receive the Carer element instead.

Unfortunately, Carer's Allowance is classed as income by Universal Credit, and is deducted pound for pound. One of the benefits of the Carer's Element is that you can receive it even if your earnings increase (as long as you are still entitled to Universal Credit), whereas with Carer's Allowance, the payment would stop when your earnings reached above £132 per week (as of April 2022).

Further reading:

A guide from Turn 2 Us about using Universal Credit to your advantage: https://www.turn2us.org.uk/Your-Situation/Carers/Universal-Credit/Additional-Elements-of-Universal-Credit

An overview from Entitledto: Caring overview - Entitledto

Details on the work allowance rates: Work allowance for Universal Credit - Entitledto

More information about earnings and deductions; Universal Credit: How your earnings affect your payments - GOV.UK (www.gov.uk)

1.6: What is Carers Allowance?

You are entitled to Carers Allowance if you provide care and support to your relative for 35 hours or more per week, whether or not you live with them. Your relative must receive one of the following benefits:

- **Personal Independence Payment** daily living component;
- **Disability Living Allowance**, at the middle or highest rate for care;
- **Attendance Allowance**;
- **Constant Attendance Allowance at maximum rate**, with an Industrial Injuries Disablement Benefit;
- **Constant Attendance Allowance at basic rate**, with a War Disablement Pension;
- **Armed Forces Independence Payment**; or
- **Child Disability Payment**, at the middle or highest care rate.

To be eligible to claim you must also be:

- aged 16 or over;
- not be in full-time education;
- earning £128 or less per week after tax;
- the only person with caring responsibilities claiming Carers Allowance; and
- a resident of England, Scotland or Wales.

Carers Allowance is £67.60 per week and is paid directly into your bank account every four weeks. If you and another person both care for the same individual, only one of you can claim Carers Allowance. It is up to you and the other carer to decide who should claim the benefit.

Carers Allowance can unlock some other benefits, but it can also negatively affect existing benefits for you and your relative. When claiming Carers Allowance, at £67.60 per week, note that it is classed as income by Universal Credit and is therefore deducted. The carers component of Universal Credit, which is £41 per week can be claimed instead. If you are successful in your claim for Carers Allowance, please note that your relative may lose their entitlement to their Severe Disability Premium. See **Chapter 1.5** for more information.

If you need to appeal a decision, please see **Chapter 1.12**.

Further reading:

Information on how Carer's Allowance works with other benefits:
Carer's Allowance: Effect on other benefits - GOV.UK (www.gov.uk)

Information on how Carer's Credit can make up gaps in your National Insurance record to unlock other Credits: Carer's Credit - GOV.UK (www.gov.uk)

An article from Money Helper about benefits for carers:
Benefits you can claim as a carer | MoneyHelper

1.7: What if I receive benefits and my relative lives with me?

In typical circumstances, residing with someone you don't receive child benefit for or are in a relationship with (a non-dependent) would mean a deduction from your benefit entitlement. Under certain disability-related circumstances, this is not the case.

If you get means-tested benefits and the relative you care for lives with you, they will be considered a 'dependent' for benefits purposes if they receive:

- **Attendance Allowance**
- **Disability Living Allowance (DLA)** care component (either rate)
- **Personal Independence Payment (PIP)** daily living component (either rate)

1.8: Could we get a Council Tax Reduction?

Local authorities can offer a **single occupier discount**, which would mean a 25% discount off a Council Tax bill where only one liable adult lives within the household.

For example, if you live alone with your relative, they may not be liable to pay Council Tax if they get the daily living component of PIP; or are severely mentally impaired and have a doctor certificate of evidence. In this case you may be regarded as a single occupier.

There are some other benefits and discounts that help reduce Council Tax, but these can differ from county to county. See further reading below for how to find out what is on offer locally to your relative.

If you or your relative can't get a Council Tax reduction, you could see if you qualify for a second adult rebate instead.

If you need to appeal a decision, please see **Chapter 1.12**.

Further reading:
Second adult rebate:
Check if you can get a second adult rebate on your council tax - Citizens Advice

Check what is available in your relative's area:
Apply for a Council Tax discount - GOV.UK (www.gov.uk)

Information on various discounts: Council Tax:
Discounts for disabled people - GOV.UK (www.gov.uk)

1.9: Could I be getting Pension Credit?

If you as a family carer are over State Pension age, you may be able to get Pension Credit to top up your weekly income, or as an addition to certain existing benefits. It can be complicated, so check the link below to see if you or your relative could be eligible.

Read more about Pension Credit:
Pension Credit: What you'll get - GOV.UK (www.gov.uk)

1.10: How do I know that me and my relative have every benefit we are entitled to?

The Government website's benefits section is a good source of clear information on specific benefits, including who is eligible, what rates are paid, how to claim, how reviews work and how to challenge decisions. It also provides a list of independent benefits calculators to check you and/or your relative's benefit entitlement.

To use these, you would need detailed information about your relative and their partner if living together. Gather information on savings, income, existing benefits and pensions (including those of a partner where relevant), outgoings (rent or mortgage, childcare payments) and their Council Tax bill. Answer the questions accurately and completely to get a true result.

Based on this information you will be given a list of benefits that they may be eligible to claim. We would also recommend Citizens Advice as they have advisors who specialise in benefits and will be able to guide you on your specific situation.

Further reading:

The 'entitled to' benefits calculator:
Benefits Calculator - entitledto - independent | accurate | reliable

The 'turn2us' benefits calculator: Turn2us Benefits Calculator

A range of Government support:
Browse: Benefits and financial support for families - GOV.UK (www.gov.uk)

Government support for disabled people:
Financial help if you're disabled - GOV.UK (www.gov.uk)

The Citizens Advice benefits pages: Benefits - Citizens Advice

The Money Advice Service:
Free and impartial money advice, set up by government - Money Advice Service

1.11: My relative's circumstances have changed, what should I do?

If there has been a change in your relative's circumstances, contact the departments responsible for the benefits received. It is best to do this at the earliest opportunity, ideally within a month. Changes in circumstances can be reported over the phone, however, it is a good idea to follow this up in writing, providing any necessary evidence requested.

If changes in circumstances are not reported promptly, there is the risk of benefits being stopped or overpaid if the change means your relative's entitlement is lower. If an overpayment is made, the amount will need to be repaid, either through deductions from ongoing benefit entitlement or through a regular repayment agreement.

A change of circumstance might involve:

- The level of help needed or a change in condition;
- A stay in hospital or a care home for more than 4 weeks;
- Going abroad for more than 13 weeks;

- Being imprisoned or held in detention; or
- Finding employment.

You must also report changes such as:

- Your relative's name, address or bank details;
- A request to stop receiving benefits; or
- A change of doctor.

If changes in circumstances are not reported promptly, there is the risk of benefits being stopped or overpaid if the change means your relative's entitlement is lower. If an overpayment is made, the amount will need to be repaid, either through deductions from ongoing benefit entitlement or through a regular repayment agreement.

In some instances, your relative may need to move to Universal Credit if they have been receiving one of the Legacy Benefits, which include;

- Income support
- Job Seekers Allowance
- ESA
- Housing Benefit
- Child Tax Credit
- Working Tax Credit

Please see **Chapter 1.5** for more information on this.

Further reading:

For details on who to contact about a change of circumstance:
Benefits: report a change in your circumstances - GOV.UK (www.gov.uk)

For more information about what is considered a change of circumstance:
Change in circumstances - Turn2us

If the change of circumstances is related to a death, this service enables reporting to most government organisations in one go: Tell Us Once

1.11.1: Can I ask for the effects of the change to be backdated?

It may be possible to have changes that positively affect benefits backdated within 13 months of the change. Reasons for the delay in reporting must be valid and cannot simply be a lack of awareness of time limits, for example. Detail the changes and the reasons for not notifying the DWP or Local Authority sooner in writing. The decision-maker may agree to backdate the benefit if:

- It is reasonable to do so;
- The change is relevant and could potentially change the award; or
- There are extenuating circumstances such as severe illness that prevented your relative from notifying sooner.

Some changes of circumstance mean that benefit payments will go down or stop. Changes are typically applied from the date of the change, regardless of when the change was reported, however, there are exceptions to this rule. For some disability benefits, changes are backdated to the date your relative knew or could be 'reasonably expected'[4] to have known about the change. This relates to:

- Personal Independence Payment, Disability Living Allowance, and Attendance Allowance disability tests;
- Employment Support Allowance or Universal Credit limited capability for work; and
- Disablement or Severe Disablement Allowance, including industrial injuries benefits.

Backdating benefits changes to when you, as the family carer could be reasonably expected to know, could either be beneficial or negative for a claimant. When establishing if backdating should only apply from when you could have reasonably been expected to know, a decision-maker will consider:

- what information you had received about how to report changes in circumstance;
- how much you are aware of the reasons for awarding your benefit; and
- a person's ability to recognise a gradual change or improvement in your needs qualifies as a change of circumstance.

[4] D&A Regs, reg 7(2)(c); UCPIP(D&A) Regs Sch 1, paras 7-8, 16-17 & 23 -24 https://www.legislation.gov.uk/ukdsi/2013/9780111531556/schedules

Further reading:
The relevant Regulations, see Paragraph 31: The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (legislation.gov.uk)

1.12: What can I do if I think a benefits decision regarding my relative is wrong?

The process for challenging decisions is in place for all benefits. Different departments are responsible, depending on the benefit. Housing Benefit and Council Tax decisions are made by the relevant Local Authority, whereas for most other disability benefits, the Department for Work and Pensions is responsible for decision making.

1.12.1: How should I challenge a DWP benefits decision?

There are four main ways to challenge a benefits decision. A decision can be:

1. revised (if incorrect);
2. **superseded** (replaced by a new decision);
3. corrected (following identification of a clerical or mathematical error); or
4. appealed (if disagreed with).

The first step in this process is called a mandatory reconsideration. This means that there is a dispute period of around one month following a benefits decision in which your relative has the unconditional right to request that a decision be revised. The one-month period begins from the date on the decision letter.

Requests can be for any reason except a change of circumstances that occurred after the decision date (the date on the benefits letter). In this case, you, as the family carer can request the decision be superseded by another decision (option 2 above).

If the one-month mandatory reconsideration deadline is missed, you can in certain circumstances, still request that the decision be revised. Requests to revise after the deadline will be permitted if:

- the decision-maker agrees the request to be reasonable;
- the application has merit (this condition does not apply to PIP or Universal Credit); or
- extenuating circumstances are relevant to explain why you, as the family carer, could not make an application in time.

If your request to revise the decision after missing the deadline is denied, it is possible to appeal up to 13 months after the decision is received. See Chapter 1.12.3 for more information.

Requests for mandatory reconsiderations from the DWP can be made over the phone or through an online account for Universal Credit. Follow up on the request in writing, or (if the benefit is administered by the DWP) by submitting a mandatory reconsideration request form. Explain why you think the decision is wrong. If you intend to provide further evidence in the future, give an estimation of when you will be able to do so. If you have evidence to hand, include this with the form.

Once you've made the mandatory reconsideration request, you will receive two copies of the 'mandatory reconsideration notice'. This is the result of the mandatory reconsideration. One copy is for your relative's records and one is for use should you, as the family carer, decide to appeal. If the decision is revised, it is backdated to the original decision date.

