

Powers of attorney

Help with making decisions about your health, welfare or finances

Money matters



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and solutions to do more to enrich
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***The Age UK family includes Age Cymru,
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Every effort has been made to ensure that the information contained in this leaflet is correct. However, things do change, so it is always a good idea to seek expert advice on your personal situation.

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Age UK is the new force combining

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Concern

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Introduction

There are a number of reasons why you might need someone to make decisions for you, or act on your behalf. This could just be temporary, for example, if you are in hospital and need help with everyday things like making sure that bills are paid. Or you may need to make more long-term plans, for example, if you have been diagnosed with dementia. The Mental Capacity Act 2005 sets out principles to be followed when someone is acting on your behalf, and establishes new arrangements that can be made to give someone else the power to act for you. There is also a Code of Practice, which explains how the 2005 Act should be applied.

Throughout the guide you will find suggestions for organisations that can give further information and advice about your options. Their contact details can be found in the 'Useful organisations' section (see pages 24 to 26). Contact details for organisations near you can usually be found in your local phone book. If you have difficulty finding them, your local Age UK/Age Concern* should be able to help (see page 24).

This guide is applicable across England and Wales.

Key



This symbol indicates where information differs for Wales.



This symbol indicates who to contact for the next steps you need to take.

*Many of our local partners will remain Age Concern for a while yet.

Help with managing your money

Do you need help with managing your finances, but are still able to make your own decisions and supervise the actions of someone else who is helping you? There are a number of options that might help you.

- You could add the name of a carer, friend, relative or someone you trust to your bank account, so that they have easy access to your money for things such as paying bills.
- If you haven't already done so, you could set up direct debits or standing orders for the payment of regular amounts out of an account. Again, this is useful for making sure bills get paid on time and means that you do not have to leave your house (you may have a disability that makes it difficult to do so).
- If you receive benefits or a State Pension and you have trouble getting out to collect your money, you can arrange to have your benefits paid by giro cheque. If you sign the back of the cheque, you could then authorise a person you trust to cash the cheque on your behalf. The benefit of doing this, rather than asking someone to collect money from a cash machine, is that you do not have to share your PIN, and you can be sure how much money is being cashed.

what next?

It's your decision to decide what is best for you. Don't feel pressurised into doing something you do not want to do. For more information on managing your finances, see our free guide *Managing your money*.

Powers of attorney

If you want to give someone full access to make decisions and take action concerning your finances, you can set up an Ordinary Power of Attorney. This is a legal document giving someone else authority to act on your (the donor's) behalf. It is only valid while the donor still has mental capacity to make their own decisions about their finances, so that they can keep an eye on what their attorney is doing. You can limit the power you give to your attorney so that they can only deal with certain assets such as, for example, your bank account but not your home.

There is a standard form of words to use to create an Ordinary Power of Attorney. You can buy a form (CON36) from a legal stationers or you could see a solicitor or local advice agency to set one up. To find a solicitor in your area, contact the Law Society (see page 25).

An alternative is to set up a Lasting Power of Attorney (LPA), which would continue to be valid if you were no longer able to make your own decisions (see page 7 for more information on LPAs).

If you have income from state benefits only, such as State Pension and Pension Credit, someone can apply for authority to deal with your benefits by becoming an appointee. They should apply to the office that deals with your benefits, or to the council if you need to deal with Housing Benefit and Council Tax Benefit.

what next?

Discuss the options with someone you trust to see what they think and whether they are able to help. Ultimately, it's up to you how you handle your affairs. Even if someone thinks you are not doing the right thing, the final decision is yours.

What is mental capacity?

Mental capacity means being able to make decisions, including those about everyday things, such as what to wear or whether you need to go to the GP, and about legal issues, such as making a will. Some people may have capacity to make decisions on some things but not others, or their capacity to make decisions may change from day to day.

