

Legal advice and power of attorney in Sevenoaks District

Amended April 2022

This local information pack covers:

- information and advice about legal issues
- complaints
- advocacy
- **a list of local solicitors**
- representing yourself in court
- victim support
- wills
- cohabitation rights
- family and neighbour disputes
- housing advice
- immigration
- Powers of Attorney and living wills

Details are subject to change; please check with the organisation concerned.

If you cannot find what you are looking for please contact us as we may be able to help further. Amendments and additions are also welcome.

We publish other local information packs covering:

- Care agencies
- Care homes
- Health and wellbeing
- Help at home
- Housing
- Memory loss and dementia
- Money matters
- Social activities
- Transport, travel and leisure

Age UK Sevenoaks & Tonbridge is a registered charity no. 1088213

Tel: 01732 454108. Web: www.ageuksevenoaksandtonbridge.org.uk

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Information and advice

Age UK

Tel: 0800 169 6565. We produce publications on

- getting legal advice
- resolving problems
- the law on age discrimination and the Equality Act
- challenging welfare benefit decisions
- making complaints about NHS care
- safeguarding older people from abuse
- estate planning
- Power of Attorney (arranging for someone to make decisions about your finance or welfare)
- advance decisions, advance statements and living wills
- making a will
- what to do when someone dies
- how to be an executor

Citizens' Advice

Citizens' Advice provide free, impartial and confidential advice on many consumer issues. They also provide advice on other issues such as debt management, making a will, claiming benefits, grants and help with heating costs. Free phone advice Monday-Friday 9am-5pm. Some office appointments may be possible.

- Sevenoaks, Swanley, New Ash Green and Otford Tel: 0808 278 7810
- Edenbridge and Westerham Tel: 0808 278 7962

Complaints

Complaints procedures

If you are not happy with the service you have received, speak to the organisation first. It is always best to try and resolve things at an early stage. You can complain formally to them if raising concerns doesn't work. Many organisations have a complaints procedure or even a complaints officer or department which can help you make a formal complaint. Online help making a complaint is also available from Age UK Web: www.ageuk.org.uk/money-matters/consumer-advice/resolver/

How to make complaints about tradespeople

Citizens' Advice Consumer Service (formerly Consumer Direct) is a service run by Citizens' Advice on behalf of the Government to provide advice on civil matters to anyone experiencing problems with tradespeople. For example, they may be able to advise you if you have agreed with a tradesperson that they will do some work with you but then you are not happy with the quality of their work or the price they are charging. Tel: 0808 223 1133.

How to make complaints about health and social care services

- Ambulances, hospital outpatients, mental health and out-of-hours doctors. If making a formal complaint doesn't work contact the West Kent Clinical Commissioning Group Tel: 03000 424244 Email: kmcs.complaints@nhs.net

- Chemists, dentists, GPs and opticians. If making a formal complaint doesn't work contact the NHS Tel: 0300 311 2233 Email: england.contactus@nhs.net
- Hospital inpatients. If you are in hospital, ask at Reception for the PALS office (Patient Advice & Liaison Service); they can help sort out problems and cut through red tape
- Social services. Contact Kent County Council Tel: 03000 414141 Email: county.hall@kent.gov.uk

If you are still unsure where to complain then call Healthwatch Kent on Tel: 0808 801 0102 and they can make sure your complaint is directed to the right place. If you are still unhappy with the treatment you have received, you can contact the Ombudsman Tel: 03000 610614.

How to make complaints about tax

Tax Help for Older People, Unit 10, Pineapple Business Park, Salway Ash, Bridport DT6 5DB Tel: 0845 601 3321, 01308 488066 Email: taxvol@taxvol.org.uk Web: www.taxvol.org.uk

Tax volunteers undertake appeals and complaints for older people **on lower incomes** who cannot afford to pay for professional tax advice. Face-to-face appointments can be held at Age UK or Citizens' Advice (some home visits)

How to make complaints about pensions

The Money Helper website can offer guidance for people with complaints about their private pension scheme. Web: www.moneyhelper.org.uk

Advocacy

Citizens' Advice

Help filling in forms and representing your views. Free phone advice Monday-Friday 9am-5pm. Some office appointments may be possible.

