



Lasting Powers of Attorney

Since 1 October 2007, it has not been possible to make an enduring power of attorney (EPA). If you want to appoint someone to make decisions on your behalf if you lose capacity, you therefore have to make a lasting power of attorney (LPA).

There are two types of LPA:

1. A property and financial affairs LPA

This type of power allows your attorney to manage your property and finances on a day-to-day basis, for example by:

- paying bills on your behalf;
- investing your funds;
- dealing with the sale of your assets.

2. A health and welfare LPA

This type of power allows your attorney to make decisions about your health and welfare such as:

- where and with whom you should live;
- decisions about medical examinations and treatment;
- decisions about community care services.

It also gives the attorney rights of access to personal information about you (such as your medical records).

You can choose whether to just make one type of LPA or both. If you decide to make both types of LPA you can have different attorneys but you will need to consider carefully how they will interact as there will be some decisions which overlap.

LPAs must be registered with the Office of the Public Guardian before they can be used regardless of whether you still have mental capacity. As part of the registration process, it is necessary to notify at least one person (who you name in the LPA) about the registration unless you choose not to notify anyone, in which case you will need to have 2 certificate providers (see below). Either you or your attorney can apply for registration.

Once registered, the attorney can act immediately under a property and financial affairs LPA if you so wish, even if you still have capacity. However, the attorney under a health and welfare LPA can only act if you have lost capacity. In either case, if the attorney believes that you do not have capacity to make a certain decision, he must have regard to the Mental Capacity Act 2005 and the Mental Capacity Act Code of Practice, which provides guidance for attorneys when making decisions under LPAs, on your behalf. He must act in your best interests.

Different types of decision require different levels of capacity. If you have declining mental capacity your attorneys should ensure that you can make those decisions which you retain the capacity to make, unless you wish for them to make those decisions, and that you are involved in any decisions made about you as much as you can be. This should ensure that you retain control for as long as you can.



When you make an LPA, you have to ask someone to act as a certificate provider. This is a person who certifies that you understand the LPA and have capacity to make the LPA. See our Frequently Asked Questions for details of who can and cannot act as a certificate provider.

Our LPA questionnaire highlights the points on which we would require your instructions, before drafting your LPA, for example:

- your choice of attorneys;
- your choice of replacement attorneys (if any);
- persons to be notified when the LPA is registered;
- who is to be appointed as the certificate provider.

It is important to consider all of these issues carefully before making your LPA, to ensure that if and when it needs to be used, decisions can be made as quickly and effectively as possible.