Taking time to understand or communicate may be mistaken for a lack of mental capacity, but having dementia does not necessarily mean that someone is unable to make any decisions themselves. Where someone is having difficulty in communicating a decision, an attempt should always be made to overcome those difficulties and help the person make the decision themselves. See 'Getting help to make decisions' (page 14) for more information.

If you want to give someone full access to make decisions and take action concerning your finances, you can set up an Ordinary Power of Attorney.



How does someone decide that I lack mental capacity?

If, at some point in the future, you are unable to make your own decisions, someone else will need to make decisions on your behalf. This could be decisions about your property and financial affairs, such as paying your mortgage, investing your savings or buying items that you need. Or it could be decisions about your personal welfare, such as what you should eat, or whether you should consent to medical treatment.

Before someone can make a decision on your behalf, they must have reasonable belief that you lack capacity to make a particular decision. The words ‘reasonable belief’ are important because capacity can change over time and someone may have capacity to make one decision but not another. The person making a decision on your behalf must also make sure they are acting in your best interests. More information on how someone should make a decision in your best interests is on page 15.

what next?

Contact the Office of the Public Guardian (see page 26) and ask for a copy of its publication *Making decisions about your health, welfare or finances: who decides when I can't?*

Lasting Powers of Attorney

If you lack capacity in the future and you have someone who cares for you, they will need specific authority to make some decisions on your behalf, for example, if they need access to your money. While you still have mental capacity, you can choose to create a Lasting Power of Attorney (LPA) to give the person this authority. Lasting Powers of Attorney were introduced in October 2007, replacing the old system of Enduring Powers of Attorney (EPA). An EPA created before October 2007 remains valid (see ‘What if I have already created an EPA?’ on page 16).

There are two types of LPA: one that can cover decisions about the donor’s (the person who creates the LPA) property and financial affairs, known as a Property and Financial Affairs LPA, and one that can cover decisions about their healthcare and personal welfare, known as a Personal Welfare LPA. As a donor you can restrict or specify the types of decisions that the attorney can make, or you can allow the attorney to make all decisions on your behalf. One difference between the two types of LPA is that a Property and Financial Affairs LPA can be used while someone still has capacity, whereas a Personal Welfare LPA can only be used once they have lost capacity.

‘If the time does come when I am no longer able to make decisions, I can trust my daughter to do whatever’s for the best.’

Eric is in his 80s and recently decided to set up a Property and Financial Affairs Lasting Powers of Attorney (LPA).

‘I’m in my 80s and – while I’ve still got my marbles – I’ve been unable to leave the house for a few years. My daughter supports me with managing my finances – things like paying my bills and dealing with the small investments I’ve got. She always discusses any important decisions with me.

‘However, I was getting worried about what would happen if I became unable to make decisions about my finances in the future and I discussed this with my daughter.

‘We looked into it and discovered that I could make a Property and Financial Affairs LPA and appoint my daughter as my attorney, which would allow her to make decisions about my finances and property on my behalf.

‘My daughter agreed to be my attorney and I now feel reassured because I know that if the time does come when I am no longer able to play a part in making these types of decisions, I can trust my daughter to do whatever’s for the best.’



Decisions about property and financial affairs

An attorney under a Property and Affairs LPA can generally make decisions on things such as:

- buying or selling property
- paying the mortgage
- investing money
- paying bills
- giving people access to the donor's financial information
- arranging repairs to property.

Decisions about personal welfare

An attorney under a Personal Welfare LPA can generally make decisions about things such as:

- where the donor should live
- whether the donor should consent to a certain type of medical treatment
- what they should eat
- who they should have contact with
- what kind of social activities they should take part in.

**what
next?**

Contact the Office of the Public Guardian for information on how someone can set up an LPA (see page 26). It can provide a free pack containing all the necessary forms and guidance.

When is an LPA valid?

An LPA will only be valid if the donor has mental capacity to set it up and they have not been put under any undue pressure to do so. It must always be the decision of the donor, as they are giving someone else extensive power to make decisions about their life. There must be a relationship of trust between the donor and their chosen attorney.