- Sevenoaks, Swanley, New Ash Green and Otford Tel: 0808 278 7810
- Edenbridge and Westerham Tel: 0808 278 7962

INVOLVE

Advocacy and help representing your views. Tel: 03000 810005

The Advocacy People (formerly SEAP)

Advocacy and help representing your views. PO Box 375, Hastings TN34 9HU Tel: 0330 440 9000 Email: info@theadvocacypeople.co.uk Web: www.theadvocacypeople.co.uk
May be able to do home visits.

Legal advice

Age UK cannot make recommendations for legal advice. However here are some options for solicitors who specialise in helping older people:

Free legal advice

- Age UK may be able to help people over 50 and their families get some free legal advice from Warners Solicitors. We host a law clinic at our offices on the 1st Wednesday of the month. They will deal with Power of Attorney, wills, probate, Court of Protection and estate planning only. It is quite short so the solicitors can only answer one legal question free of charge; they cannot "take on" cases or give

ongoing support. If you need that or want them to fill in forms then you can either arrange to pay them for further advice or go to another solicitor. You have to make an appointment through Age UK Tel: 01732 454108.

- Other solicitors may also be able to give you some free basic advice over the phone.
- You may also be able to get some help from Citizens' Advice. Free phone advice Monday-Friday 9am-5pm. Some office appointments may be possible.
 - Sevenoaks, Swanley, New Ash Green and Otford Tel: 0808 278 7810
 - Edenbridge and Westerham Tel: 0808 278 7962

LawWorks

They may be able to put you in touch with volunteer solicitors if you are not eligible for legal aid and cannot afford to pay for legal advice. Web: www.lawworks.org.uk

Age UK Legal Services (advice by phone or in writing)

Irwin Mitchell Solicitors provide a legal service on behalf of Age UK. This is a telephone advice and correspondence service so charges may be a bit lower than a face-to-face service. They cover most things: will writing, Power of Attorney, probate, buying and selling a home, personal injury, family and relationships, rights at work. To find out more:

- Ring our Chatham callcentre on 01634 578085
- If they are not available ring 0345 685 1078

A range of other solicitors are available (see below).

Local solicitors

If you prefer to see a solicitor face-to-face (or have difficulties hearing) then you could approach a solicitor who specialises in helping older people.

Solicitors for the Elderly (SFE) is an independent, national organisation of lawyers, such as solicitors, barristers, and legal executives who provide specialist legal advice for older and vulnerable people, their families and carers. They specialise in such things as wills, Power of Attorney, living wills, tax planning, asset preservation, trusts, probate, paying for care, NHS continuing healthcare, Court of Protection and elder abuse. They are trained to be sensitive to issues such as explaining things clearly to people who are hard of hearing. You can find out more about them by phoning Solicitors for the Elderly on 0844 567 6173 or looking on their website at: www.solicitorsfortheelderly.com

Here are some examples of local solicitors you could approach:

Sevenoaks

- JE Bennett Law, 5 Victoria Rd, Sevenoaks TN13 1YD. Amy Paxton is an accredited Solicitor for the Elderly. Tel: 01732 454983. Web: www.jebennettlaw.co.uk
- Knocker & Foskett, Red House, 50 High St, Sevenoaks TN13 1JL. Julie Miller and Damien Jones are accredited Solicitors for the Elderly. Tel: 01732 748836, 748807. Web: www.knocker-foskett.co.uk
- Thackray Williams, 15 Pembroke Rd, Sevenoaks TN13 1XR. Andrea Kershaw is an accredited Solicitor for the Elderly. Tel: 01732 496496. Web: www.thackraywilliams.com
- Warners Law LLP, 16 South Park, Sevenoaks TN13 1AN. Ask for Simon Garner. Tel: 01732 747900. Web: www.warners-solicitors.co.uk

