

POWER OF ATTORNEY INFORMATION SHEET

What is a Power of Attorney?

A Power of Attorney is a legal document that allows someone to make decisions for you, or act on your behalf, if you are no longer able to or if you no longer want to make your own decisions.

There are a number of reasons why you might need someone to make decisions for you or act on your behalf:

- This could be a temporary situation, for example, if you are in hospital and need help with everyday tasks such as paying bills
- You may need to make longer-term plans if, for example, you have been diagnosed with dementia and you may lose the mental capacity to make your own decisions in the future

If a person has already lost mental capacity and there is no Power of Attorney in place, an application has to be made to a court to help the person with one-off or long-term decisions. The applicant then becomes the deputy for the person concerned. Information about the Court of Protection can be found on the government website.

What is mental capacity?

Mental capacity means the ability to make or communicate specific decisions at the time that they need to be made. To have mental capacity you must understand the decision you need to make, why you need to make it, and the likely outcome of your decision.

Some people will be able to make decisions about some things but not others. For example, they may be able to decide what to buy for dinner, but be unable to understand and arrange their house insurance. Alternatively, their ability to make decisions may change from day to day.

Needing more time to understand or communicate does not mean that you lack mental capacity. For example, having dementia does not necessarily mean that someone is unable to make any decisions for themselves. Where someone is having difficulty communicating a decision, an attempt should always be made to overcome these difficulties and help the person decide for themselves.

Different types of Power of Attorney

There are different types of power of attorney and you can set up more than one.

Ordinary Power of Attorney – this covers decisions about your financial affairs and is valid while you have mental capacity. It is suitable if you need cover for a temporary period, for example a hospital stay or holiday, or if you find it hard to get out, or you want someone to act for you.

Lasting Power of Attorney (LPA) – An LPA covers decisions about your financial affairs, or your health and care. It comes into effect if you lose mental capacity, or if you no longer want to make decisions for yourself. You would set up an LPA if you want to make sure you are covered in the future.

Enduring Power of Attorney (EPA) – EPAs were replaced by LPAs in October 2007. However, if you made and signed an EPA before 1 October 2007, it should still be valid. An EPA covers decisions about your property and financial affairs, and it comes into effect if you lose mental capacity, or if you want someone to act on your behalf.

Ordinary Powers of Attorney – More Information

An ordinary power of attorney allows one or more people, known as your attorney, to make financial decisions on your behalf. It is only valid whilst you still have mental capacity to make your own decisions. You may want to set one up if, for example:

- You need someone to act for you for a temporary period, such as when you are on holiday or in hospital
- You are finding it harder to get out and about to the bank or post office, or you want someone to be able to access your account for you
- You want someone to act for you while you are able to supervise their actions

You can limit the power you give to your attorney, so that they can only deal with certain assets, for example, your bank account but not your home.

As an ordinary power of attorney is only valid while you have mental capacity to make your own decisions, if you want someone to be able to act on your behalf if there comes a time when you do not have the mental capacity to make your own decisions, you should consider setting up a lasting power of attorney.

Lasting Powers of Attorney – More information

A lasting power of attorney (LPA) is a way of giving someone you trust, your attorney, the legal authority to make decisions on your behalf if you lose mental capacity to do so in the future, or if you no longer want to make decisions for yourself.

There are two types of LPA:

- LPA for financial decisions
- LPA for health and care decisions

LPA for financial decisions

An LPA for financial decisions can be used when you still have mental capacity or you can state that you only want it to come into force when you lose capacity.

An LPA for financial decisions can cover items such as:

- Buying and selling property
- Paying the mortgage
- Investing money
- Paying bills
- Arranging repairs to property

You can restrict the types of decisions your attorney can make, or let them make all decisions on your behalf.

If you are setting up an LPA for financial decisions, your attorney must keep accounts and make sure that their money is kept separate from yours. You can ask for regular details of how much is spent and how much money you have. These details can be sent to your solicitor or a family member if you lose mental capacity. This offers an additional layer of protection to you.