There is no time limit on how long a mandatory reconsideration can take; decisions can be received within two weeks or take several months.

Further reading:

The mandatory reconsideration request form:
CRMR1 mandatory reconsideration request form

Government guidance on how to challenge a benefits decision:
Challenge a benefit decision (mandatory reconsideration) - GOV.UK (www.gov.uk)

Turn2us advice on challenging PIP decisions: Challenging a PIP decision - Ask for Mandatory Reconsideration - Turn2us

DWP Decision Makers Guide Chapter 4: DMG Chapter 04: Supersession, suspension and termination (publishing.service.gov.uk)

1.12.2: What happens after my request is denied because I missed the deadline on my DWP mandatory reconsideration notice?

It is not always possible to challenge a decision within the dispute period. If your request to revise the decision after missing the deadline is denied, it is possible to appeal up to 13 months after the decision is received. Requests to review a benefit decision can be made at any time, however once the dispute period has passed, the request will only be agreed upon if one of the following conditions are satisfied.

- **A relevant change of circumstances** has occurred that calls for serious consideration and; could change the benefits award.
- **An error of law has occurred**, meaning that the decision-maker has misinterpreted the relevant law, leading to an incorrect decision. It is important to note that decisions made by a First-Tier or Upper Tribunal cannot be revised on any grounds of an error of law.

- **A new medical report** from a DWP-approved healthcare professional is received.
- **An official error** was caused solely by the DWP, HMRC or Local Authority. This condition does not apply to a decision made by First-Tier and Upper Tribunal.
- **An award of or increase of a 'qualifying' benefit**; to you or your relative
- **A decision based on incorrect facts** for example, an error is made, underestimating the daily help needed when completing a PIP assessment. It is important to note that mistakes made do not always work in the claimant's favour and a benefits decision may decrease entitlement.
- **An earlier successful appeal** for a related decision can lead the benefits decision to be revised. This is relevant where a subsequent benefits claim is submitted. For example, following a refusal to award PIP (claim one), a subsequent unsuccessful benefits claim is submitted (claim two). A successful appeal against claim one; can also be applied to claim two.
- **Decisions that carry no right of appeal** can be revised or superseded at any time without specific grounds. Such as decisions about how benefits are claimed or paid.
- **Decisions to apply a penalty** can be challenged and revised at any time.

With any one of the above conditions met, the decision-maker will make one of three decisions:

1. **revise** the original decision;
2. **supersede** the original decision; or
3. confirm the original decision as correct.

1.12.3: Does my relative have the right to appeal a DWP decision to revise or supersede a decision?

Your relative has the right to appeal any decision that revises or supersedes a decision, except those that fall within the 'no right of appeal' laws. One way to find out whether your relative has the right of appeal is to look at the Mandatory Reconsideration Notice, as this will tell you if the right of appeal exists in your circumstances.

You have the right to appeal following a request for mandatory reconsideration. There is no right of appeal, however, where a decision-maker refuses to revise a decision or if the application to supersede is considered to be very obviously unlikely to be successful.

Applications are best done in writing and sent recorded delivery if affordable. For Universal Credit claimants, it is possible to make a request online, however, it is always best to follow this up in writing.

In your letter, explain which conditions you believe apply in your relative's circumstances and why and include evidence to support this where you can. If you are waiting on evidence, state this in your letter, confirming when the decision-maker can expect it.

If your relative does not have the right of appeal, there are a couple of options. You, as the family carer, can request that the no appeal rights decision itself be revised or superseded (as per the conditions for challenging a decision mentioned above), or ask for a Judicial Review.

Further reading:

For more information about the grounds for revising or superseding a benefits decision: hbgm-c6-reconsidering-revising-superseding.pdf (publishing.service.gov.uk)

The Regulations: The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (legislation.gov.uk)

Child Poverty Action Group has a helpful resource explaining the Judicial Reviews process: Child Poverty Action Group

This Turn2Us find an advisor tool can help to find expert benefit advice in your area: Turn2Us - AdviceFinder

A guide to First-Tier Tribunals: What is the First Tier Tribunal? - Turn2us

1.12.4: How does my relative appeal a DWP benefits decision to revise or supersede a decision?

For appeals regarding DWP administered benefits, use the SSCS1 Notice of Appeal form, or you can appeal online. Please see further reading for more information.

You will be asked if you, as the family carer, are willing to take part in the 'oral' hearing. This hearing could be over the phone, via video call or face-to-face. The thought of being involved in a hearing can be nerve-wracking, but see it as an opportunity to answer any disability-related questions. If you choose to not take part in an oral hearing, the appeal will be a 'paper hearing' that considers the paperwork alone.

Once completed, send the form and any mandatory reconsideration notices or written statement of reasons received to HMCTS Benefit Appeals PO Box 12626 Harlow CM20 9QF.

Note that a decision-maker for the DWP can decide to revise a benefits decision whilst preparing their response for the tribunal, or at any time before the appeal is heard. If their decision is favourable then the appeal may end.

Further reading:
The SSCS1 form: SSCS1

How to appeal online:
Appeal a benefit decision: Submit your appeal - GOV.UK (www.gov.uk)

1.12.5: How can I appeal a Local Authority benefits decision?

To submit an appeal for Local Authority processed benefits, contact your Local Authority for the correct paperwork and where it should be sent. Your Local Authority will send your submitted appeal and relevant paperwork to HMCTS alongside their response. You should receive a copy of these.

The appeal should be received within one month of the mandatory notice being sent. If you cannot meet this deadline, the tribunal can decide whether to accept it up to 12 months of the one-month deadline. It is important to explain all the reasons why the appeal is late.

The tribunal may get in contact to make a request such as for you, as the family carer, to provide further information. Any requests must be done within a specified time frame. Failure to respond could lead to the appeal being 'struck out'.

Your appeal, or part of it, can be struck out if any of the following apply:

- The appeal is on an issue the tribunal cannot influence, however a tribunal can transfer your appeal to another tribunal who does have influence.
- Requested evidence has not been provided.
- The tribunal feels there is little chance of appeal success.
- The tribunal feels that due to a lack of cooperation by the claimant, they cannot deal with the appeal fairly or justly.

If your relative's appeal is dismissed because the necessary process was notfollowed, you have one month to write to HM Courts and Tribunal Service to request that it be reinstated.

You can withdraw your appeal at any time if you or your relative change your minds, including at the appeal hearing itself, without permission or explanation. If withdrawing before the hearing, write to HM Courts & Tribunal Service to inform them.

1.12.6: How can I prepare for an appeal hearing?

Being prepared for an appeal will help you represent your relative's case as best as possible and help reduce feelings of stress or worry. You will be given at least 14 days' notice of the hearing. During this time there are several things you can do to help feel prepared for the day:

- **Know the facts and evidence of your relative's case.** Your appeal will focus on the facts, so it is good to have these clear in your mind and know what evidence you, as the family carer, have to support them. You may want to call a witness either in person or via a written statement. Be sure that this is agreed upon by everyone involved and arranged beforehand.
- **Gather medical evidence.** If your relative's appeal involves disability needs, you will most likely need medical evidence relating to the period that the appeal covers. These can be reports provided by a medical professional or can be a care diary. If you receive paperwork from a DWP assessor that is incorrect, seek evidence to show it is incorrect. You can ask for an extension if you have difficulty getting the evidence in time.

- **Accessibility needs.** If you or your relative have any accessibility needs, discuss these with the Tribunal Clerk to confirm what accessibility options are available and what adjustments can be made.
- **Read up on legislation and case law.** Understanding the law and the outcomes of similar former cases may help. If you need help to do this, use the Turn2Us Advisor Finder Tool mentioned in Chapter 1.12.3.

The purpose of a tribunal is to investigate and ask questions to reach a decision. The judge will ensure that everyone understands the purpose of the hearing, and that time is given to everyone to put forward their case and present their evidence.

Who takes part in a hearing (the 'tribunal members') depends upon the benefit and the appeal. For disability-related tribunals, this will typically be a judge, a doctor and someone who is experienced in the needs of people with disabilities. This person is referred to as the 'disability member'.

When everyone has had an opportunity to put forward their case, the judge will request that everyone leaves, either the room or video call, whilst they make their decision. You will receive a decision notice (the tribunal's decision) on the day or shortly after.

Further reading:
A good source of information on case law summaries:
Case law summaries archive | Disability Rights UK

1.12.7: I don't agree with the tribunal decision. What can I do?

You may disagree with the decision that the tribunal has reached. If this is the case, request a statement of reasons that explains the law which is applied to the decision in more detail. Request this within one month.

It's possible for a tribunal decision to be changed in one of the following circumstances:

- **Accidental mathematical or administrative error.**
- **Setting aside for procedural reasons,** if this is in the interest of justice. For example, a document is not received in time, or a key person was absent from the hearing.

- **An error of law.** If there has been an error in how the law was applied to the decision, you, as the family carer, can request permission to appeal further to the Upper Tribunal. Take advice on the statement of reasons to help you understand if this is the case.

1.12.8: How do I appeal to the Upper Tribunal?

It is only possible to appeal to the Upper Tribunal where there has been an error of law in the **First-Tier Tribunal** decision. Errors in law can include a failure to follow legislation; a decision made without supporting evidence; or a decision reached that is inconsistent with the facts.

It is essential to be aware of the timelines in requesting permission to appeal to the Upper Tribunal. Request permission in writing within one month of receiving the statement of reasons. Address the request to the Tribunal Clerk, setting out the reasons why you believe there has been an error of law and enclose a copy of the statement of reasons. Make copies of everything you send.

If permission is given, your request to appeal will typically be treated as the appeal paperwork, and you may not need to do anything more unless requested. If the First-Tier Tribunal rejects your relative's request for permission, you can appeal directly to the Upper Tribunal within 30 days of being sent notice of refusal. If this is also refused, you have 14 days to request a hearing to review this decision.

Legal Aid support for your relative may be available if appealing to the **Upper Tribunal** or higher courts. It may also be available if the First-Tier Tribunal has identified it has made an error in applying the law.

Further reading:

A case law resource that covers errors of law:
Decision-making and appeals caselaw summaries | Disability Rights UK

The link above leads to case law examples, such as: Yeboah v Crofton (2002)

Legal Aid: Legal aid: Overview - GOV.UK (www.gov.uk)

To see if your relative may be eligible: Civil Legal Advice (CLA) - GOV.UK (www.gov.uk) or phone **0345 345 4 345**

Find an advisor: Turn2Us Advisor Finder Tool

Chapter 2: Appointeeship

Appointeeship, which gives someone the right to manage another person's benefits, is generally less well known and understood than **Lasting Power of Attorney** or **Deputyship**. This can make applying for it feel a bit daunting. In this chapter, we focus on the key considerations and responsibilities associated with becoming an Appointee. We also look at **Corporate Appointeeship** and how to change Appointee.

Throughout, when we talk about banks, we are referring to banks and building societies. Please also note that due to the nature of the topics covered, it is worth checking the products and hyperlinks mentioned with the appropriate organisations (either via their websites or directly) at the time of reading, as names of products and links can change more regularly than other types of information. There may also be new options available to you and your relative.

2.1: What is Appointeeship?