In order to be valid, an LPA has to be signed by a certificate provider who certifies that the donor understands the LPA and was not pressurised into signing.

An LPA cannot be used until it has been registered with the Office of the Public Guardian. There is currently a fee of £120 for each LPA, so to register both a Personal Welfare LPA and a Property and Financial Affairs LPA would cost £240. You must register the LPA while you have the mental capacity to do so. Contact the Office of the Public Guardian if you need to find out whether an LPA has been registered or not (see page 26).

If the donor has lost mental capacity, the attorney can register the LPA for them. However, during the registration process they will not have power to act on their behalf under the terms of the LPA.

You can get a copy of the LPA from the Office of the Public Guardian for £25 (or less if you're on a low income).

what next?

See our free factsheet *Arranging for someone to make decisions about your finance or welfare* for more information. Contact the Office of the Public Guardian (see page 26) and ask for a copy of its publication *Fees, exemptions and remissions*.

The role of the attorney

You should always remember that the role of attorney involves a great deal of power and responsibility.

Think carefully about whether there is someone you believe would be able to carry out the role and make decisions in your best interests. Give the person you ask time to think about the role, to make sure that they are making the right decision.

An attorney can only make decisions that you have given them authority to make. For example, if you create a Property and Financial Affairs LPA, your attorney does not have authority to make decisions about your (the donor's) healthcare, for example, unless they are also your attorney under a Personal Welfare LPA.

An attorney can claim back any expenses that they incur as a result of the role as your attorney. This could be postage, travel costs or photocopying costs, for example. They can claim these from your money, keeping an account of any expenses and relevant receipts. They can't claim for time spent carrying out their duties, however (as would be the case if you had appointed a professional attorney, such as a solicitor).

An attorney must be over 18 and shouldn't be a paid care worker, except in exceptional circumstances.

what next?

For more information about who can be an attorney and what the role involves, see our free factsheet *Arranging for someone to make decisions about your finance or welfare*.

Making decisions on your behalf

When someone is acting as your attorney under a Lasting Power of Attorney, they have to follow certain principles set out in the Mental Capacity Act. These are aimed at making sure you are able to make your own decisions as much as possible, and that if this is not possible, your attorney makes the right decisions on your behalf. The principles are:

A presumption of capacity

A person must be assumed to have capacity to make their own decisions, unless it can be established that this is not the case.

The right to be supported to make a decision

All practical steps must be taken to help a person to make their own decision before anyone concludes that they do not have the capacity to do so.

The right to make unwise decisions

A person should not be treated as unable to make a decision just because they make an unwise decision.

Best interests

Any decision made or action taken on behalf of people without capacity must be made in their best interests.

Least restrictive intervention

Anyone making a decision for or on behalf of a person without capacity should consider all effective alternatives and choose the one that is the least restrictive of the person's rights and freedoms.

Getting help to make decisions

The second of the principles listed on page 13 means that before someone can make a decision on someone else's behalf, they should make sure the person they are caring for is unable to do it themselves. This might mean that if someone is more relaxed or able to understand things at a particular time of day, they should wait until then before trying to help someone make a decision. Or the person may be better able to understand or communicate through the use of pictures or sign language.

All practical steps must be taken to help a person to make their own decision before anyone concludes that they do not have the capacity to do so.



How will someone make sure that they make a decision in my best interests?

When someone takes a decision in your best interests they must:

- do everything possible to encourage you to participate in the decision-making
- consider your past and present feelings, particularly taking into account any statement of your wishes that you made in advance
- consider those of your beliefs and values that could influence their decision
- consult other people such as family, carers or friends, who can provide information about your feelings, beliefs and values, and who can help to suggest what might be in your best interests.

what next?

Contact the Office of the Public Guardian (see page 26) and ask for a copy of its publication *Making decisions about your health, welfare or finances: who decides when you can't?*

What if I have already created an EPA?

