

Lasting Power of Attorney (LPA)

What is a Lasting Power of Attorney (LPA)?

A Lasting Power of Attorney enables you to appoint one or more people (known as 'attorneys') to make decisions on your behalf if you have lost the capacity to do so for yourself.

When should I create an LPA?

None of us knows what is round the corner, regardless of our age or state of health. However, the older or more frail you are the more important it is that you create an LPA without delay.

Is an LPA a legal document?

A Lasting Power of Attorney is a legal document and the attorneys you appoint have legal rights and responsibilities.

Why can't my next of kin take decisions on my behalf?

Next of kin has no legal meaning and cannot consent to, for example, providing or withholding care. You can appoint, with their agreement, the person you think of as your next of kin to be your attorney.

What if I have lost capacity before I make an LPA?

Attorneys must be appointed whilst you have capacity. If you have not done so, a deputy can be appointed by the Court of Protection to make decisions on your behalf. It is a slow and expensive process and a deputy's powers are restricted.

Do my attorneys have control over my affairs whilst I still have capacity?

There are two kinds of LPA and the answer to this is different for each. See below for further information.

Who can help me with this if necessary?

You can create an LPA yourself, but you may wish to take legal advice, particularly if your situation is not straightforward.

What should I do with it?

Once you have an LPA you need to register it with the Office of the Public Guardian (you can do this at the same time if using the online service) and give certified copies to your attorney(s).

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Lasting Power of Attorney *contd.*

There are two types of LPA:

A Property and Financial Affairs LPA gives your attorney authority to deal with specified property and finances. If you want to make an LPA which only deals with certain matters, you should make sure that it is drawn up in such a way as to ensure the attorney is very clear about what authority they have to deal with your affairs. The Property and Financial Affairs LPA comes into effect as soon as it is registered, unless you include instructions otherwise.

A Health and Welfare LPA allows the attorney to make health and welfare decisions on your behalf. It should be registered immediately but it only comes into effect when you lack mental capacity. This may mean it is in effect one day and not the next. Needing more time to understand or communicate does not mean you lack mental capacity. See Factsheet: Understanding mental capacity on page 56.

It is important to remember that anything done under the authority of the LPA must be in the person's best interests. The same person or person(s) can act as attorney(s) for both LPAs.

You must be 18 or over and have mental capacity (the ability to make your own decisions) when you make your LPA.



Further reading/ resources:

<https://www.gov.uk/power-of-attorney>

Solicitors for the Elderly can put you in touch with a local lawyer:
<https://sfe.legal/> or phone 0844 567 6173.



Action List

- Take legal advice if your situation is not straightforward
- Choose your attorney(s), ensuring they are appropriate and happy to take on the role, and understand their responsibilities
- Choose your certificate provider (a professional able to confirm you have mental capacity)
- Complete the form online or request a paper form by calling the Office of the Public Guardian on 0300 456 0300.
- Store the original in a safe place and give your executors copies that have been signed and certified by you as an exact copy. (A lawyer will need to do this if copies need to be made after you have lost capacity.)

Appointing a Power of Attorney is one part of your future planning. Guidance on the other decisions and actions available to you can be found in the My Future Care Handbook: www.myfuturecare.org.