An **Appointee** has the right to deal with the benefits of another person when they lack the **capacity** to do so themselves. Appointees are registered with the **Department for Work and Pensions (DWP)** and are responsible for making and maintaining any benefit claims and spending the money in the person's **best interests**. Usually, family carers take on this role, though organisations also offer this service, known as Corporate Appointeeship, at a cost. There is more information on this in **Chapter 2.9**.

When your relative's only source of income comes from benefits, Appointeeship is the most straightforward, inexpensive and least restrictive option. This is because, unlike deputies or people with Lasting Power of Attorney, Appointees do not have the legal authority to deal with all finances; they can only deal with benefits income and a reasonable sum of accrued savings.

2.2: What responsibilities does an Appointee hold?

The Appointee will be responsible for all contact with the DWP. You will need to fill out benefit application forms, receive the benefit payments, look out for and deal with any issues, and ensure that you proactively report any change in circumstances to the DWP.

The main responsibilities of an Appointee are to:

- represent the person with the Department for Work and Pensions (DWP);
- ensuring the correct benefits are claimed for your relative and completing all relevant paperwork;
- report any change of circumstances that may affect the benefits your relative gets;
- spend the benefit which is paid directly to you in your relative's best interest (see **Chapter 2.3** below);
- check savings balances and inform the DWP if they reach a level that could impact benefits; and
- pay all necessary bills.

2.3: How do I spend money in my relative's best interest?

Spending money in your relative's best interest means thinking about how they would choose to spend their money if they had the capacity to do so. It means ensuring that essential costs are paid on time, such as utility bills, phone contracts, and rent. It also means spending money on things that they enjoy doing, and making sure that they have spending money available to them as often as they need it (see **Chapter 5.5** for information on how to get spending money to a relative who doesn't live near you).

For most people, it's important to have as much control as they can over their finances, so where appropriate, do involve your relative in budgeting, thinking about what they might want, and decisions about how to spend their money. You could also involve their support circle or those that support them with the day to day, in discussions around bigger purchases.

2.4: What should I consider before taking on Appointeeship as a family carer?

Appointees only have the authority to receive and spend benefit money. So long as money is coming in and going out, then Appointeeship is probably the best option. Appointees need to monitor savings levels, as they can build-up due to unspent pension and benefits. Once savings reach a certain level, Appointeeship may no longer be appropriate. The **Court of Protection** and the **Office of the Public Guardian (OPG)** has indicated that Appointees can manage a 'reasonable sum' of accrued savings.[5] A reasonable sum is approximately equivalent to one month's accommodation costs and cash enough to meet unforeseen circumstances.[6] For larger amounts of savings, Deputyship or Lasting Power of Attorney should be considered.

Appointeeship isn't as well-known as Lasting Power of Attorney or Deputyship. This can mean that you may struggle when speaking to utility companies on behalf of your relative. If this happens, ask if the company has a 'vulnerable customer' or 'disability team' that you can speak to. If needed, you can prove your status by sending in a copy of your BF57 form. Under the **Equality Act 2010**, they have an

[5] See Page 18 of Financial Management guidance.pdf (lambethsab.org.uk)

[6] cophb-chapter-5-sample.pdf (wordpress.com)

anticipatory duty to make 'reasonable adjustments', which means that they should be thinking in advance about their policies, staff training and provision in this area.

Becoming an Appointee for your relative involves research to understand the role and responsibilities, and to ensure your relative gets their full benefit entitlement. You may also need to appeal decisions if your relative's benefit award doesn't seem right.

It is important to know that arrangements will need to be made with care providers to get money to your relative. Procedures for this vary depending on the care provider, so have a discussion with the care manager to find out more.

Unlike Corporate Appointees, family carers are not paid for this role. The up-side of this is that there is no cost to your relative and it cuts out the need for you, as the family carer, to have to correspond with a corporate organisation about spending decisions.

2.5: How do I become an Appointee?

You need to contact the DWP, however which helpline to call depends on the main benefit that your relative receives.

Current DWP guidance is that the Appointee should, where possible, be a close relative who lives with them or visits them often. If you and your relative don't live close to each other, this doesn't have to be a barrier. See **Chapter 5.5** for information on how to give your relative access to money for day to day spending.

Once you apply, the DWP will visit or interview you and complete a BF56 Appointee form. They will ask for a bank account for the benefits to be paid in to. They will also visit your relative.

If your application is successful, you will be issued a BF57 form confirming your appointment. Keep this form safe, as you are likely to need to show it as proof of your authority to manage your relative's benefits.

Further reading:
A list of up to date contact numbers:
Become an appointee for someone claiming benefits - GOV.UK (www.gov.uk)

The BF57 form: untitled (publishing.service.gov.uk)

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2.6: How do I open an Appointeeship bank account?

The BF56 form states that you must keep your relative's benefits money separate from your own. This will help you to be transparent about how much money your relative has and how it's spent. It will also help you to monitor **savings thresholds** and whether payments are going out on time. The form states that the DWP cannot pay money into a joint account involving a third party or an account belonging to another person.

Some banks offer specific Appointee accounts, though the first person you speak to may not know this. Ask if they have a 'vulnerable customer' or 'disability team' to speak to someone with specialised knowledge. Be aware that some banks set limits on the amount of money that can be held in an Appointee account. Check if this is the case with your bank when choosing an account.

The BF56 application form asks for bank account details, when you apply to become the Appointee, so ideally, you should have the account set up before you apply to become an Appointee to avoid any delays in receiving your relative's money. When opening a specific Appointee account, the bank will likely want to see evidence that you are the Appointee first. In this instance, the application form says that if you intend to open a bank account, you can provide the bank details as soon as you have them. See Chapter 5 for more information and tips.

2.7: How do I make sure I'm claiming the right benefits on my relative's behalf?

If you are taking over Appointeeship from an organisation or another person, do not assume that your relative is receiving the correct benefits. For example, if your relative lives in a residential home they should not be receiving the care component of DLA or the daily living part of PIP, nor should they receive the Severe **Disability Premium** of ESA unless they are self-funding. However, the DWP does not always understand the difference between supported living and residential homes, so check that they are receiving the right benefits yourself.

There are some benefits calculators freely available online. These will ask you to answer some questions and input some information about your relatives' current circumstances, so have details to hand.

If your relative's needs increase, they may be entitled to the higher rate of benefits if they are not already receiving them, so contact the DWP if this applies.

See **Chapter 1.10** for more information and links around how to check entitlement.

If you need to appeal a benefits decision, please see **Chapter 1.12**.

2.8: What sort of change in circumstance do I need to report?

It is crucial to report any changes promptly to avoid overpayment. If overpaid, you may need to pay money back or receive a fine.

The three main areas of funding that can be affected by a change in circumstances are:

1. Eligibility for **means-tested** benefits
2. Financial contribution to adult social care
3. Eligibility for Housing Benefit

For example, if your relative inherits money or a property, this could affect how much money they receive and how much they must pay as a care contribution. See **Chapter 7** for more information. Savings include combined money across multiple accounts. So, if you have more than one account for your relative, you will need to keep track of the combined balance.

It is risky to move money or property into a **trust** or account in your name to avoid it being included in an assessment. Any movement of large amounts of money or assets is likely to be questioned. The DWP can query any transaction over £500 – that is, where it has gone and why – and may ask for receipts or proof of purchase. The DWP will update the housing department and adult social care of any changes – but Appointees are still responsible for contacting other services themselves.

If savings thresholds are reached (see **Chapter 1.2**), you will be required to provide evidence such as bank statements (for all of your relative's accounts), wage slips or a P60 if your relative is working.

As the Appointee, it is your responsibility to inform the DWP about any changes to your relative's circumstances that may affect their entitlement to means tested benefits. Report any changes in the following:

- savings;
- income from benefits and any other income including a private pension;

- starting or stopping employment – both paid and volunteering;
- **inheritance** including property or trust fund payments;
- leaving the UK for more than two weeks (although PIP and DLA can be claimed for up to 13 weeks outside of the UK); and
- change of address.

2.9: What is Corporate Appointeeship?

Corporate Appointees are accredited organisations (such as Local Authorities, charities or private companies) that will act as Appointee for a fee. The Department for Work and Pensions does not provide a policy on how much Corporate Appointees can charge people, but their guidance requires that charges are proportionate and reasonable.

Most organisations charge a set-up fee which will vary across organisations and over time, so it's worth asking for up to date figures from the examples below. The larger, more established organisations also charge a monthly fee, which will be higher if your relative is community-based (in supported living or receiving domiciliary care at home) than if they are supported in residential care settings.

Some are more hands-on than others and offer financial advocacy alongside their Appointeeship service, meaning that your relative would have regular visits from their financial **advocate** who could support them to learn new money management skills.

Some questions to ask an Appointeeship service to gain further details about what they do and how they do it, could include;

1. How will you get to know my relative?
2. How exactly is budgeting managed?
3. What is the process for extra spending or big purchases?
4. How will my relative have access to cash?

If your relative contributes towards the cost of their care and support, known as their client contribution'; and is receiving care in their own home, then you, as the family carer, can request that the Local Authority treat the fee for Corporate Appointeeship as a **Disability Related Expenditure (DRE)** under the category of expenditure; 'increased use of non-specialised items and services'.

DRE is an expense that disabled people (who are receiving social care and benefits such as the care component of DLA or PIP or Attendance Allowance) incur to pay for specialist services or items to help them to manage or cope with their disability. If agreed, the Local Authority deducts the fee from the amount paid towards their care. For some people, this means that they would receive the Corporate Appointeeship service without additional costs, however, this is not always the case for those living in care homes.

Many local authorities will offer Corporate Appointeeship. Most charge for this service, although they may only charge when a person has more than a certain amount in savings. Be sure to clarify what they charge for Appointeeship and what service they offer before your relative agrees or participates in a best interest decision. It is also worth asking for some information about how they manage people's benefits separately from their social care funding packages, and how information about your relative's benefits will be shared with the social care financial assessment team.

Further reading:

See the following chapters in our 2018 FCSS guide, 'How to get the right support from your Local Authority'; Chapter 6: The Mental Capacity Act 2005 and; Chapter 9: Personal budgets and financial assessments for adults with learning disabilities and/or autism.

DOSH: Appointeeship and financial advocacy – Dosh – Financial Advocacy

Money Carer Foundation: Appointeeship, Money Management and Carer Cards for Vulnerable People and Carers (moneycarer.org.uk)

Disability Related Expenditure (DRE) explained:
Disability Related Expenses: explained | Independent Lives

2.10: Can the Appointeeship change hands?

An Appointeeship can change hands under the following circumstances:

- When the existing Appointee no longer wishes to act as Appointee and nominates another person or organisation to take over.

- If a person is unhappy with their Appointee and has the capacity to choose a different one.
- If a person decides to manage their own benefits directly.
- As the result of a best interest decision.

To stop being an Appointee, phone the benefit office that deals with the claim. The number will be on any letters they've sent, or for a list of up to date contact numbers, see further reading in **Chapter 2.5.**

The new prospective Appointee should phone the benefit office that deals with the claim to make a fresh application. The DWP will then visit or interview them to complete the BF56 Appointee form, and follow the new Appointee application process thereafter. If the new Appointee is corporate however, they will fill in the form themselves.