Bexleyheath

- T G Baynes, 208 Broadway, Bexleyheath DA6 7BG. Andrew Robertson is an accredited Solicitor for the Elderly. Tel: 020 8301 7612. Web: www.tgbaynes.com
- Chancellors Lea Brewer LLP, 246 Broadway, Bexleyheath DA6 8BB. Alison Kemsley and Tara Pitts are accredited Solicitors for the Elderly. Tel: 020 8303 0077. Web: www.chancellors.com

Orpington

- Clarkson, Wright & Jakes Ltd, 12 Knoll Rise, Orpington BR6 0PG. Jeremy Wilson and Scott Walker are accredited Solicitors for the Elderly. Tel: 01689 887847, 887858. Web: www.cwj.co.uk

Sidcup

- Woolsey Morris & Kennedy, 100 Station Rd, Sidcup DA15 7DT. Emma Bland is an accredited Solicitor for the Elderly. Tel: 020 8300 9321. Web: www.wmk-law.com

Of course there are many other local solicitors who are not members of Solicitors for the Elderly but who may still be able to help. You can find other solicitors by contacting Civil Legal Advice (Tel: 0345 345 4345) or the Law Society's Find a Solicitor service (Tel: 020 7320 5650).

Lifebook

This enables you to record all sorts of useful details which will not only help you to be more organised but could also be invaluable to a family member or a friend if they need to locate important information about you in an emergency. You simply follow the step-by-step instructions to fill in the various sections with your details, contacts and locations of important documents. The financial section deals with recording details of your solicitor. The LifeBook is available in both a booklet and computer versions. More information from Age UK Tel: 0345 685 1061 Web: www.ageuk.org.uk/lifebook

Representing yourself in court

If you can't afford a solicitor you may be able to get free help to represent yourself in court from Advice Now. You can get free step-by-step guides to going to court without the help of a solicitor to, for example:

- Get a financial order
- Deal with a consumer dispute
- Claim compensation
- Get a divorce

You may be able to get free legal advice, representation, practical and emotional support to help you to manage your case. You can find out more by visiting Advice Now's website at:

www.advicenow.org.uk/going-to-court

Victim support

Domestic Abuse Support Services in Kent & Medway

Support with court proceedings. Tel: 0808 168 9276 Web:

www.domesticabuseservices.org.uk

Domestic Abuse Volunteer Support Services (DAVSS).

PO Box 530, Tunbridge Wells TN2 9TB Tel: 01892 570538 (Helpline open Monday to Friday 10am to 1pm; can leave a message at other times) Email: office@davss.org.uk
Web: www.davss.org.uk

This is the local helpline for men and women who are experiencing physical, sexual, emotional or financial abuse from current or former partners or other family members.

Family Matters

Advice on accessing criminal justice system for victims of sexual violence. Tel: 01474 537392, 536661 Email: admin@familymattersuk.org Web: www.familymattersuk.org

Victim Support

Free and confidential help for victims of crime, witnesses, their family, friends and anyone else affected. May accompany you to court. Tel: 0808 168 9111, 0808 168 9276. Web: www.victimsupport.org.uk

Wills

Will writing

- All the solicitors listed above including Age UK Legal Services will help you write or amend a will. Prices vary enormously so you should shop around.
- You can also do it yourself or get help from a will writing firm.
- You can also get help from Citizens' Advice. They have an easy-to-follow guide which includes how to make, store and update your will as well as how to change your will when your circumstances change. Free phone advice Monday-Friday 9am-5pm. Some office appointments may be possible.
 - Sevenoaks, Swanley, New Ash Green and Otford Tel: 0808 278 7810
 - Edenbridge and Westerham Tel: 0808 278 7962

Will Aid

Every year (in November) some solicitors take part in Will Aid. A local solicitor writes your will without charging their normal fee. Instead you are invited to make a voluntary donation to Will Aid which goes to a number of charities (including Age UK). The suggested donation is £100 for a basic single will (for an individual) or £180 for a pair of basic mirror wills (for a couple) which is probably cheaper than they will charge at other times.