LPA for health and care decisions

This covers health and care decisions and can only be used once you have lost mental capacity. An attorney can generally make decisions about items such as:

- Where you should live
- Your medical care
- What you should eat
- Who you should have contact with
- What kind of social activities you should take part in

You can also give special permission for your attorney to make decisions about life-saving treatment.

How to set up a Power of Attorney

Setting up an Ordinary Power of Attorney

If you want to set up an ordinary power of attorney you can either do this yourself or you can get advice from a solicitor as there is a standard form of

wording that must be used. An Ordinary Power of Attorney pack can be purchased online for completion.

An ordinary power of attorney does not need to be registered with the Office of the Public Guardian, and can be used as soon as the donor signs the document.

An Ordinary Power of Attorney must include the following statement:

“This General Power of Attorney is made this day of (X) by me (donor’s full name) of (address). I appoint (attorney’s full name) of (address) (joint) / (jointly / jointly and severally) to be my attorney(s) in accordance with section 10 of the Powers of Attorney Act 1971.

“Signed by me as a deed and delivered.”

Setting up a Lasting Power of Attorney

The following steps should be followed:

1. Contact the Office of the Public Guardian (<https://www.gov.uk/power-of-attorney/make-lasting-power>) to get the relevant forms and an information pack. You can download the forms or fill them out online.
2. You can fill out the forms yourself, or with the help of a solicitor. Taking professional advice can prevent issues later on, especially if you are unsure of the process or your affairs are complex.
3. Have your LPA signed by a certificate provider. This is someone who confirms that you understand it and have not been put under any pressure to sign it. The certificate provider must be someone you know well or a professional person such as a doctor, social worker or solicitor.
4. The LPA must be registered with the Office of the Public Guardian before it can be used. There is a fee of £82 to register each LPA you require. If you are on a low income, you may be eligible for a 50% discount, and if you are receiving certain benefits you will not have to pay anything. You must register your LPA while you still have the mental capacity and it cannot be used during the registration process, which takes approximately 9 weeks. If you lose mental capacity but signed the LPA while you still had mental capacity, your attorney can register it for you.

Do I need a solicitor?

You do not have to use a solicitor to create an LPA. The application forms from the Office of the Public Guardian (OPG) contain guidance to help you fill them out. Alternatively, you can fill them out online and telephone the OPG helpline (0300 456 0300) if you have any issues, questions or concerns.

If you want to use a solicitor, you will need to pay them to complete the form for you. Fees for creating an LPA vary, so you should contact a few solicitors to compare their fees and the services they offer.

How do I make changes to my power of attorney?

You can ask the Office of the Public Guardian to change your LPA if it has been registered and you still have mental capacity to make decisions. The Office of the Public Guardian can be contacted on 0300 456 0300 for advice on changing an LPA.

What if I am having problems with my attorney?

If you are unhappy with the decisions that are being taken by your attorney, there are a number of ways to make a complaint:

- If you think you are in immediate danger, contact your local police force or call 999 in an emergency
- Raise your concerns with the Office of the Public Guardian, which has responsibility for monitoring attorneys and deputies and can investigate allegations of mistreatment or fraud. It can report concerns to another agency, such as the Police or Social Services, if appropriate
- To speak to someone confidentially about your concerns of financial misuse or abuse, call the Action on Elder helpline on 080 8808 8141.

What happens if my attorney wants to give up their responsibility?

Your nominated attorney can stop acting on your behalf – this is called ‘disclaiming’ an attorneyship.

Your attorney will have to complete a notification form (available at <https://www.gov.uk/government/publications/disclaim-a-lasting-power-of-attorney>) and send the completed form to:

- Yourself as the donor – if the LPA has not been registered
- Yourself as the donor and the Office of the Public Guardian – if the LPA is registered
- Any other attorneys appointed on the form

Any replacement attorneys listed in the LPA will take over if one of your attorneys chooses to stop acting as your attorney.