The transition from one Appointee to another can be challenging. Unless the benefit money is being paid into a bank account in your relative's name, the DWP will suspend the payment of the benefit when the original Appointee revokes their Appointeeship.

They will arrange for the existing bank account details to be removed from their system, and they are advised not to disclose any information about their customer's circumstances until the new Appointeeship has been confirmed.

Therefore, if taking over from an existing Appointee, it's advisable to have the bank account that you wish to receive the money in set up and ready, and to start contacting the Department for Work and Pensions (DWP) approximately two weeks after you've submitted your BF56 form. During the period of transition, there isn't anybody overseeing your relative's benefits related income, so it's important to consider what arrangements need to be made so that they still have access to money for day to day spending, and so that bills are paid on time.

Once the new Appointeeship is in place, the next step is to check with the relevant benefits claim office that payments have actually restarted, as this doesn't always happen automatically.

Note also that the DWP can revoke Appointeeship if it has evidence that the Appointee is not acting in the person's best interests. The appointment can be stopped if the DWP has evidence that;

- you are not acting properly under the terms of the appointment;
- your relative becomes able to manage their own benefits; or
- you become incapable of managing the Appointeeship yourself.

2.11: Can I do anything else as an Appointee?

If your relative gets the higher rate **mobility component** of **Disability Living Allowance**, or the enhanced rate mobility component of **Personal Independence Payment**, they could get a mobility car. As Appointee, you would be the hirer of the Motability vehicle, and legally responsible for the lease agreement on behalf of your relative.

If your relative seldom uses the car because they rely on busy family members to drive it, for example, it could be more beneficial to use their benefit money to fund taxis instead.

You could also request to manage your relative's Housing Benefit and Council Tax. You can do this directly with the Local Authority. The Local Authority and the Department for Work and Pensions are two separate bodies, so report any change in circumstances to both.

Top tips for communicating with the **DWP** and the Local Authority:

- Be prepared to be on hold for a long time; lunchtimes are usually the busiest period.
- Keep good records of telephone calls; note the date, time, person you spoke to, and issues discussed.
- Keep copies of all written communications.
- Staple additional pages to forms to ensure they don't get lost or muddled.
- Send documents via recorded delivery for any time-sensitive or important information.

Further reading:

Government guidance for Appointees: Part 5 - Appointee - GOV.UK (www.gov.uk)

Charging where Adult Social Care is the Appointee:
Appointeeship Charging.pdf (moderngov.co.uk)

Motability information for Appointees:
Information for carers and appointees | Motability Scheme

An example of best practice guidance around Appointeeship, Deputyship and financial management of a person in social care:
Financial Management guidance.pdf (lambethsab.org.uk)

Chapter 3:
Lasting Power of Attorney

Anyone in the UK who is over the age of 18 and has the capacity to do so can create a **Lasting Power of Attorney (LPA)** using the government's online service or by filling in paper forms. The process is fairly simple and it is not necessary to seek help from a solicitor. However, as a Lasting Power of Attorney is an important document, some families prefer the process to be overseen by a legal expert. This is down to individual choice.

3.1: What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document that allows a person (the **donor**) to choose someone they trust (the **attorney**) to quickly, easily and legally make important decisions on their behalf.

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If appropriate, they are a simple, cost-effective way to enable you to make decisions on your relative's behalf. Other than not being bankrupt at the time the Lasting Power of Attorney is made, there are no special requirements to be an attorney. Many people choose a family member or close friend but it is also possible to employ a professional, such as an accountant or solicitor.

Your relative may not have the mental capacity to manage their finances, but they may have capacity to make a Lasting Power of Attorney.

There are two types of Lasting Power of Attorney:

- **LPA for Property and Financial Affairs**
- **LPA for Personal Welfare**

A Lasting Power of Attorney for Property and Financial Affairs would authorise you to make decisions relating to your relative's bills, investments, property and savings. With your relative's consent, the powers afforded to you by this type of Lasting Power of Attorney can be used at any time. This means you do not have to wait until your relative loses capacity before you can start making decisions on their behalf. However, when making decisions it is important to remember to involve your relative as much as possible, regardless of their capacity at the time. Alternatively, there can be a restriction in the Lasting Power of Attorney for finances, saying it can only be used if and when your relative becomes unable to make decisions themselves.

A Lasting Power of Attorney for Personal Welfare would allow you to make decisions about your relative's daily routine, food and nutrition, where they live, and the type of care and support they receive. This type of Attorney can also be given the power to provide or withhold consent for life-sustaining medical treatment. These powers can only be used when your relative loses the capacity to make their own decisions. It is worth pointing out that, when considering where your relative should live, a Lasting Power of Attorney for Personal Welfare does not give you authority to decide the Local Authority's budget, but rather to accept or refuse the options put forward.

Further reading:
Mencap Easy Read guide for Health and Welfare LPAs:
Easy Read Guide for Making a Health and Welfare LPA

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3.2: How many Attorneys should there be?

The option to have more than one Attorney is available however, this is down to individual choice.

If your relative chooses to have more than one, the Lasting Power of Attorney will state whether the Attorneys' must act *'jointly'* or *'jointly and severally'*. 'Jointly' means all the Attorneys' must agree on every decision, whereas 'jointly and severally' means each Attorney can make decisions on their own, or together.

If Attorneys' are instructed to act 'jointly and severally', they can make decisions alone, however, they should always consult each other. This allows for a lot more flexibility in managing someone's finances.

If Attorneys' are appointed jointly, they both/all have to act together. This means internet and telephone banking will not be possible unless everyone is together, and cheques would have to be signed by all Attorneys'. It is much more difficult to manage your relative's day to day finances this way.

You can appoint Attorneys' jointly for some decisions (say larger decisions) and jointly and severally for others. However, be very clear which decisions come under which category, when creating a Lasting Power of Attorney.

3.3: How do I apply for Lasting Power of Attorney?

A Lasting Power of Attorney must be registered with the **Office of the Public Guardian (OPG)**. It is advisable to seek assistance from a solicitor, and at the very least, Citizen's Advice may have some useful information. Getting the forms right now may save you much time in the future, especially if the situation is complex. See the further reading section below for links to forms and guidance.

Once the forms are complete, a certificate provider must sign the Lasting Power of Attorney. A certificate provider is an impartial person who confirms that your relative understands what they're doing and that nobody is forcing them to make the Lasting Power of Attorney. It must be proven that:

- your relative has understood the significance of the LPA;
- has not been put under pressure to make the LPA;
- there has been no fraud involved in making the LPA; and
- that there is no other reason for concern.

The certificate provider should discuss it with your relative in private, without Attorneys or other people present, before they sign to 'certify' their part. A certificate provider must be at least 18 years old and either:

- a friend, colleague or someone your relative has known well for at least two years (they must be more than just an acquaintance); or
- a doctor or lawyer who has the professional skills to judge whether your relative understands what they're doing and whether they may or may not be being manipulated to make the Lasting Power of Attorney.

There are quite a lot of people who can't be a certificate provider – for example, members of your relative's family or the attorney's family. The certificate provider must not sign before your relative. They can either sign it on the same day as your relative or as soon as possible afterwards. The Attorney(s) sign the document next to confirm they are willing and able, and will comply with the **Mental Capacity Act** principles.

A Lasting Power of Attorney must be registered with the Office of the Public Guardian before it is considered to be fully active. This usually takes 8-10 weeks, but it can take up to 20 weeks.

The cost for registering each one is £82. So, that's £164 to register both a Property and Financial Affairs LPA and a Health and Welfare LPA. This amount can be reduced by up to 50% depending on your relative's circumstances. There is also a fee exemption if the donor is on any income related benefits, such as: Housing Benefit; income-based Employment and Support Allowance; Universal Credit; or Pension Guarantee Credit.

Further reading:
To find out if your relative is entitled to any reductions and to apply for them, download and complete the application form: www.gov.uk/power-of-attorney or call **0300 456 0300**.

Government leaflet on Lasting Power of Attorney: Lasting power of attorney leaflet A5 (publishing.service.gov.uk)

Duties of the Attorney: Lasting power of attorney: acting as an attorney: Overview - GOV.UK (www.gov.uk)

Getting started; Property and Financial Affairs Attorneys: LP11 Getting started as an attorney: property and financial affairs (web version) - GOV.UK (www.gov.uk)

Getting started; Health and Welfare Attorneys: LP10 Getting started as an attorney: health and welfare (web version) - GOV.UK (www.gov.uk)

3.4: What happens if my relative doesn't have a Lasting Power of Attorney?

If your relative loses their capacity in the future and does not have a Lasting Power of Attorney in place; decisions about their health, welfare and finances will be made via the Mental Capacity Act (2005) process. In order to gain decision-making authority for certain decisions, apply for Deputyship via the Court of Protection (see **Chapter 4** below).

Further reading:
The Court of Protection Handbook: Chapter 5, whether or not an application to the Court of Protection is appropriate: cophb-chapter-5-sample.pdf (wordpress.com)

Chapter 4: Deputyship

When your relative lacks the **capacity** to make a big decision independently, when it needs to be made, and there is no Attorney in place, you as a family carer can apply for **Deputyship** via the **Court of Protection (CoP)**. The Court of Protection will review the application and give the new Deputy an order outlining what they can and cannot do. Smaller decisions may be made on your relative's behalf via the **Mental Capacity Act (2005)**[7] process (see **Chapter 5.1**) or by an Appointee (see **Chapter 2**).

There are two types of Deputyship:

1. **Deputyship for Personal Welfare**
2. **Deputyship for Property and Financial Affairs**

[7] Mental-capacity-act-code-of-practice.pdf (publishing.service.gov.uk)

Deputies can be a person, an organisation, or organisational representative such as a solicitor. The primary focus of this chapter will be Deputyship for Property and Financial Affairs. For more detailed information on Deputyship for Personal Welfare, please see the further reading section below.

4.1: What is a Personal Welfare Deputy?

A Personal Welfare Deputy makes decisions about another person's medical treatment and care. This type of Deputyship can be difficult to obtain. This is because most decisions surrounding a person's medical treatment and care can be made via the **Best Interests** decision-making process outlined in the Mental Capacity Act (2005).

If there are lots of complex or ongoing decisions, the Court of Protection will consider a Personal Welfare Deputyship Order being granted. If intending to make this application, it may be wise to first seek advice from a solicitor who has specialised in Court of Protection work. You may also like to consider writing a witness statement explaining the decisions that need to be taken for your relative on a regular basis and why you, as the family carer, might be the best person to make those decisions. If there have previously been any issues or disputes with outside agencies or misunderstandings around your relative's capacity, this is also useful information for the judge to consider.

Personal Welfare Deputyship Orders provide a lot of power to the deputy over the person's life, so the Court of Protection must consider them carefully. Health and Welfare deputies are closely supervised to ensure they are working collaboratively with all the practitioners involved in the person's life and involving the person as much as they are able, to achieve the best for them.

Further reading:

Government guidance on Health and Welfare Deputyship (updated in 2020): SD4 How to be a health and welfare deputy (web version) - GOV.UK (www.gov.uk)

Getting started; Health and Welfare Attorneys (updated in 2018): LP10 Getting started as an attorney: health and welfare (web version) - GOV.UK (www.gov.uk)

4.2: What is a Property and Financial Affairs Deputy?