If you set up an Enduring Power of Attorney before 1 October 2007, naming someone as your attorney, it might still be valid. You might already be using it without having registered it, so that someone can act on your behalf (unlike an LPA, which must be registered before use). This is fine, until you become unable to make your own decisions relating to financial and property matters. Once this happens, the EPA must be registered before your attorney can take any further action on your behalf. At this point it is the responsibility of your attorney to register the EPA with the Office of the Public Guardian. Remember that an EPA only covers decisions about your property and financial affairs; an attorney does not have power under an EPA to make decisions about your health and welfare. You might want to consider setting up a Personal Welfare LPA to work alongside the existing EPA.

what next?

Contact the Office of the Public Guardian for more information about an EPA (see page 26).

*It's your decision to decide
what is best for you. Don't feel
pressurised into doing something
you do not want to do.*



What happens if I no longer have capacity to make an LPA?

If there does come a time in the future when you do not have the mental capacity to make a particular decision, and you have not created a valid LPA or EPA, it may be necessary for the Court of Protection to become involved. The Court of Protection deals with cases relating to the property and welfare of people who may lack capacity. It can:

- decide whether someone has the mental capacity to make a decision
- make an order relating to the personal welfare or property and financial affairs of someone who lacks mental capacity
- appoint a deputy to make decisions on behalf of someone who lacks mental capacity.

So if someone wants to be able to make decisions on your behalf and you have not made an LPA or EPA, they could apply to the court to be appointed as deputy. This is a similar role to that of attorney. The court will consider whether it is necessary for ongoing decisions to be made on your behalf, and whether that person is suitable to be appointed to that role. The court usually does everything by post, rather than holding a hearing.

If you have an existing EPA, the attorney may apply to act as a deputy in certain circumstances.

In some cases, rather than appointing a deputy, the court will make a one-off decision; for example, if there is a dispute about where a person lacking mental capacity should live, or if action is needed such as selling the person's home if they are not going to live there any more. Appointing a deputy can be lengthy and costly, and you are not able to choose who is appointed to manage your affairs. It is much better to have an LPA in place.

what next?

Contact the Office of the Public Guardian (see page 26) and ask for a copy of its publication *Making decisions about your health, welfare or finances: who decides when you can't?*

The role of the deputy

The deputy has similar responsibilities to an attorney. They must always follow the Mental Capacity Act principles (see page 13), so they should take all steps to allow you to make your own decisions, and any decisions they do make must be in your best interests.

The order of the court will set out the extent of the deputy's authority to act, so they must always make sure that they are not exceeding their powers. A deputy also has a duty to act in good faith and not to take advantage of their position as deputy for their own benefit.

Becoming a deputy involves a lot of responsibility and so the person should think carefully about whether they want to take on the role, or whether there may be someone else who would be more appropriate.

Independent Mental Capacity Advocates (IMCAs)

If, in the future, you lack capacity to make certain important decisions and there is no one who is able to speak on your behalf, such as a family member or friend, an Independent Mental Capacity Advocate (IMCA) must be instructed to protect your rights.

Decisions about the following must involve an IMCA:

- serious medical treatment
- a change of accommodation
- a care review
- adult protection procedures.

It is the responsibility of the staff in the NHS or local authority – for example, doctors, social workers and care home staff – to instruct an IMCA.

what next?

For information about the role of an IMCA, contact the Office of the Public Guardian (see page 26) and ask for a copy of the publication *Independent Mental Capacity Advocate (IMCA) service*.

Living wills

It is possible for people to make an advance decision, indicating that they wish to refuse certain types of medical treatment in certain situations, should they lack capacity to make or communicate the decision at the time. If someone has made a valid advance decision, this must be respected by the person providing their treatment.