The nearest solicitors to Sevenoaks are:

- Roger Dean & Co, 134 Main Rd, Biggin Hill TN16 3BA Tel: 01959 542872.
Contact Brian Sarney

There are various similar schemes at other times of year but they do not normally run in our area

Lifebook

This enables you to record all sorts of useful details which will not only help you to be more organised but could also be invaluable to a family member or a friend if they need to locate important information about you in an emergency. You simply follow the step-by-step instructions to fill in the various sections with your details, contacts and locations of important documents. The documents section deals with recording details of your will,

birth, marriage or civil partnership certificates. The LifeBook is available in both a booklet and computer versions. More information from Age UK Tel: 0345 685 1061 Web:

www.ageuk.org.uk/lifebook

Cohabitation rights

- If one cohabiting partner dies without leaving a will, the surviving partner will not automatically inherit anything - unless the couple jointly own property. A married partner would inherit all or some of the estate
- An unmarried partner who stays at home to care for children cannot make any claims in their own right for property, maintenance or pension-sharing
- Cohabiting partners cannot access their partner's bank account if they die - whereas married couples may be allowed to withdraw the balance providing the amount is small
- An unmarried couple can separate without going to court, but married couples need to go to a court and get divorced to end the marriage formally
- Cohabiting couples are not legally obliged to support each other financially, but married partners have a legal duty to support each other
- If you are the unmarried partner of a tenant, you have no rights to stay in the accommodation if you are asked to leave - but each married partner has the right to live in the "matrimonial home"

Family disputes

Kent Family Mediation Service

Mediation for families and individuals. Offer Legal Aid. Tel: 01795 410457 Email:

contact@kentfms.co.uk Web: www.kentfms.org.uk

Neighbour disputes

West Kent Mediation

Help resolve conflict and breakdown of relations between individuals, organisations and groups. Especially good for neighbour disputes such as noise, harassment, anti-social behaviour, verbal abuse, parking, children's behaviour, pets, gardens, fences & hedges. Free, confidential and impartial

Tel: 01732 469696 Email: theoffice@wkm.org.uk Web: www.wkm.org.uk

Housing advice

Shelter

Legal advice on housing and debt, court representation and payment plan negotiations. Can help if you are struggling to pay your mortgage or rent, if you are in bad housing or facing homelessness

Tel: 0808 800 4444 Web: www.shelter.org.uk

Immigration

Citizens' Advice can provide specialist advice on:

- visa eligibility rules
- chasing up Home Office delays
- getting replacement immigration documents
- problems with coming to the UK or staying in the UK eg applications for entry clearance, leave to enter, leave to remain or residence permits
- naturalisation (becoming a British citizen)

Free phone advice Monday-Friday 9am-5pm. Some office appointments may be possible.

- Sevenoaks, Swanley, New Ash Green and Otford Tel: 0808 278 7810
- Edenbridge and Westerham Tel: 0808 278 7962

Lasting Powers of Attorney

Why you should consider it

There are a number of reasons why you might need someone to make decisions for you or act on your behalf.

- A lasting power of attorney gives someone you trust the legal authority to make decisions on your behalf, if either you're unable to in the future or you no longer wish to make decisions for yourself.
- You may wish to make long-term plans in case you are ever diagnosed with dementia or another long-term health condition.

A power of attorney gives the attorney (the person you choose to act for you) a legal document that proves their powers.

It is very important to try to set up Lasting Powers of Attorney while you still have mental capacity (in other words while you can recognise and understand what you will be signing). These will enable your family or friends (or a solicitor) to manage your finances, property and affairs as well as your health and welfare if you can no longer make decisions.

Applying for a Lasting Power of Attorney

To apply for a Lasting Power of Attorney, first get the forms and an information pack from the Office of the Public Guardian (OPG), PO Box 16185, Birmingham B2 2WH Tel: 0300 456 0300 Email: customerservices@publicguardian.gov.uk Web: www.gov.uk/power-of-attorney

Filling in the forms for Power of Attorney

Option 1. Doing it yourself

The cheapest option is to fill in the forms yourself but they are quite long and complicated. The Office of the Public Guardian will post them to you or you can download them from their website or fill them in online. You will need to pay to register it.

If there is a particular complication or if you prefer you can ask a solicitor to do it for you but they will charge a lot more.