Property and Financial Affairs Deputies make decisions about the property and/or finances of a person who lacks capacity. They are sometimes referred to as 'Financial Deputies'.

If your relative's only source of income is from benefits, and the money is regularly spent in their best interests by an Appointee, Financial Deputyship may not be necessary (see **Chapter 2** on Appointeeship). However, if income from their benefits starts to become surplus savings, a Financial Deputy is then required to decide how that money is spent.

Financial Deputyship is often sought if a person lives in supported living, as it enables the Deputy to sign a legally enforceable tenancy agreement and to open a bank account in the person's name to manage outgoings on their behalf.

Your relative may have capacity to manage small amounts of money and make smaller day-to-day decisions, but lack capacity to manage larger sums of money or make bigger financial decisions. In such a case, if your relative does not have a Lasting Power of Attorney (see **Chapter 3**), a Financial Deputy will be required.

4.3: How do I arrange Property and Financial Affairs Deputyship?

To apply for Property and Financial Affairs Deputyship, complete the following forms:

- COP1
- COP1A form (for finance); and/or
- COP1B form (for welfare)
- COP3 form; or if you can't get an assessment; COP24 form instead.
- COP4 form

Send the forms, including a copy of (as well as the original) COP1 form, to the Court of Protection, with a cheque for the application fee, which is currently £371. You will have to pay this yourself initially, however any fee payable can be claimed back from your relative's funds if you are appointed as their Financial Deputy. However, this is not the case for Personal Welfare Deputyship, where you cannot recover the fee unless you are already the deputy or have Power of Attorney. If applying for both types of Deputyship, you will have to pay the application fee twice.

If the court decides your case requires a hearing, currently an additional £494 will be required to cover the court fees. Hearings are quite rare and are usually only required if someone disputes your application (e.g. another family member).

There is a fee exemption form in certain financial situations. If the fee is unaffordable, submit form COP44 along with your application.

Before Deputyship is granted, it is sometimes necessary to set up a 'Security Bond' to protect your relative's finances. The court may decide this is unnecessary if the estate has low value, but if a Security Bond is required, the court will send a letter explaining what you need to do. See the link 'More on Court of Protection fees' below.

Further reading:

Government information on Deputyship for Property and Financial Affairs:
Deputies: make decisions for someone who lacks capacity: Overview - GOV.UK (www.gov.uk)

COP1 main application form: Form COP1: Apply to make decisions on someone's behalf as a deputy - GOV.UK (www.gov.uk)

COP1A form (for finance):
Apply-to-make-decisions-on-someones-behalf-property-and-finance-form-cop1a

COP1B form (for welfare):
Apply-to-make-decisions-on-someones-behalf-personal-welfare-form-cop1b

COP3 form to make a report:
Make a report on someone's capacity to make decisions - GOV.UK

Or, if you can't get an assessment, COP24 witness statement form instead:
give-a-witness-statement-about-a-person-who-lacks-capacity-form-cop24

Make a declaration COP4 form:
Apply to become someone's deputy (make a declaration) - GOV.UK

Fee exemption COP44 form:
Court of Protection fees (COP44) - GOV.UK (www.gov.uk)

More on Court Of Protection fees:
COP44 - Court of Protection – fees (publishing.service.gov.uk)

4.4: What are the responsibilities, powers and limitations of a Property and Financial Affairs Deputy?

According to the **Mental Capacity Act Code of Practice**[8], anyone acting as a Deputy must comply with the following rules.

- Make sure they **only** make decisions they are authorised to make by the order of the court. This **may** include the power to:
  - manage any investments, savings or property;
  - pay the person's bills;
  - manage the person's welfare benefit claims;
  - make reasonable gifts on behalf of the person; and/or
  - provide for dependants.
- Make sure they follow the **Mental Capacity Act 2005** statutory principles in the Code of Practice, including:
  - Considering whether the person has capacity to make a particular decision for themselves. If they do, the Deputy should allow them to do so unless the person agrees that the Deputy should make the decision.
  - Taking all possible steps to try to help a person make the particular decision.
- Always make decisions in the person's best interests, according to the Code of Practice.
- Have regard to guidance in the Code of Practice that is relevant to the situation.
- Fulfil their duties towards the person concerned, including:
  - Duty of care;
  - **Fiduciary duty**;
  - Duty not to delegate;
  - Duty of good faith;
  - Duty of confidentiality;
  - Duty to comply with the directions of the Court of Protection;
  - Duty to keep accounts; and
  - Duty to keep the person's money and property separate.

[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921428/Mental-capacity-act-code-of-practice.pdf

See **Chapter 5.1** for a further outline of the Mental Capacity Act 2005 processes, including the two-stage test and the five principles. For detailed explanations as to what each duty entails, please refer to the Code of Practice, linked below.

Further reading:
Getting started; Property and Financial Affairs Deputyship: LP11 Getting started as an attorney: property and financial affairs (web version) - GOV.UK (www.gov.uk)

Government information on how to be a Property and Financial Affairs Deputy: SD3 How to be a property and affairs deputy (web version) - GOV.UK (www.gov.uk)

4.5: Will I be supervised in my role as either a Personal Welfare or Financial Affairs Deputy?

Once appointed as Deputy, you will have to pay for a one-off assessment (£100), as well as an annual supervision fee. Depending on the type of supervision required, you will either pay £320 for general supervision, or £35 for minimal supervision.

All new Deputies receive 'general supervision' from the **Office for the Public Guardian (OPG)** during their first year. After that, this moves to 'minimal supervision', as long as you no longer require a general level of supervision and manage less than £21,000 if you are a Financial Deputy. There is a fee exemption for those on income related benefits.

Being 'supervised' means that the Office for the Public Guardian is authorised to contact you or visit to ensure you are correctly fulfilling the role of deputy. Your supervisor can give you support and advice, should you need it.

You will have an in person or virtual visit from an OPG Visitor in the first year of being a Deputy. This will be to discuss either the management of your relative's finances or their personal welfare, and to explain the annual report form (in the further reading section below). They should also be able to help with any issues or signpost you to support services if needed.

Personal Welfare Deputies will continue to have visits perhaps every year or two, as they are such powerful orders.

As a Financial Deputy, you must keep clear records of everything you spend on your relative's behalf and ensure you manage your own property and money separately.

Personal Welfare Deputies must also keep detailed records of every decision they make on their relative's behalf.

This information is submitted to the Office for the Public Guardian in the form of an annual report. Your annual report is then reviewed, and more information will be requested if anything needs clarifying. This is one of the reasons thorough record-keeping is so important as a Deputy.

Provided you have registered for an online account, you can complete your annual report online or on paper. Please refer to further reading below for printable versions of all forms and their corresponding guidance. The Office for the Public Guardian will let you know which forms to complete and when to complete them. All Deputies must complete either the OPG102 form or the OPG103 form each year. The level of supervision the Deputyship requires determines which form needs to be completed.

If planning to make an important decision, such as selling your relative's property, you must inform the Office for the Public Guardian. You also need to check you have the authority to do so in the Court Order. Some orders contain a restriction that property cannot be sold without a further order from the Court.

Further reading:

Help paying Office of the Public Guardian fees: https://www.gov.uk/government/publications/deputy-fees-remission-or-exemption

For advice on selling property, contact the Office for the Public Guardian: **0300 456 0300**.

Creating an account online: Complete the deputy report | GOV.UK (complete-deputy-report.service.gov.uk)

The Property and Financial Affairs Deputy report forms: OPG102 - Deputy report form - Property and financial decisions (publishing.service.gov.uk)

OPG103 Deputy report form: Property and financial decisions (publishing.service.gov.uk)

Detailed guidance on filling out the Property and Financial Affairs Deputy report forms: OPG102A: Filling in your deputy report form: property and financial decisions (web version) - GOV.UK (www.gov.uk)

OPG103A: Filling in your deputy report form: property and financial decisions (web version) - GOV.UK

The Health and Welfare Deputy report form: OPG104 Deputy report form: Health and welfare decisions (publishing.service.gov.uk)

Detailed guidance on filling out the Health and Welfare Deputy report form: OPG104A: Filling in your deputy report form: Health and welfare decisions (web version) - GOV.UK

4.6: What happens if nobody can be the Financial Deputy?

Where a Financial Deputy is required yet no family member is willing or able to take on the role, the **Court of Protection (CoP)** may appoint the Local Authority as a 'Panel Deputy'. This is generally only an option if a person's assets are less than £40,000.

The fees for a Professional/Panel Deputy are currently capped at 4.5% of a person's assets under £16,000. Generally speaking, Panel Deputies must demonstrate to the **Office of the Public Guardian** that the fees charged are both reasonable and proportionate. Each case will vary depending on the complexity of the person's financial arrangements, what is required of the Panel Deputy and how much time they spend on the case.

It is worth mentioning that, because of the associated costs, an application for the appointment of a Panel Deputy is the 'option of last resort'. When there is no one else willing or able to take on the role of Deputy and the family does not have a professional Deputy of their own choosing, the Court of Protection will appoint a Panel Deputy from the list found below.

Further reading:
Court of Protection approved Panel Deputies:
Panel deputies: list of court-approved professionals - GOV.UK (www.gov.uk)

4.7: What is a one-off Deputyship Order?

The Court of Protection can make a **'one-off' Deputyship Order**. This means the order only relates to one specific decision. A one-off order may be required to sign a tenancy agreement on your relative's behalf or to make a life changing health decision. The Court of Protection may also make a one-off order for the sale of a property.

