

Lasting Power of Attorney **(includes Enduring Power of Attorney and Court of Protection)**

If you were to become incapable of managing your legal, property, financial or health affairs, you may need someone to do this for you. A Lasting Power of Attorney (LPA) is a legal document which allows you, the 'donor', to formally appoint a friend, relative or professional person as your 'attorney' who will make decisions on your behalf.

If you need someone to act for you for a temporary period – to cover a hospital stay or convalescence, for example, an Ordinary Power of Attorney may be appropriate. To find out more please refer to our **Helping someone to manage their financial affairs** factsheet.

The Mental Capacity Act 2005, which came into force in 2007, introduced LPA. These replace the old system of Enduring Power of Attorney (EPA). An EPA arranged before 1 October 2007, however, can still be used.

A LPA can be drawn up at any time, providing you have mental capacity (the ability to make your own decisions) and you are aged over 18.

An LPA can still be made while observing government guidance on social distancing, self-isolating and shielding. To find out more refer to 'Making and registering an LPA during the coronavirus outbreak' at www.gov.uk.

The Office of the Public Guardian (OPG) is responsible for administering LPA. This office deals with all applications and registrations (see page 2).

Contact: Telephone: 0300 456 0300
Online: www.gov.uk/government/organisations/office-of-the-public-guardian
Email: customerservices@publicguardian.gov.uk

You can create two types of Lasting Power of Attorney (LPA)

- **Property and Financial Affairs**
- **Health and Welfare**

Property and Financial Affairs LPA allows you to choose someone to make decisions about money and property for you. This could include paying your bills, collecting benefits and dealing with your property, including selling your home, if necessary.

This type of LPA can be used, with your permission, as soon as it is registered with the OPG.

Health and Welfare LPA allows you to choose someone (known as an Attorney) to make decisions about your healthcare and well-being. Their responsibilities could cover your medical care, including decisions on life-sustaining treatment and decisions on where you live such as moving into a care home. Aspects of your everyday routine such as eating and what you wear can also be decided by an attorney.



This LPA can only be used when it is registered with the OPG and you have become **unable to make your own decisions**.

Appointment of an Attorney under a Health and Welfare LPA, after you have made an advance decision, however, can invalidate the advance decision. This happens if you have given your Attorney power to make the same decisions about the same treatment which you specified in your advance decision. Similarly, if an advance decision is made after an appointment of an Attorney, the advance decision would overrule the Attorney's decision. To find out more please refer to our **Advance planning for medical treatment and care** factsheet.

Appointing your attorney(s)

You can choose one or more people to act on your behalf. An attorney must be aged over 18 and could be a relative, friend or professional person such as a solicitor. Appointing an attorney will obviously need careful consideration. How well do you know the person? Can you trust them to act in your best interests? Do they appear to deal with their own affairs in a competent way? Anyone who is currently bankrupt cannot be an attorney for a Property and Financial Affairs LPA.

Making a Lasting Power of Attorney

The procedure has been simplified in recent years. Forms provided by the OPG are used to make a LPA.

To complete these forms, you can choose to:

- fill in the forms online at: www.lastingpowerofattorney.service.gov.uk/home (quickest method)
- download the forms at: www.gov.uk/government/publications/make-a-lasting-power-of-attorney
- receive forms by post – contact the OPG (details page 1)

A LPA is a powerful, legal document, and you may wish to take legal advice before completing it – Carers' Resource can give details of firms which provide LPA services. Many people find they are able to complete the forms themselves, however. It is not a requirement that you use a solicitor.

Registering a LPA

The LPA must be registered with the OPG before it can take effect. An application to register can be made at any time after you have made an LPA. This may take some weeks so it is advisable to act promptly in case your attorney needs to help you – they cannot act under an LPA until it is registered.

You can register an LPA online – please see details of the OPG on page 1.

Either you or your attorney can apply to register your LPA. However, if you, as the donor, lose your mental capacity before registration, your attorney has to take this responsibility.

There is a registration fee – currently £82 for each type of LPA. Fees may be reduced or waived depending on financial circumstances. If eligible an LPA120 form (Fee remissions and exemption form) must be completed.

Once the LPA has been registered it can continue indefinitely.



Refunds for previously registered Powers of Attorney

If you applied to register a lasting or enduring power of attorney with the OPG between 1 April 2013 and 31 March 2017 and subsequently paid a fee you may be due a partial refund. This is because it is now cheaper to process a power of attorney than it used to be. You must claim your refund by 1 February 2021.

Contact the OPG for more information (details page 1)

Can I change or cancel my LPA?

You can cancel or change your LPA even if it's been registered, as long as you still have mental capacity.

Should an attorney lose mental capacity, they will, of course, be unable to act on your behalf but you cannot simply appoint someone else in their place. Always take advice from the OPG or from your solicitor.

To **cancel** an LPA a 'deed of revocation' must be completed. A template is available online at: www.gov.uk/power-of-attorney/end

To **change** an LPA, a 'partial deed of revocation' must be completed. Again, there is a template available online at: www.gov.uk/power-of-attorney/change-your-lasting-power-of-attorney

If an **attorney** no longer wishes to act on your behalf, they should complete a 'disclaimer' form. The form (LPA005 or EP5) can be downloaded from:

www.gov.uk/government/publications/disclaim-a-lasting-power-of-attorney

www.gov.uk/government/publications/disclaim-an-enduring-power-of-attorney

Complaints

If you wish to complain – for example, you may feel the attorneys are not carrying out their responsibilities correctly – you must contact the OPG or your solicitor.