Option 2. Getting help from a solicitor

You can get free legal advice from a solicitor. They will answer questions but you will need to pay if you want them to fill in the forms. You can find more information about how to get free legal advice and finding solicitors earlier in this document.

What is mental capacity?

Having mental capacity means a person is able to make their own decisions. If you're unable to make your own decisions at some point in the future – such as if you have advanced dementia or are unconscious – someone else will need to do so for you. These could be decisions about your:

- finances - paying your mortgage, investing your savings or buying items you need
- health and care - what you should eat, or what type of medical treatment you should have.

Some people may have capacity to make decisions about some things but not others, or their capacity to make decisions may change from day to day.

Attempts should always be made to first overcome difficulties

Taking time to understand or communicate may be mistaken for a lack of mental capacity, but having dementia for example, does not necessarily mean that someone is unable to make any decisions themselves.

Where someone is having difficulty communicating a decision, an attempt should always be made to overcome those difficulties and help the person decide for themselves.

There must be 'reasonable belief'

Before someone can make a decision on your behalf, they must have reasonable belief that you cannot make that particular decision yourself. The words 'reasonable belief' are important because capacity can change over time. The person making a decision for you must make sure they are acting in your best interests.

There may be times when someone needs to seek legal or medical advice on whether you have mental capacity to make a decision, or whether to act under a lasting power of attorney permanently.

Types of Lasting Power of Attorney

There are two types of LPA:

- for property and financial affairs
- for health and welfare

You can restrict or specify the types of decisions your attorney can make or you can allow them to make all decisions on your behalf.

1. LPA for property and financial affairs

This can be used while someone still has mental capacity. An attorney (the person who makes decisions for you) can generally make decisions on things such as:

- buying and selling property
- paying the mortgage
- investing money
- paying bills
- arranging repairs to property.

If you're setting up an LPA for financial decisions, your attorney must keep accounts and make sure their money is kept separate from your money.

You can request regular details of how much is spent and how much income you have. This offers you an extra layer of protection. If you lose mental capacity, these details can be sent to your solicitor or a family member.

2. LPA for health and welfare

This covers decisions about healthcare as well as personal welfare and can only be used once a person has lost mental capacity. An attorney can generally make decisions about things such as:

- where you should live
- your medical care
- what you should eat
- who you should have contact with
- what kind of social activities you should take part in.

When is a Lasting Power of Attorney valid?

An LPA will only be valid if you have:

- the mental capacity to set it up
- you have not been put under any pressure to create it.

It must be your decision and you must be able to trust your attorney, as you're giving them extensive power to make decisions about your life.

The LPA must be signed by a certificate provider who confirms that you understand it and haven't been put under any pressure to sign it. They must be someone you know well or a professional person, such as a doctor, social worker or solicitor.

The certificate provider must not be:

- an attorney or replacement attorney for the LPA
- an attorney or replacement attorney in any other LPA or enduring power of attorney that you've already made
- a member of your or your attorneys' families – including wives, husbands, civil partners, in-laws and step-relatives
- an unmarried partner, boyfriend or girlfriend of yours or of any of your attorneys – whether or not they live at the same address
- your business partner or one of your attorneys' business partners
- your employee or one of your attorneys' employees
- an owner, manager, director or employee of a care home where you live, or a member of their family
- anyone running or working for a trust corporation appointed as an attorney in a financial decisions LPA

Your witness can't be:

- under 18
- one of your attorneys
- one of your replacement attorneys
- an employee of a trust corporation that is your attorney or replacement attorney

The same person can be a witness and certificate provider as long as the above conditions are met.

Registering a Lasting Power of Attorney

The LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. It costs about £82 for each one.

- Contact the OPG for information about LPA registration fees. If you have a low income, you may be eligible for a 50% discount, and if you're receiving certain benefits you won't have to pay anything at all.

- You must register the LPA while you have the mental capacity to do so. The LPA can't be used during the registration process which can take up to 15 weeks. You can contact the OPG if you need to find out if your LPA has been registered.