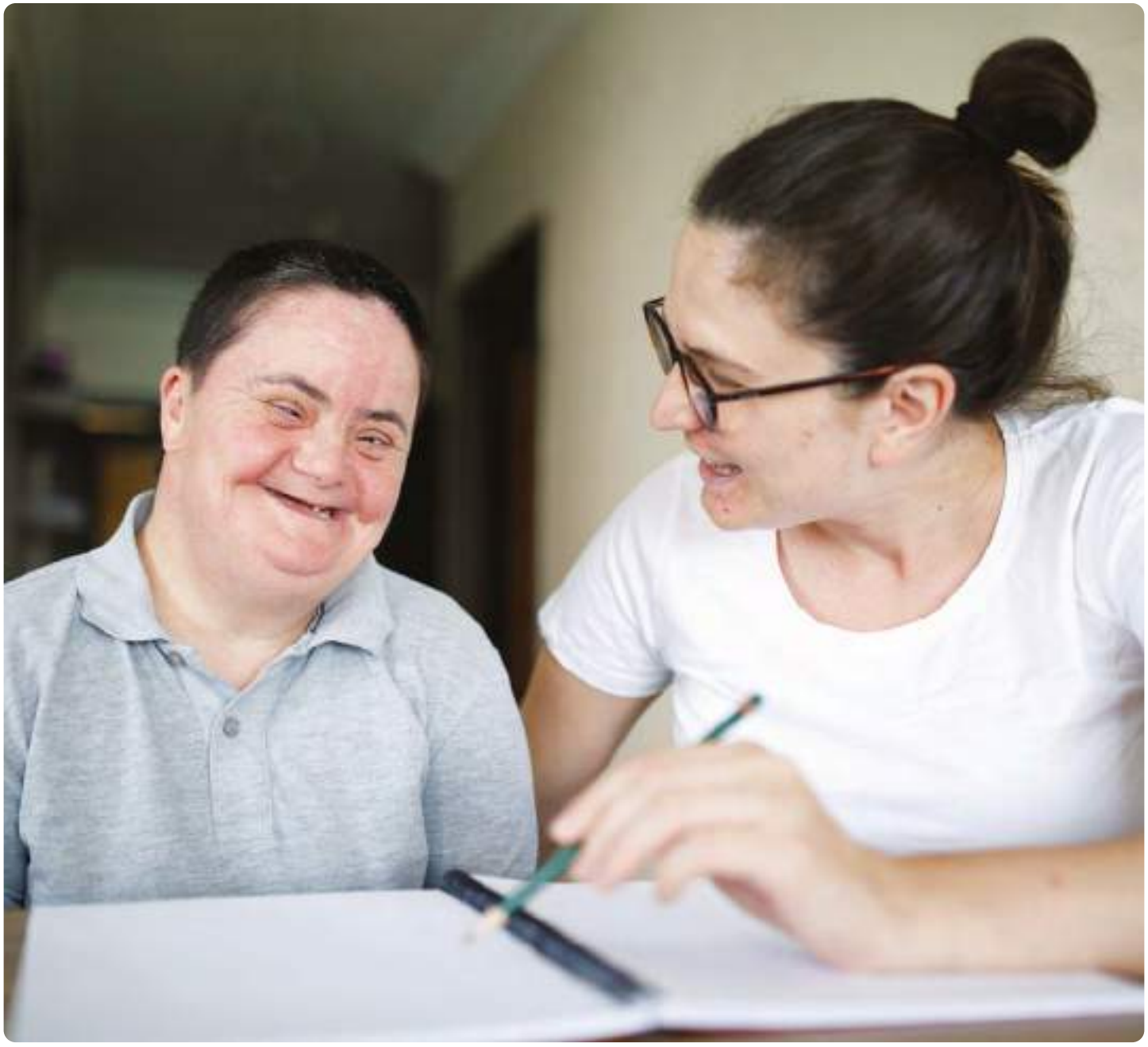
As far as property and finance is concerned, one-off orders are quite restrictive and thought should therefore be given to whether a general order would be more practical in the longer term.

4.8: What happens if a Financial and Property Affairs Deputy is not in place?

Technically, if a person lacks **capacity**, without a **Lasting Power of Attorney** (see **Chapter 3**) or Deputyship Order, no one has legal authority to manage the person's money.

Many families do so through an Appointeeship arrangement with the **DWP**. Appointeeship will allow you to manage your relative's benefits, but you may have difficulty opening bank accounts or dealing with outside agencies, for example, if your relative lives in supported living (as opposed to a residential home, where most expenses are paid for by the care provider). For more information on Appointeeship, please refer to **Chapter 2**.

Chapter 5: Banking



People with learning disabilities should be supported to have as much control over and involvement in their finances as possible. Access to banking is a necessity but one that can prove very difficult for learning disabled people and their family carers whilst trying to support them. Bank closures and removal of a counter service alongside a move towards a cashless society expedited by the pandemic have had a hard impact on the accessibility of banking for vulnerable groups. In this chapter we look at two important protective laws, and explore some of the common barriers and potential solutions.

Throughout, when we talk about banks, we are referring to banks and building societies. Please also note that due to the nature of the topics covered, it is worth checking the products and hyperlinks mentioned with the appropriate organisations (banks in particular) at the time of reading, as names of products and links can change more regularly than other types of information. There may also be new options available to you and your relative.

5.1: What is the Mental Capacity Act 2005 and how does it work?

The **Mental Capacity Act 2005** is a protective law designed to empower people and maximise their ability to make decisions for themselves. When a person is unable to make a specific decision for themselves, it provides a framework for that decision to be made on their behalf, in their best interests, and in a way that is least restrictive of their rights and freedom.

You can only assess a person's **capacity** relating to a specific decision, at the time it needs to be made. Assessments must therefore always be decision and time specific.

What is the two-stage test?

To determine whether a person has the capacity to make a particular decision, two questions must be answered:

Stage 1: The functional test.

Is the person unable to make a particular decision?

Stage 2: The diagnostic test.

Is the inability to make a decision caused by an impairment of, or disturbance in the functioning of, a person's mind or brain? This could be due to long-term conditions such as mental illness, dementia, or learning disability, or more temporary states such as confusion, unconsciousness, or the effects of drugs or alcohol.

A person is considered unable to make a decision if they cannot do one or more of the following four things.

- Understand the relevant information relating to the decision;
- retain that information for long enough;
- to be able to weigh it up; and
- communicate their wishes (verbally, using sign language or by any other means).

There are five principles underpinning the Mental Capacity Act, which family carers should familiarise themselves with.

1. We must begin by assuming that the person has capacity.
2. People must be supported to make a decision before anyone treats them as unable to make the decision.
3. Unwise decisions do not necessarily mean the person lacks capacity.
4. Decisions made on behalf of a person (who is found to lack capacity) should be made in their best interests.
5. Decisions made on behalf of a person (who is found to lack capacity) must be made in a way that is least restrictive of their rights and freedom.

Further reading:
Mental Capacity Act Code of Practice:
Mental-capacity-act-code-of-practice.pdf (publishing.service.gov.uk)

5.2: How does the Equality Act 2010 protect disabled people?

The Equality Act 2010[9] is a protective law that says that a person cannot be discriminated against because;

- of their disability;
- another person believes that they have a disability;
- they're connected to someone with a disability.

There are six main types of disability discrimination:

- Direct discrimination
- Indirect discrimination
- Failure to make reasonable adjustments
- Discrimination arising from disability
- Harassment
- Victimisation

In the context of this chapter, the most important and likely relevant considerations are probably whether the bank or building society is indirectly discriminating against your relative, or if they are failing to make reasonable adjustments. Explanations for the other types can be found in further reading below.

[9] https://www.legislation.gov.uk/ukpga/2010/15/contents

Indirect discrimination against disabled people happens when an organisation has a policy/process/practice or rule that applies to everyone, but puts disabled people at a disadvantage.

A reasonable adjustment is a change that a public organisation works in order to improve the service for its disabled customers. It is a legal requirement under the Equality Act (2010) to make reasonable adjustments wherever disabled customers, or potential customers, would otherwise be at a substantial disadvantage compared with non-disabled people.

Further reading:

Government guidance: Equality Act 2010: guidance - GOV.UK (www.gov.uk)

Government information:
EQUALITY ACT 2010: What do I need to know? (publishing.service.gov.uk)

Reasonable adjustments:
Reasonable adjustments: a legal duty - GOV.UK (www.gov.uk)

The six types of disability discrimination: Disability discrimination | Equality and Human Rights Commission (equalityhumanrights.com)

Equality law around banks: Equality law - Banks and other financial services providers | Equality and Human Rights Commission (equalityhumanrights.com)

5.3: What should banks be doing to be compliant with these laws?

All bank staff should be trained in the **Equality Act 2010** and **Mental Capacity Act 2005** and should always start by assuming that the person that they are speaking to has capacity. They must think about the needs of learning-disabled customers, anticipate problems that they may have with banking, and make reasonable changes to ensure that they don't discriminate against them.

When a person opens an account with a bank, they enter into a contract. The terms and conditions of the contract will vary depending on the bank and the type of account. There is no exhaustive list of what your relative should be able to understand in order to open a bank account. However, for most common accounts, e.g. current, basic, and savings accounts, examples of what your relative would need to understand include; any charges associated with the particular account, any

spending limits, how information will be provided, and what to do if something goes wrong. The banks should provide this information to all customers in a way that is easy to understand.

Banks must provide the information in an accessible format when requested. For some people, this may mean the information is provided in easy-read or braille or it may mean that the bank manager meets with the person in a quiet place to explain the terms and conditions of the contract. If the person has capacity to understand the basic terms and conditions of the contract, then they have capacity to have a bank account in their own name.

If the bank has reasons to suspect that your relative does not understand what it would mean to enter into a contract with them, then the bank ***should*** conduct a **Mental Capacity Assessment**. If the assessment concludes that your relative lacks capacity to have their own bank account; the bank should give the reasons for this in writing. The bank should then look at the least restrictive options and make reasonable adjustments to enable the person to have their own account, if possible. Failing that, they could advise on ways in which someone else could do it on their behalf, such as **Deputyship for Financial and Property Affairs**, or **Lasting Power of Attorney**.

Banks have a duty to protect their customers. Their staff receive training in how to spot signs of financial abuse and what to do to protect potential victims, but in trying to meet this objective, the unintended outcome is often that learning-disabled people are prevented from accessing their money. Listed below are some common complaints amongst learning disabled people and family carers and potential solutions.

Complaint	Potential solution
Staff assuming that the person lacks capacity to open a bank account, resulting in refusal to open an account or freezing an existing one.	Speak to staff about Principles One and Two of the Mental Capacity Act (2005), explaining that they should assume that the person has the capacity to have a ba nk account. If they suspect that they lack capacity, then staff should provide information in a way that is accessible to them, for example in Easy Read, before making a decision about their capacity.
Failing to understand that a person with a learning disability who has some difficulties accessing or managing their money, is not necessarily someone who lacks the capacity to have a bank account at all.	Remembering a PIN is a common issue for people with a learning disability, but banks should seek to understand individual difficulties and explore alternatives. For example, discussing whether a chip and signature card would overcome the problem. If a person has difficulty with budgeting and is at risk of getting into debt, the bank should discuss basic bank accounts that cannot become overdrawn or that have daily spending limits. Failing to understand that a person with a learning disability who has some difficulties accessing or managing their money, is not necessarily someone who lacks the capacity to have a bank account at all. Remembering a PIN is a common issue for people with a learning disability, but banks should seek to understand individual difficulties and explore alternatives. For example, discussing whether a chip and signature card would overcome the problem. If a person has difficulty with budgeting and is at risk of getting into debt, the bank should discuss basic bank accounts that cannot become overdrawn or that have daily spending limits. They should also discuss whether a third-party mandate would be appropriate. This is a document from your relative telling the bank that they can accept instructions about their money from a named person, giving you as their family carer the authority to run their bank account. Please note that your relative would have to have the capacity to have their own bank account and to instruct the bank to set up a third-party mandate for this to be an option.
Staff not accounting for the fact that many people with a learning disability don't have a drivers' licence or passport to be able to prove their identity, or any utility bills in their name to be able to prove their address.	Staff should provide the person with a list of alternative ways to prove identity and resident address.

If you feel that the bank is treating you or your relative unfairly, and you haven't been able to resolve it by meeting with the bank manager, you should consider making a complaint. The more complaints that banks receive, the more likely they are to do something about improving access and overall experience for their learning-disabled customers and the family carers who support them.

Further reading:
Citizens advice on the complaints process:
Complaints about banks and building societies - Citizens Advice

Advice for carers on using the Equality Act 2010:
Equality Act 2010: What Do I Need To Know As A Carer (publishing.service.gov.uk)

5.4: How can we open a bank account when my relative lacks the mental capacity to do so?

If you have the authority to manage your relative's finances, either as their **Lasting Power of Attorney** (see **Chapter 3**) or Deputy for Financial and Property Affairs (see **Chapter 4.2** onwards), then you will be able to open an account in your own name to receive their money. If you have Appointeeship, banks may be able to offer either a bespoke account or a separate standard account just for benefits (see **Chapter 2.6**).