Further details are available from the OPG – details on page 1.

Enduring Power of Attorney

An EPA **applies only to property and financial affairs**. A person given power under an EPA before 1 October 2007 can still use it and apply to have it registered. This person has a duty to apply to register the EPA as soon as they believe that you are becoming or have become mentally incapable of making financial decisions for yourself.

If you have an unregistered EPA and still have the capacity to make decisions for yourself, you can make a Health and Welfare LPA to run alongside it.

You can cancel an unregistered EPA if you have the capacity to do so.

To cancel a registered EPA you must show the Court of Protection:

- that you understand who the attorney is and what powers they have
- that you understand the effect of the cancellation
- that you understand why the EPA is being cancelled

An EPA is revoked if you or the appointed attorney becomes bankrupt.

You can find information on how to cancel an EPA at:

<http://www.gov.uk/use-or-cancel-an-enduring-power-of-attorney>



Court of Protection

If a person loses their ability to make their own decisions and they have not arranged a LPA or an EPA it is possible to apply to the Court of Protection for a 'deputy' to be appointed.

This is a responsible person who will make decisions on their behalf. Their role is similar to that of an attorney appointed for an LPA.

If a person has no property or savings and their only income is social security benefits such as a state pension, there will usually be no need for a deputy as these payments can be managed by an appointee agreed by the government department which pays the benefit.

Contact: Tel: 0300 456 4600.

Online: www.gov.uk/courts-tribunals/court-of-protection

Email: courtofprotectionenquiries@justice.gov.uk

Further information is available from:

- Age UK Advice Line. Tel: 0800 678 1602; online: www.ageuk.org.uk
Arranging for someone to make decisions on your behalf (FS22).
- Alzheimer's Society Tel: 0330 333 0804; online: www.alzheimers.org.uk
Lasting Power of Attorney (472).
- Carers' Resource – contact details below.
Advance planning for medical treatment and care
Helping someone to manage their financial affairs
- Government website: gov.uk
- Office of the Public Guardian – full details on page 1.
- Solicitors – Carers' Resource offices can provide details of local firms which will arrange LPAs.

See also: *Appendix – Words and phrases relating to Power of Attorney and Court of Protection* pp. 5 – 6.



If you need further information or would like to discuss any aspect of your caring role, please contact Carers' Resource:

Harrogate 01423 500555
11 North Park Road, Harrogate, HG1 5PD

Bradford 01274 449660
15 Park View Court, St Paul's Road, Shipley, BD18 3DZ

Skipton 01756 700888
Ronaldsway House, 36 Brook St, Skipton, BD23 1PP

info@carersresource.org **www.carersresource.org**

We can provide this information in another format. Please contact us to discuss your requirements.

Date of information: August 2020; revise by March 2021



APPENDIX

Words and phrases relating to Power of Attorney and Court of Protection

Attorney	Someone appointed under either a Lasting Power of Attorney or an Enduring Power of Attorney 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.
Court of Protection	The specialist Court for issues relating to people who lack capacity to make specific decisions.
Deputy	Someone appointed by the Court of Protection with ongoing legal authority as prescribed by the Court to make decisions on behalf of a person who lacks capacity to make particular decisions as set out in Section 16(2) of the Mental Capacity Act 2005.
Donor	A person who makes a Lasting Power of Attorney or Enduring Power of Attorney.
Enduring Power of Attorney	A Power of Attorney created under the Enduring Powers of Attorney Act 1985 appointing an Attorney to deal with the Donor's property and financial affairs. Existing Enduring Power of Attorneys will continue to operate under Schedule 4 of the Mental Capacity Act, which replaces the Enduring Powers of Attorney Act 1985.
Health and Welfare	Personal welfare decisions are any decisions about a person's healthcare, where they live, what clothes they wear, what they eat and anything needed for their general care and well-being. Attorneys and Deputies can be appointed to make decisions about personal welfare on behalf of a person who lacks capacity. Many acts of care are to do with personal welfare.



Jointly (or ‘together’) Attorneys appointed ‘jointly’ must always act together. They must all agree before doing anything on the Donor’s behalf. If one Attorney does not agree with a proposed action then that decision cannot be made.
If one attorney dies or can no longer act, all attorneys become unable to act. The LPA will then stop unless the Donor is able to appoint at least one replacement attorney.

Jointly and severally (or ‘together and independently’) Attorneys appointed ‘jointly and severally’ can act on their own and can act together. This means that any one Attorney can decide on a particular issue independently of the others. This can be useful if the Attorneys are not always in the same place at the same time.

Lasting Power of Attorney There are two types of Power of Attorney:

- the Donor’s Health and Welfare and/or
- the Donor’s Property and Financial Affairs

Ordinary Power of Attorney Allows decisions about financial affairs and is valid while the person has mental capacity. It is suitable if cover is needed for a temporary period – to cover a hospital stay, for example.

Property and Financial Affairs These include possessions owned by a person (such as a house or flat, jewellery or other possessions), the money they have in income, savings or investments and any expenditure. Attorneys and Deputies can be appointed to make decisions about property and affairs on behalf of a person who lacks capacity.