If you lose mental capacity but signed the LPA while you still had mental capacity, the attorney can register it for you. You can get a certified copy from the OPG for a fee. If you do not register it immediately, there is a risk that it will become invalid as any errors cannot be corrected if you have lost mental capacity

Lifebook

This enables you to record all sorts of useful details which will not only help you to be more organised but could also be invaluable to a family member or a friend if they need to locate important information about you in an emergency. You simply follow the step-by-step instructions to fill in the various sections with your details, contacts and locations of important documents. The documents section deals with recording details of your Powers of Attorney. The LifeBook is available in both a booklet and computer versions. More information from Age UK Tel: 0345 685 1061 Web: www.ageuk.org.uk/lifebook

Choosing an attorney

The role of an attorney involves a great deal of power and responsibility so it's important that you trust the person you choose.

- Think carefully about whether there's 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.
- Your attorney could be a family member, a friend, your spouse, partner or civil partner. Alternatively, they could be a professional, such as a solicitor.
- You may also choose to appoint a successor to your attorneys, in case they die or otherwise cannot act for you.

Your attorney can claim back any expenses they incur as a result of their role as your attorney – postage, travel costs or photocopying costs, for example. They can claim these from your money, keeping an account of any expenses and relevant receipts.

What is a joint attorney?

You can appoint any number of attorneys in the same lasting power of attorney. You need to decide whether the attorneys should act:

- jointly - meaning they work together on all matters. If one of the attorneys dies the LPA is no longer valid for the remaining attorney(s)
- jointly and severally - where they may act together or separately, as they choose.

You can specify in the lasting power of attorney that the attorneys must act jointly for specific decisions, such as selling a house, and jointly and severally for all other decisions.

What an attorney does

When someone is acting as your attorney, they have to follow certain principles to ensure you still make your own decisions as much as possible, and that they make the right decisions on your behalf if you can't. The principles are as follows:

- A presumption that you have mental capacity
- It must be assumed you're able to make your own decisions, unless it can be established that you can't.
- The right to be supported to make a decision
- You must be given as much practical help as possible to make your own decision before anyone decides you're unable to. For example, if you're more relaxed or able

to understand things at a particular time of day, you should be helped to make a decision then. Or you may be better able to understand or communicate through the use of pictures or sign language.

- The right to make what appears to be unwise decisions

You shouldn't be treated as unable to make a decision just because you make an unwise decision.

Making decisions in your best interests

Any decision made or action taken on your behalf must be made in your best interests. Anyone making a decision for you should consider all the alternatives and choose the one that is the least restrictive of your rights and freedoms. When someone makes a decision in your best interests, they must:

- do everything possible to encourage you to participate
- consider your past and present feelings, especially any expression of your wishes you made, such as an advance statement
- consider any of your beliefs and values that could influence the decision
- talk to other people, such as your family, carers or friends, who know about your feelings, beliefs and values and can suggest what might be in your best interests
- always remember your right to privacy and that it might not be appropriate to share information about you with everyone
- know about any exceptions, such as if you have made an advance decision to refuse medical treatment.

Other Powers of Attorney

Enduring Power of Attorney

Lasting powers of attorney were introduced in October 2007, replacing the old system of Enduring Power of Attorney (EPA).

Is it still valid?

If you made and signed an EPA before 1 October 2007, it's still valid. However you should check if it was ever registered with the Office of the Public Guardian. 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, your attorney is responsible for registering it with the Office of the Public Guardian before they can take any further action on your behalf.

Is it sufficient?

Remember that an EPA only covers decisions about your property and financial affairs; an attorney doesn't have power under an EPA to make decisions about your health and welfare. You should consider setting up an LPA for health and welfare decisions to work alongside the existing EPA especially if you have been diagnosed with dementia or another long-term health condition.

Ordinary Power of Attorney

What is it?

If you want to give someone full access to make decisions and take action concerning your finances while you still have mental capacity, you can set up an Ordinary Power of

Attorney. This is a legal document giving one or more people authority to handle your financial affairs. You may want to set one up if, for example:

- you need someone to act for you for a temporary period, such as while you're on holiday
- you are in hospital and need help with everyday things such as making sure that bills are paid

What does it cover?

It's up to you to decide what the Ordinary Power of Attorney covers. It can be a general power, without restrictions, or give limited powers only to do a specific task, for example to sell a house or manage your bank account. In either case, you can still also act for yourself.