Make sure that you keep the account completely separate to your own finances, as both the Department for Work and Pensions, and the Local Authority (if they receive social care funding) will ask to see bank statements at various intervals. They do this to confirm your relative's continued entitlement to social care funding and **means-tested** benefits.

You may already have a joint account with your relative, despite them lacking the capacity to have a bank account. Just be aware that there is increasing financial regulation around joint accounts. With a joint account, both account holders are individually and collectively responsible for debts on the account.

When a family carer dies, this can trigger greater scrutiny over the capacity of the learning-disabled person to manage the account. If the bank suspects that one of the account holders lacks capacity to manage the account, they will likely freeze the account unless or until such a time that a deputy for property and affairs is

appointed. Some banks may continue to pay pre-existing direct debits for care home fees or utility bills until a Deputy is appointed, but others won't - there isn't a standardised procedure that they all follow in the event that one account holder loses capacity (or is discovered to not have capacity). Please see **Chapter 6** for information on preparing financially for the death of a family carer or relative, and **Chapter 7** for how to prepare financially for your own death.

If there is currently no doubt from the bank about the account holder's capacity, it may be worth asking what the bank would do in this situation so that you are prepared. You could also request a written copy of any verbal agreement you come to.

5.5: How do I get money to a relative who doesn't live with me?

If your relative lives away from home, you, as the family carer, need to consider how they can access their money for day to day spending. Do they have their own bank account? Are they able to remember a PIN? Do they need support from other people to physically go into the bank to withdraw money?

If your relative is reliant on a support provider to help them access their money, you need to understand the level of support the organisation is willing to provide, as this does vary. Organisations should at the very least have policies and procedures in place to monitor the person's finances and minimise the risk of financial abuse.

Some support providers will let staff accompany people into their local bank to withdraw money. In this case, a carers card or trusted person's card could be purchased. The card and PIN number are issued to named support workers, and the family Appointee tops up the card with spending money on a planned basis.

Your bank may be able to offer this as an add-on to an existing Appointeeship account, or they are available for a fee from third-party organisations. Banks usually advertise their carers cards as something for 'vulnerable' customers, but you can request one for an account in your own name, as long as you are the account holder. Explain that you are their Appointee/Deputy/Lasting Power of Attorney, and you don't live with your relative but need to get a limited amount of spending money to them on a weekly basis, that a named support worker can access.

These cards have built in safe-guards. They won't divulge any bank details, so they're not suitable for setting up direct debits, and they have spending and withdrawal limits. They can work very well to allow your relative access to weekly spending money.

However, many support providers are reviewing their policies and may not let staff assist those who lack capacity to do things like withdraw money or remember a PIN. Where this applies, the support provider will usually request that family Appointees drop off cash to the person as needed. We understand that this isn't ideal, however there isn't currently a solution.

Further reading:

Lloyds bank types of access on behalf of another person:
Lloyds Bank | Help and Guidance | Types of representative access

Halifax types of access on behalf of another person:
Halifax UK | Types of representative access | Help Centre

NatWest Companion Card: NatWest unveils new 'companion card' for vulnerable customers (cardsinternational.com)

Santander Carers Card: Carers Card Account | Santander UK

5.6: What can I do as a family carer?

There are some things you can do to make sure you're prepared for dealing with banks and banking in relation to your relative.

- Be prepared by having a basic understanding of banks duties under the Mental Capacity Act and the Equality Act.
- Shop around to see what different banks and building societies offer.
- Arrange an appointment in the branch with the bank manager.
- Discuss any issues specific to your relative and ask what support the bank may be able to offer, including information on basic bank accounts, phone and internet banking, in-branch support etc.

If you know that your relative lacks capacity to have their own bank account and your aim is to set up an account to receive and spend money on their behalf, make sure that you have proof of address, identity and paperwork proving your status as Appointee/Deputy/Lasting Power of Attorney, and request that this information is electronically flagged, so your right to deal with the account is recognised in any branch.

If your relative lacks capacity and you are able to do so, set the account up in their name rather than your own. This is because, if you were to die or become incapacitated and the account was in your name, your relative would not be able to access their funds. As a **Property and Financial Affairs Deputy**, or someone with **Lasting Power of Attorney**, you should be able to open an account on behalf of your relative in their name. Appointees have less authority and therefore often have to open accounts in their own name. See **Chapter 2.6** for more information on this. If this is the case, explore adding Trusted Signatories to the account to protect your relative in the event that something should happen to you.

Ensure that you get a written copy of any agreement you have with the bank about your relative's account or one that you have on their behalf.

Further reading:

A basic bank account agreement:
141211_basic_accounts_agreement_text.pdf (publishing.service.gov.uk)

Detailed and accurate financial management guidance from Lambeth Adult Social Care department, who produce good resources:
Financial Management guidance.pdf (lambethsab.org.uk)

The banking section from the DOSH website: Banking – Dosh – Financial Advocacy

The DOSH banking guide: Dosh-banking-guide-2014-Final-v2.pdf

Information from Barclays: Banking made clearer (barclays.co.uk)

Information from United Response: Making money easier - United Response

Guidance around managing a bank account for someone else from the Building Societies Association:
ST00038201_2P_BBA_Guidance_for_Consumers_booklet.indd (bsa.org.uk)

Relevant advice from Age UK:
Arranging for someone to make decisions on your behalf (ageuk.org.uk)

Chapter 6: How can we best prepare financially for my relative's death?

Although it can be uncomfortable to think about, it is worth helping your relative to prepare for the inevitable. In this chapter, we will cover the issue of mental **capacity** and **Will** making; **Intestacy Rules**; and accessing money in a bank account after a person has died without a Will in place.

If you can, we recommend seeking the advice of a solicitor with expertise in this area, as your relative's **mental capacity** will need to be understood.

6.1: How does my relative make a Will?

To make a Will, a person has to be 18 years or older and have the necessary **mental capacity**. If a person were to make a Will without understanding their actions, the validity of the Will could be challenged.

The first step is to speak to a solicitor who has experience in this area. The solicitor will assess your relative's capacity to instruct them, and to satisfy the relevant legal tests. If they doubt your relative's capacity, they should get a second opinion from a professional expert or a doctor.

There are specific legal tests for making a Will, in addition to the two-stage test for capacity (see **Chapter 5.1** for more information on this). Your relative would need to be able to:

- understand that they are directing what happens after they die;
- understand approximately the value of what they are leaving in their Will;
- understand who gets what; and
- appreciate the claims of the people they ought to have regard to.

They also need to differentiate between people they know; to reach a moral judgement about who gets what. For example, they may choose to leave money to one person over another because they had been more involved in their care or because of a greater need for financial assistance.

Your relative may lack the capacity to manage their financial affairs and have a **Deputyship** for Property and Financial Affairs in place but still have the capacity to make a Will - this is why it's important to seek a specialist solicitor to advise. Your relative doesn't need the ability to sign their name on the Will, so long as they have the mental capacity to make the Will, they could mark it or have someone sign on their behalf.

6.2: What happens when my relative lacks the capacity to make a Will?

A **Statutory Will** is a Will made by the **Court of Protection** on behalf of someone who is unable to make one themselves because they lack the required mental capacity. If your relative lacks the capacity to make a Will, but a Will is needed and they have enough funds, there is an option to apply directly to the Court of Protection for a **Statutory Will**. Currently, the application costs £371, and you may also need to pay the following fees.

- £494 if the court decides to hold a hearing (including telephone hearings).
- Solicitors fees if a solicitor is appointed by the Official Solicitor to act as the person's litigation friend.
- Counsel's fees, if there are any.

Depending on your relative's circumstances, you may not have to pay an application or hearing fee, for example, if they have low (or no) income or are on certain types of benefits. See the links below for more information.

Further reading:
Fee exemption COP44 form:
Court of Protection fees (COP44) - GOV.UK (www.gov.uk)
More on Court Of Protection fees:
COP44 - Court of Protection – fees (publishing.service.gov.uk)

6.3: What are Intestacy Rules?

Intestacy Rules apply when a person dies without a Will in place. These rules determine who is entitled to a share of someone's money, property and possessions. It's worth noting that a surviving partner who was not married or in a civil partnership with the deceased has no automatic right to inherit.

Typically, the relative to inherit the most is responsible for applying for a grant letter of administration. This makes them the 'administrator' of the estate, enabling them to value the estate, settle any debts, and share out the estate according to Intestacy Rules.

If Intestacy Rules find that no living relative is entitled to the estate, then the whole estate would go to the Crown.

6.4: What happens to money held in my relative's bank account after they die?

Banks are legally obligated to check that they are releasing money to the right person, after someone has died. It is illegal to withdraw money from a deceased person's bank account without notifying their bank of their death and following the bank's process. This is the case even if you have **Lasting Power of Attorney** or Deputyship for **Property and Financial Affairs** - as these come to an end when a person dies.

If a Will was in place, this is a straightforward process. The executor of the Will has the legal right to access the bank account. The bank will need to be notified of the death and provided with a death certificate. The bank will then freeze the account. To cancel direct debits and standing orders, contact the relevant companies to notify them the person has died.

A bank has the discretion to release some of a deceased person's assets through a letter of indemnity. This is appropriate if, according to Intestacy Rules, you are the only person entitled to the funds. If it transpires, another person has an entitlement to a share of the funds; the bank will need reimbursement for any losses or costs incurred.

6.5: How do I report a death?

Tell Us Once is a free government service that enables reporting a death to central and local governments. To use the service, first register the death at the council register office in the area where the death took place.

Tell Us Once will notify the services below.

- **DWP** Pensions and Benefits
- Personal Tax
- Council Tax
- Passport
- Driving licence
- Blue Badge
- Electoral register

The Death Notification Service is a free online service that enables reporting of a death to a number of banks simultaneously. It is important to note that whilst many banks and building societies are members, it may not cover all.

Further reading:

Tell Us Once:
What to do after someone dies: Tell Us Once - GOV.UK (www.gov.uk)

The Death Notification Service: The Death Notification Service

Government guidance on Intestacy Rules:
Intestacy - who inherits if someone dies without a will? - GOV.UK (www.gov.uk)

Mencap's guide to making a Will: Mencap%27s Accesible guide to making a will.pdf

Legal advice on contesting a Will:
Contesting a will on the grounds of mental capacity (wright hassall.co.uk)

Chapter 7: How can I remember my relative in my Will?

Many family carers have questions about the best approach to remembering their relative in their **Will**; you may be asking yourself how you can leave money safely, or if an **inheritance** may cause your relative unintended difficulties. It is possible to safely leave assets to your relative in a way that provides financial stability, through a **Wills Trust**.

7.1 What are the key considerations?

As a Will is legal in nature, we do recommend seeking the advice of a solicitor with expertise in this area who can guide you in thinking through the key questions, potential future risks and how to include your relative in a way that financially protects them and doesn't affect their income or care.

Each person's circumstances are unique; however, there are considerations to discuss with your solicitor, such as:

- whether your relative has **mental capacity**;
- whether they are considered vulnerable and need support to manage money; and
- whether they receive or are likely to receive **means-tested** benefits.