You may have heard this referred to as a living will. The term 'living will' doesn't have a legal meaning, but can be used to refer to either an advance decision or an advance statement. An advance statement covers decisions about how you would like to be treated, including non-medical matters such as your food preferences, religious or other beliefs, and even whether you would prefer a bath or shower. Only an advance decision is legally binding, but an advance statement should be taken into account when deciding what's best for you.

what next?

For information on how to make an advance decision, see our free factsheet *Advance decisions, advance statements and living wills*.

'I've made a written statement to be kept with my medical records, just in case the time comes when I cannot let people know myself.'

Deprivation of Liberty Safeguards

To protect people who lack capacity to make a decision in a care home or hospital, the Deprivation of Liberty Safeguards (DOLS) were introduced on 1 April 2009 as part of the Mental Capacity Act. DOLS exist to provide safeguards to protect people with mental disorders such as dementia. They aim to make sure that people are only deprived of their liberty when this is necessary for their own safety and to provide the care or treatment they need, and where a lawful procedure has taken place to authorise it.

**what
next?**

See our free factsheet *Deprivation of Liberty Safeguards* for more information.

What to do if you think that someone is not acting in your best interests

If you are worried that your attorney or deputy is not making decisions in your best interests there are a number of ways you can make a complaint. First, you could try to resolve this informally through an independent advocacy service or mediation.

If your complaint is a healthcare issue, you could contact your local Patient Advice and Liaison Service (PALS) in England, or local Community Health Council if you live in Wales.



If this does not resolve your complaint or you want to make a more formal complaint, you could contact the Independent Complaints Advocacy (ICAS).

If your complaint is about social care, you could contact the local social services adult protection team to discuss your concerns. If you think that you are in immediate danger, contact your local police force.

You can also raise your concerns with the Office of the Public Guardian (see page 26). The OPG has responsibility for monitoring attorneys and deputies, and can investigate allegations of mistreatment or fraud. The OPG can report concerns to another agency, such as the police or social services, if appropriate.

The Mental Capacity Act 2005 created a new criminal offence of ill treatment or wilful neglect of a person who lacks capacity.

**what
next?**

You can talk to someone confidentially if you are at risk of abuse. Call the Action on Elder Abuse helpline on 0808 808 8141.

Useful organisations

Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our Age UK Advice line, publications and online.

Age UK Advice: 0800 169 65 65

www.ageuk.org.uk

In Wales, contact

Age Cymru: 0800 169 65 65

www.agecymru.org.uk

In Northern Ireland, contact

Age NI: 0808 808 7575

www.ageni.org

In Scotland, contact

Age Scotland: 0845 125 9732

www.agescotland.org.uk

The Age UK Executorship Service*

In certain circumstances, Age UK is able to act as your executor. As part of our service, our Regional Legacy Officers can make sure that your home and valuables are safe, make funeral arrangements and provide practical and sympathetic support to those left behind. Our experienced in-house legal team will then deal with the administration of your estate and deal with the distribution of your assets in accordance with your wishes.

To find out more, contact the Regional Legacy Officer team on 020 3033 1421 or email legacies@ageuk.org.uk

*Please note that the Regional Legacy Officer team and Executorship Service operate in England only.

Action on Elder Abuse

A national organisation providing a free helpline for anyone concerned about the abuse of older people.

Tel: 0808 808 8141

www.elderabuse.org.uk

Alzheimer's Society

National organisation offering information and support for families and carers of those affected by dementia.

Devon House
58 St Katharine's Way
London E1W 1LB

Tel: 0845 300 0336

Email: enquiries@alzheimers.org.uk

www.alzheimers.org.uk

Directgov

Directgov is the official Government website that provides information on public services such as benefits, jobs, the environment, pensions and health services.

www.directgov.uk

Law Society

Representative body for solicitors in England and Wales. Contact them to find a local solicitor.

Tel: 020 7242 1222

www.lawsociety.org.uk

Mental Health Foundation

Provides information and guidance on mental capacity issues.