What is the difference between an Ordinary Power of Attorney and a Lasting Power of Attorney?

It is only valid while you still have mental capacity to make your own decisions, so that you can keep an eye on what the person making decisions for you (your attorney) is doing. If you want someone to be able to act for you when you lose capacity to make your own decisions, you should consider a Lasting Power of Attorney rather than an Ordinary Power of Attorney.

How long does an Ordinary Power of Attorney last?

An Ordinary Power of Attorney is only valid while you are capable of giving instructions. It will end if:

- you lose mental capacity to make your own decisions about your finances and are no longer able personally to supervise or direct the attorney
- you revoke the power
- the power is limited to a specific task which has been completed
- the attorney dies or loses mental capacity.

How to get an Ordinary Power of Attorney

You can buy an ordinary power of attorney document from a law stationer (some high street stationers also stock them) or arrange for a solicitor to prepare one.

What happens if I don't have a valid LPA or EPA?

The Court of Protection

If you have not set up a valid Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA) and no longer have mental capacity your family will need to go through the Court of Protection. This is longer (2-6 months) and a lot more expensive (about £2000) so it is a good idea to set Powers of Attorney up in advance. Tel: 0300 456 4600. Web: www.gov.uk/courts-tribunals/court-of-protection

The Court of Protection 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.

You can get help applying to the Court from a solicitor

Applying to be a deputy

Someone who wants to make decisions on your behalf can 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. You can't choose your deputy and the process of appointing one can be lengthy and costly. It's much better to have an LPA in place

What does a deputy do?

The deputy has similar responsibilities to an attorney. They must always follow certain principles taking all steps possible to allow you to make your own decisions and ensuring any decisions they do make are in your best interests.

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

Problems with a power of attorney

There are a number of ways you can make a complaint, if you think your attorney or deputy is not making decisions in your best interests.

- If your complaint is a healthcare issue, your local NHS Complaints Advocacy service can support you when making a formal complaint. Find out more from your local Healthwatch
- If your complaint is about social care, you could contact the local social services adult protection team to discuss your concerns.
- If you think you're in immediate danger, contact your local police force.

You can also raise your concerns with the Office of the Public Guardian, which has responsibility for monitoring attorneys and deputies and can investigate allegations of mistreatment or fraud. The Office of the Public Guardian can report concerns to another agency, such as the police or social services, if it think it's appropriate.

Living wills

What is a living will?

A living will is where you express your wishes about how you want to be treated and cared for in certain situations, in case you lack capacity to make or communicate your decisions at the time.

The term 'living will' doesn't have a legal meaning but usually refers to either an advance decision or an advance statement. The difference between an advance decision and advance statement is explained in this guide.

Age UK publishes an information guide "Thinking about end of life" and a detailed factsheet on "Advance decisions, advance statements and living wills". These are

available from 01732 454108 or can be downloaded at <https://www.ageuk.org.uk/services/information-advice/guides-and-factsheets/>

Lifebook

This enables you to record all sorts of useful details which will not only help you to be more organised but could also be invaluable to a family member or a friend if they need to locate important information about you in an emergency. You simply follow the step-by-step instructions to fill in the various sections with your details, contacts and locations of important documents. The documents section deals with recording details of your living wills including advance decisions, advance statements or advance directives. The LifeBook is available in both a booklet and computer versions. More information from Age UK Tel: 0345 685 1061 Web: www.ageuk.org.uk/lifebook

Advance statement

What is it?

An advance statement can explain your likes and dislikes and include anything that is important for you to be comfortable. It allows you to say how you would like to be looked after and cared for and will be used if you ever lose the ability to make or communicate your own decisions.

What does it cover?

For example, you might include information on:

- where ideally you would like to be cared for, e.g. your home, a care home or a hospice
- your dietary requirements
- foods you do and don't like
- whether you prefer baths or showers
- what kind of clothes you prefer to wear
- the type of music you like and what you like to watch on TV
- whether you like to sleep with a light on
- how you like your day to be planned, such as your bed time and whether you're an early riser or prefer a lie in
- your religious or other beliefs and values
- who you want to be consulted about your care
- who you would like to visit you.