7.2 What is a Wills Trust?

A Wills Trust is usually the most suitable option if the issues above are relevant for your relative. A Trust is a legal arrangement for managing assets, such as money, property or land, after a person has died, for a beneficiary (the person for whom the Trust was created). **Trustees**, a person or group of individuals, control and manage your assets according to your wishes and in the best interest of the beneficiaries. Trustees can be family, friends or hired professionals.

Such an arrangement can be beneficial as it removes the need for your relative to make financial decisions, protects them from financial abuse and avoids impacting their means-tested benefits.

Which Trust is best will depend on your relative's circumstances; the flexibility, the value and type of assets involved. **Discretionary Trusts** or **Vulnerable Beneficiary Trusts** are the most common types considered.

A Discretionary Trust is a legal arrangement that gives trustees discretion to meet the needs of beneficiaries as they see fit. Beneficiaries have the potential to benefit from the Trust, not the right. When and how they receive assets is at the discretion of the trustees. However, you may want to discuss with your solicitor preparing guidance for trustees on your wishes for how you would like your relative to benefit from the Trust.

A Vulnerable Beneficiary Trust, also known as a Disabled Person's Trust, is very similar to a Discretionary Trust; the main difference is the special treatment of Income Tax and Capital Gains Tax. A specialist solicitor can provide advice on this.

The Law Society provides a database of legal professionals and their contact information. Searches of the database can be by geographical and legal area. When making enquiries, ask if the solicitor is additionally qualified to advise vulnerable people. Mencap is also a good source of information and provides a Wills and Trust service.

Further reading:

Mencap Wills and Trusts service:
Wills and Trusts Service for parents and carers | Mencap

A database of legal professionals from The Law Society:
Find a Solicitor - The Law Society

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Information about Hft's Family Carer Support Service

Hft's Family Carer Support Service (FCSS) is an information and support service for family carers with an autistic relative or a relative with a learning disability. To avail of our service, your relative must be aged 16 years or older and living in England.

FCSS
Hft's Family Carer Support Service

We can help in the following ways:

- Ongoing 1:1 support via telephone and email
- Support at virtual meetings with other professionals (this support is offered at our discretion based on service capacity)
- Email and letter writing
- Resources designed to simplify complicated topics
- Workshops/webinars about subjects affecting family carers and their relatives.
- Information and guidance on common topics

Common topics include:

- Adult Social Care
- Carers' rights
- Personal Budgets, Direct Payments and care packages
- Financial contributions and Disability Related Expenditure
- Transition from childrens' to adult services
- The Mental Capacity Act
- Lasting Power of Attorney, Deputyship, Appointeeship
- Benefits
- Planning for the future

If you would like to discuss your individual situation with us, please contact us:

Freephone: 08088010448 *(open Monday - Thursday from 9:30am - 4pm)*

familycarersupport@hft.org.uk

@HftFamilyCarers

@familycarersupport

To sign up to our monthly e-newsletter, please follow this link: https://zcmp.eu/ln2

Glossary

Advocate – an independent person who supports an individual to understand their rights and express their views.

Appointee/Appointeeship – an Appointee is someone who has been appointed by the Department for Work and Pensions to deal with the benefits of someone who can't manage their own affairs. Appointees are responsible for making and maintaining any benefit claims, and spending benefits money in the claimant's best interests.

Assessment of capacity – the process described by the **Mental Capacity Act 2005** and the Code of Practice to establish whether someone has the capacity to make a decision.

Attendance Allowance – a benefit for people over State Pension age who need help with personal care or supervision because of illness.

Attorney – a person appointed under a Lasting Power of Attorney (LPA) order, who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the Power of Attorney.

Best interests – any decision made, or anything done, for a person who lacks capacity must be done in their best interests. This is ascertained by weighing up several different criteria. Who can make the best interest decision is dependent on the particular circumstances of the individual concerned.

Carer's Allowance – a benefit paid when a person provides care for an individual at least 35 hours a week, earns below a set amount each week and the person they care for is entitled to certain benefits.

Corporate Appointee – an organisation approved by the Department for Work and Pensions (DWP) to manage the welfare benefits of a claimant who lacks capacity.

Court of Protection (CoP) – a court specifically set up to deal with issues relating to people who cannot make decisions for themselves because they lack the capacity to do so. www.gov.uk/courts-tribunals/court-of-protection

Daily Living Component – see Personal Independence Payments (PIP).

Deputy/Deputyship order – someone who has been authorised by the Court of Protection to make decisions on behalf of another person. There are two types of Deputy: **Personal Welfare Deputy**; and **Property and Financial Affairs Deputy**.

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Disability Living Allowance (DLA) – a state benefit for disabled individuals who need extra support with their care or their mobility. There are two parts of this benefit (known as components) covering **care** and **mobility** needs. Within each component are three levels of entitlement: lower, middle and higher rates. Note: new applications for DLA are no longer received for persons aged over 16. This has been replaced by Personal Independence payments (PIP).

Disability Premiums – an extra amount of money added to certain benefits. There are three different types of Disability Premium; Disability Premium, **Enhanced Disability Premium** and **Severe Disability Premium**. Each premium has its own qualifying conditions. A person can be awarded more than one premium at once.

Disability Related Expenditure (DRE) – costs that arise from a disability or long-term health condition. The Care Act Statutory Guidance, in Annex C, Section 39, says that during financial assessments, Local Authorities must leave people with enough money *'to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority'*.

Discretionary Trust – see **Wills Trust**.

Donee – another term for Attorney. See **Attorney**.

Donor – a person who gives authority to another person to act on their behalf.

DWP – The Department of Work and Pensions.

Employment and Support Allowance (ESA) – a benefit you can apply for if you have a disability or health condition that affects how much you can work. It is currently being phased out and replaced by Universal Credit.

Fiduciary duty – a legal or ethical relationship of confidence or trust between two or more parties. For example, a duty of confidentiality.

First-Tier Tribunal – Appeals to the First-Tier Tribunal are against decisions from government departments and other public bodies.

HMRC – Her Majesty's Revenue and Customs; the government department responsible for taxes.

Inheritance – assets such as money or property passed on to an individual after someone dies.

Intestate – having died without making a **Will**.

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Intestacy Rules – laws that set out what should happen if a person dies intestate, without having made a **Will**.

Judicial Review – a procedure by which a court can review an administrative action by a public body and make a declaration, order, or award.

Lasting Power of Attorney (LPA) – a legal document that allows 'attorneys' to help a person make decisions, or to make decisions on their behalf, if and when they lose capacity. Lasting Power of Attorney can only be granted if the person has the capacity at the time of application to instruct another person to manage their affairs. There are two types of LPA: **Health and Welfare LPA**; and **Property and Financial Affairs LPA**.

Legacy Benefit – a state benefit being phased out and replaced by Universal Credit. Examples include Job Seekers Allowance and Income Support.

Legal Aid – can help meet legal costs. Typically, in order to get Legal Aid an applicant will need to demonstrate that: 1) the case is eligible; 2) the problem is serious; and 3) you cannot afford to pay for legal costs.

Mandatory reconsideration – the first process by which a benefits decision you don't agree with can be looked at again.

Means-tested – available only to people whose financial circumstances make them eligible.

Mental capacity / **capacity** – the ability to make a decision about a particular matter at the time the decision needs to be made.

Mental Capacity Act 2005 – the statutory framework intended to empower and protect people who lack capacity to make decisions for themselves. Our guide 'Using the Mental Capacity Act 2005' is a good source of information about this act.

Mental Capacity Act Code of Practice – supports the legal framework of the Mental Capacity Act 2005 and provides guidance and information on how the Act works in practice.

Mental capacity assessment – a process to be used to determine if an individual can safely make decisions about their welfare. Our guide 'Using the Mental Capacity Act 2005' is a good source of information on mental capacity assessments.

Mobility component – see Personal Independence Payment **(PIP)**.

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Office of the Public Guardian (OPG) – an executive agency sponsored by the Ministry of Justice, the OPG provides information and guidance on all aspects of mental capacity policy. Court-appointed deputies are supervised by the OPG. www.publicguardian.gov.uk

One-off Deputyship Order – a Deputyship Order that only relates to one specific decision.

Ordinary Power of Attorney – a legal document that allows 'Attorneys' to make decisions on behalf of another person. It is only valid whilst the person concerned has mental capacity.

Personal Independence Payment (PIP) – a state benefit to help with extra living costs where a person has a long-term condition that causes difficulty in doing everyday tasks. PIP entitlement is made up of two components; the **Daily Living Component** and the **Mobility Component**. Each component has two levels of award, a standard rate and an enhanced rate.

Pension Credit – an additional benefits payment to help with living costs if you receive a State Pension and are on a low income. This is a **means-tested** benefit.

Property and financial affairs – any possessions owned by a person (e.g. a house or flat, jewellery or other possessions), money from income, savings or investments, and any expenditure.

Revise/revision – a benefits decision is corrected if incorrect. It is backdated to the date of the benefits decision concerned.

Safeguarding – incorporates the concepts of prevention, empowerment and protection to enable adults who are in circumstances that make them vulnerable, to retain independence, well-being and choice, and to access their right to a life free from abuse and neglect.

Savings thresholds – a level of savings whereby a means tested benefit entitlement begins to be reduced. A high level of savings may discount entitlement completely.

Single occupier discount – a 25% Council Tax reduction. This can be awarded against a Council Tax liability if you are a single adult living alone or where the only other adult in the property is entitled to the daily living component of **Personal Independence Payment (PIP)**. Sometimes referred to as the 'single person discount'.

Statutory Will – a **Will** made by the Court of Protection on behalf of someone who is unable to make one themselves as they lack capacity.

Supersede/Supersession – a new benefits decision that takes effect from a date later than the original decision.

The Equality Act 2010 – a legal framework to protect individuals from discrimination at work and in wider society.

Trustee – Trustees are the legal owners of the assets held in a trust. Their role is to deal with the assets according to the trust deed or Will, and manage the trust on a day-to-day basis, deciding how to invest or use the Trust's assets.

Universal Credit (UC) – a state benefit to help with living costs for those on a low income. This benefit will replace many of the **Legacy Benefits**.

Upper Tribunal – reviews and decides appeals arising from the **First–tier Tribunal**.

Vulnerable Beneficiary Trust – see Wills Trust.

Will – a legal declaration of wishes regarding the disposal of property and estate following death.

Wills Trust – a trust is a legal arrangement for managing assets such as money, property or land. There are types of trusts for different situations where varying tax rules apply. Two most commonly considered are Discretionary Trusts and Vulnerable Beneficiary Trusts.

Working Tax Credit – a benefit intended to boost the income of working people on a low income. This benefit is being phased out and replaced by **Universal Credit**.

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We are a national charity that creatively supports adults with learning disabilities to live the best life possible.

People with learning disabilities face obstacles that are hard to imagine. We use our skills, experience and creative ideas to help people to overcome them. Our Fusion Model of Support is key in this – it's how we ensure the best possible outcomes for everyone we support, challenging us to provide consistent, high-quality services.

Today, we are trusted to support more than 2,200 people across England and Wales, from living independently in their own home, to day opportunities; from a few hours a week, right up to 24 hours a day.

For some people we support, we provide round the clock support; for others it may be a question of helping with specific challenges such as building a social life or developing skills for independent living. For every person we support, we are committed to working with them to realise their best life possible.

Find out more at hft.org.uk

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