

When should I make a Lasting Power of Attorney (LPA)?

No one wants to think about becoming incapable of making their own decisions through illness or accident. But it happens every day to people of all ages.

A Power of Attorney lets you plan ahead to make sure that all your wishes are respected, no matter what happens. It gives you the confidence of knowing that your future is in the hands of someone who cares about you.

A Power of Attorney is a written document that allows someone else to make decisions or take action on your behalf. This person is called your attorney and you can decide the most appropriate person(s) to hold this authority. You also decide exactly what they're authorised to do and under what circumstances.



These arrangements are designed to take effect if you are ever in a situation where you are incapable of looking after yourself. As we all know, this can happen gradually over time or suddenly, either through an accident or illness. Having a Power of Attorney lets you decide what kinds of decisions you want someone to make on your behalf in the future.

The benefits of having a Power of Attorney are:

- Reassurance that all of your affairs will be taken care of
- Planning ahead with confidence
- Protecting your loved ones from unnecessary stress



What is a Lasting Power of Attorney (LPA)?

If you want to give someone full authority to make decisions and take action concerning your finances while you still have mental capacity, you can set up an Ordinary Power of Attorney. This is a legal document giving someone else the authority to act on your (the donor's) behalf. It is only valid while you still have the mental capacity to make your own decisions about your finances so that you can monitor what your attorney (the person making decisions for you) is doing. You can limit the power you give to your attorney so that they can only deal with certain assets; e.g. they can make decisions regarding your bank account, but not your home.

An alternative to an Ordinary Power of Attorney is to set up a Lasting Power of Attorney (LPA), which would continue to be valid if you lost mental capacity and were no longer able to make your own decisions.



There are two types of LPA.

The first one is known as a property and financial affairs LPA, and gives your attorney the authority to deal with buying and selling your property, paying your bills, and managing your bank accounts and investments. This type of LPA can be used while a person is still capable of handling their own affairs, but has chosen to delegate these tasks to their attorney.

The second type is known as a personal welfare LPA. This type of LPA covers decisions about health and medical care and even decides where the person who is the subject of the LPA is to live. It can only be used if that person is incapable of dealing with such matters themselves.

A Lasting Power of Attorney is not valid until it has been registered with the Office of the Public Guardian (OPG), who will check to be sure that everything is correct and raise any queries.



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What is mental capacity?

Having mental capacity means a person is able to make their own decisions. If you become unable to make your own decisions at some point in the future, someone else will need to do so for you. This could include decisions about your property and financial affairs such as paying your mortgage, investing your savings or buying items you need, or decisions about your personal welfare, such as what you should eat or what type of medical treatment you should have.

Some people may have the mental capacity to make decisions about some things but not others, or their capacity to make decisions may change from day to day. Taking a long period of time to understand something or to communicate can be mistaken for a lack of mental capacity, but having dementia, for example, does not necessarily mean that someone is unable to make any decisions by themselves. When someone is having difficulty communicating a decision, an attempt should always be made to overcome the communication difficulties and help the person decide for themselves.

Before someone can make a decision on your behalf, they must have reasonable belief that you cannot make that particular decision yourself. The words “reasonable belief” are important because capacity can change over time. The person making a decision for you must make sure that they are acting in your best interests.

Choosing an attorney



Remember, the role of an attorney involves a great deal of power and responsibility, so it is important that you trust the person you choose. Think carefully about whether there's someone who you believe would be able to carry out this role and make decisions in your best interests. Give the person time to think about whether they wish to accept the role of attorney, to make sure that they are making the right decision. Your attorney could be a family member, a friend, your spouse, partner or civil partner. Alternatively, they could be a professional, such as a solicitor.

Your attorney can claim any expenses they incur as a result of their role as your attorney – postage, travel costs or photocopying costs, for example. They can use your money to pay for these types of expenses, keeping an account of the expenses and the relevant receipts. However, they can't claim payments for time spent carrying out their duties unless you appoint a professional attorney, such as a solicitor.

An attorney must be over 18, and shouldn't be a paid care worker except in exceptional circumstances.

Frequently asked questions

▶ **Isn't this kind of thing just for rich people?**

This isn't simply about your finances or property. A Power of Attorney can also let you decide in advance who should deal with personal welfare issues on your behalf.

▶ **I'm not old, why should I worry?**

While nobody likes to think about these things, accidents or illness can affect anyone at any time. Having a Power of Attorney in place simply means you're prepared for any eventuality.

▶ **What happens if my attorney becomes incapable too?**

If your attorney becomes unable to act, you will need to draw up a replacement, if, of course, you are still able to do so. This is one of the reasons why it's a good idea to have more than one attorney or an additional person known as a replacement attorney who can step in if need be.

▶ **What if I don't have a Power of Attorney?**

Your family or friends might have to go to court to gain authority to act on your behalf, which is likely to be both time-consuming and costly.

▶ **Who can be my attorney?**

You can choose anyone you want to be your attorney; e.g. a family member or friend, a solicitor or accountant, or any combination. If you want, you could have one person to make decisions related to your financial matters and another to make decisions on your personal welfare, whatever seems most appropriate to you.

▶ **Who decides if a person is incapable?**

This is a decision that can only be made by a registered and licenced medical doctor.

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