Letting people know

It's a good idea to give a copy of your advance statement to all those involved in your care, especially your care staff, GP and medical team, so that they know your wishes and preferences.

Do they have to take notice?

Advance statements must be considered by the people providing your treatment when they determine what is in your best interests, but they are not legally bound to follow your wishes.

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Advance decision (to refuse treatment)

What is it?

If you feel strongly that there are some medical treatments you would not want to receive in certain circumstances, you can formalise your wishes in an advance decision.

It will only be used if you lose the capacity to make or communicate decisions about your treatment, for example if you have advanced dementia or are unconscious.

What does it cover?

An advance decision:

- is legally binding - meaning that those caring for you must follow your instructions
- allows you to refuse treatment, even if this might lead to your death
- must be clear about the circumstances under which you do not want to receive specified treatment
- doesn't have to be in writing unless you want to refuse life sustaining treatment
- can't be used to request certain treatment
- can't be used to ask for your life to be ended.

Who you should speak to

It's advisable to discuss your advance decision with a health care professional who knows your medical history. The benefits of discussing this with them are:

- if you have an illness they can advise you on how your it may affect you and what may happen as your condition progresses
- they can help you to understand the risks and benefits of refusing certain treatments that you may wish to include in your advance decision
- they can help you make sure your advance decision is clear about what you want and advise you on what could happen if it isn't clear
- they will be able to confirm that you had mental capacity at the time of writing your advance decision.

You may also want to discuss this with your friends and family so that they understand your wishes.

You don't need to consult a solicitor but you may wish to do so if you are uncertain of how to make sure your views are clearly expressed. They will charge.

How to make an advance decision

To ensure your advance decision is followed, you must tell people that you have made one. It's a good idea to write it down and give a copy to your loved ones and all those involved in your care. Your GP and medical team must know about your advance decision so that they can include it in your medical notes. You can change it at any time, but make sure that you clearly communicate, record and date these changes.

There are no official forms for writing an advance decision, although some organisations have produced various templates. For example www.mydecision.org.uk The following guidelines could be helpful:

- Put the decision in writing.

- Include your name, date of birth, address and details of your GP.
- Specify what kind of treatment is to be refused and in what circumstances, giving as much detail as possible.
- Sign and date the document.
- Ask someone to witness your signature.

You could ask your doctor or another relevant professional to sign a statement on the document saying that they have carried out an assessment of you and, in their opinion, you have the mental capacity to make the decision.

You can get help writing an advance decision from the Heart of Kent Hospice dementia service, Preston Hall, Aylesford ME20 7PU Tel: 01622 792200 Email: enquiries@hokh.co.uk

If there is a particular complication or if you prefer you can ask a solicitor to do it for you but they will charge a lot more.

Advance decision to refuse life-sustaining treatment

If you want to refuse potentially life-sustaining treatment, there are legal requirements you must follow:

- The decision must be in writing. You can ask someone else to write it down if you can't do it yourself.
- You must sign and date the document. You can ask someone to sign it on your behalf in your presence if you can't sign it yourself.
- Your signature, or the signature of the person signing on your behalf, must be witnessed. The witness must also sign the document in your presence.
- You must include a written statement that the advance decision is to apply to the specific treatment 'even if life is at risk as a result'.

The person who is a witness is signing only to show that they have witnessed the document being signed by you (or by the person signing on your behalf). They are not signing to confirm that you have mental capacity or that they affirm the advance decision.

Advance decisions and Lasting Powers of Attorney

It's possible to have both an advance decision and a health and welfare Lasting Power of Attorney (LPA), but these are both legal documents and you need to think carefully about the order you make them in.

- If you make an advance decision after making a health and welfare LPA, your advance decision will take priority. This means that your attorney will not be able to override your advance decision.
- If you make a health and welfare LPA after making an advance decision, your attorney may be able to override your advance decision, but only if your LPA expressly gives your attorney authority to make decisions about the same treatment.

If in doubt, it's best to seek legal advice about the way these two documents will interact

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