

# Powers of Attorney | frequently asked questions



A power of attorney is a legal document that allows a person (the donor) to authorise someone else (the attorney) to make decisions or act on their behalf should they ever be unable to do so through loss of mental or physical capacity; it allows the donor to choose the people they want to make decisions for them, and to let the attorney know how they would like those decisions to be made.

## What is mental ‘capacity’?

Capacity is the ability to make a decision for yourself about a particular matter. To have capacity a person must be able to:

- understand the information given to them about a particular decision
- retain the information long enough to be able to make the decision
- weigh up the information available to make the decision
- communicate their decision, whether by speech, sign language, or simple movements eg. blinking

People are said to lack capacity when illness or injury prevents them from being able to make personal decisions, temporarily or permanently.

Capacity can change over time, and depending on the decision to be made. For example, a person may have capacity to make simple decisions such as what to eat, but not to deal with more complex matters such as financial affairs or health.

## What is an ordinary power of attorney?

An ordinary power of attorney gives the attorney authority to act on behalf of the donor in respect of certain assets (eg. a bank account) whilst the donor still has the mental capacity to make decisions regarding finances themselves. It can be useful for a particular period of time (eg. if a person expects to be in hospital for several weeks) or if the donor’s mobility prevents them from getting out (eg. to deal with banking). A power of attorney can also be limited to certain assets (eg. bank account), and specifically exclude others (eg. a person’s home).

## What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a more permanent way of giving someone the authority to make decisions on behalf of the donor in the future either because the donor is unable to do so because they lack capacity, or chooses not to make their own decisions.

There are two types of LPA:

- A **property and financial affairs LPA** lets someone manage financial affairs such as paying the mortgage, making investments, paying bills, selling a home.
- A **health and welfare LPA** allows someone to make decisions about health, care and welfare – for example, what medical treatment a person receives, where they should live, who they should have contact with.

## **Who should be an attorney?**

Acting as an attorney is a big responsibility and the donor should choose people they trust and who have the skills to make decisions for them. More than one attorney can be appointed, and some people include a professional such as a solicitor as well as family members or close friends – it depends on how much control the donor wants their attorneys to have.

## **When can a Lasting Power of Attorney be set up?**

An LPA can only be set up when the donor has capacity to make decisions for themselves, so it's a little like an insurance policy – it protects against problems that may arise in the future by anticipating a time when the donor may not be able to make decisions. If someone does lose capacity due to an illness or accident and an LPA already exists, it will be much easier to take over managing their affairs.

## **What happens if a person loses capacity and there is no Lasting Power of Attorney in place?**

Spouses or civil partners don't automatically have the authority to assume responsibility for managing the financial affairs of a person who loses capacity. To be able to take some control, they will have to make an application to the Court of Protection, which can be a lengthy and expensive process.

If there is no health and welfare LPA, decisions about healthcare will be made by medical professionals in consultation with the person's family. The final decision will rest on what course of action the medical staff consider to be in the individual's best interests.

## **When does a Lasting Power of Attorney become effective?**

An LPA must have been registered with the Office of the Public Guardian before it's needed; if it isn't registered, an attorney cannot assume responsibility for the donor's affairs even if it is confirmed that they no longer have capacity to manage their own affairs.

## **Is a Lasting Power of Attorney expensive to set up?**

Drawing up an LPA needn't cost anything unless you choose to use a solicitor to help you. The LPA can only be used once registered, and there is a registration fee payable to the Office of the Public Guardian (£82 in July 2017).

## **Can a Lasting Power of Attorney be cancelled?**

A donor can cancel an LPA at any time as long as they have capacity. They would need to draw up a deed of revocation and notify the Office of the Public Guardian.

## **Is an Enduring Power of Attorney (EPA) still valid?**

EPAs can no longer be set up, but existing EPAs written before October 2007 are still valid. EPAs can be used without being registered, but must be registered as soon as the donor begins to lose capacity.

This note is for information only and does not constitute legal advice.

The Brain Injury Group is a national network of legal and other professionals supporting individuals and families affected by brain injury. [www.braininjurygroup.co.uk](http://www.braininjurygroup.co.uk)