9th Floor, Sea Containers House
20 Upper Ground
London SE1 9QB

Tel: 020 7803 1100
Email: mhf@mhf.org.uk
www.mentalhealth.org.uk

Mind

The mental health charity can provide information on mental capacity issues.

15–19 Broadway
Stratford
London E15 4BQ

Infoline: 0300 123 3393
Email: contact@mind.org.uk
www.mind.org.uk

Office of the Public Guardian

For information about making a lasting power of attorney or applying to the Court of Protection.

Office of the Public Guardian
PO Box 15118
Birmingham B16 6GX

Tel: 0300 456 0300
Email: customerservices@publicguardian.gsi.gov.uk
www.publicguardian.gov.uk

Can you help Age UK?

Please complete the donation form below with a gift of whatever you can afford and return to: Age UK, FREEPOST LON13041, PO Box 203, London N1 9BR. Alternatively, you can phone 0800 169 87 87 or visit www.ageuk.org.uk/donate. If you prefer, you can donate directly to one of our national or local partners. Thank you.

Personal details

Title:	Initials:	Surname:
Address:		
Postcode:		
Tel:	Email:	

By providing your email address and/or mobile number you are agreeing to us contacting you in these ways. You may contact us at any time to unsubscribe from our communications.

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I would like to make a gift of: £

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 Maestro American Express

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Expiry date	<input type="text"/>	/	<input type="text"/>	Issue no. (Maestro only)	<input type="text"/>	

Gift Aid declaration

(please tick) Yes, I want Age UK and its partner organisations* to treat all donations I have made for the four years prior to this year, and all donations I make from the date of this declaration until I notify you otherwise, as gift aid donations. I confirm I pay an amount of income tax and/or capital gains tax at least equal to the tax that the charity will reclaim on my donations in the tax year. Date: ___/___/___ (please complete). *Age Cymru, Age Scotland and Age NI



We will use the information you have supplied to communicate with you in line with Data Protection guidelines. Age UK (registered charity no 1128267) comprises the Charity, its group of companies and national partners (Age Cymru, Age Scotland and Age NI). If you would prefer not to hear from them or carefully selected third parties, let us know by phoning 0800 107 8977.

You may be interested in other guides in this range

- *Avoiding scams*
- *Can I afford to retire?*
- *Claiming benefits: a guide for people of working age*
- *Equity release*
- *Help with legal advice*
- *How to be an executor*
- *Lesbian, gay or bisexual*
- *Looking after someone else's affairs*
- *Managing your money*
- *Money matters*
- *More money in your pocket: a guide to claiming benefits for people over pension age*
- *Save energy, pay less*
- *Tax guide*
- *When someone dies*
- *Wills and estate planning*
- *Your consumer rights*



To order any of our **free** publications please call Age UK Advice, free on:

0800 169 65 65

www.ageuk.org.uk/moneymatters

What should I do now?

For more information on the issues covered in this guide, or to order any of our publications, please call Age UK Advice free on **0800 169 65 65** or visit **www.ageuk.org.uk/moneymatters**

Our publications are also available in large print and audio formats.

The following Age UK information guides may be useful:

- *Looking after someone else's affairs*
- *Wills and estate planning*
- *Advice for carers*

The Age UK Group offers a wide range of products and services specially designed for people in later life. For more information, please call **0800 169 18 19**.

If contact details for your local Age UK/Age Concern* are not in the box below, call Age UK Advice free on **0800 169 65 65**.



*Many of our local partners will remain Age Concern for a while yet.

Age UK is a charitable company limited by guarantee and registered in England (registered charity number 1128267 and registered company number 6825798). The registered address is 207-221 Pentonville Road, London N1 9UZ. Age Concern England (registered charity number 261794) and Help the Aged (registered charity number 272786), and their trading and other associated companies merged on 1 April 2009. Together they have formed the Age UK Group, dedicated to improving the lives of people in later life. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age NI and Age Cymru. ID8821 07/11