

# ***Powers of attorney***

.....  
Help with making decisions about  
your health, care or finances  
.....



# **Information and advice** you need to help you love later life.

**We're Age UK and our goal is to enable older people to love later life.**

We are passionate about affirming that your later years can be fulfilling years. Whether you're enjoying your later life or going through tough times, we're here to help you make the best of your life.

**Our network includes Age Cymru, Age NI, Age Scotland, Age International and more than 150 local partners.**

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# What this guide is about

In future you might need someone to make decisions for you or act on your behalf for a number of reasons. You may want to draw up a temporary arrangement, for example if you're in hospital and need help with everyday things such as making sure bills are paid. Or you may need to make long-term plans, for example if you have been diagnosed with dementia or have an accident or illness, which may cause you to lose 'mental capacity'.

Even without a specific reason, it's a good idea to plan ahead, make sure you're in control over what happens to you in future and that someone you can trust will be able to make decisions for you if needed.

There are two types of powers of attorney for different circumstances: ordinary and lasting. Lasting powers of attorney are only valid in England and Wales, and replaced enduring powers of attorney in 2007. This guide covers different types of powers of attorney, how to set them up, and other considerations.

The information given in this guide is applicable across England and Wales. For information about powers of attorney in Northern Ireland, contact Age NI, and in Scotland, contact Age Scotland. See page 24 for their contact details.

## What is mental capacity?

Mental capacity means being able to understand a specific decision, retain information for long enough to make it, weigh up different choices and communicate the decision in any way possible (see page 6 for more information).

# Lasting powers of attorney

Registering a lasting power of attorney (LPA) is a way of giving someone you trust, known as your attorney, the legal authority to make decisions on your behalf, if either you no longer wish to make decisions for yourself, or if in future you aren't able to make decisions.

No one automatically has the right to deal with your bank accounts and pensions, or to make decisions about your health and social care, if you lose the capacity to do so. You need to set up an LPA to give them this authority.

There are two types of LPA: an LPA for financial decisions and an LPA for health and care decisions.

## **LPAs for financial decisions**

You can state in your application when you want your attorney to start acting on your behalf, either before or after you lose mental capacity. Your attorney can make decisions on things such as:

- selling your home
- paying the mortgage
- paying bills
- arranging repairs to property.

You can let your attorney make all decisions on your behalf, or you can give instructions about the types of decisions they can make.

With an LPA for financial decisions, your attorney must keep accounts and keep your money separate from their own. You can ask for regular details of how much is spent and how much money you have. You can also request that these details are sent to your solicitor or a family member if you lose mental capacity.

## **LPAs for health and care decisions**

Your attorney can only use an LPA for health and care decisions when you no longer have mental capacity (see page 6). 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.

You can also give permission for your attorney to make decisions about life-saving treatment.

Once your attorney starts making decisions about your health and care on your behalf, they must tell your friends, family and relevant health and care professionals.

## **How do I set up an LPA?**

- 1. Order LPA forms and an information pack from the Office of the Public Guardian** (OPG, page 26). You can also download the forms or fill them out online. Visit [www.gov.uk/lasting-power-of-attorney](http://www.gov.uk/lasting-power-of-attorney).
- 2. You can fill out the forms yourself, or with the help of a solicitor or local advice agency.** Taking professional advice can prevent problems later on, especially if you're unsure of the process or your affairs are complex.
- 3. Have the LPA signed by a certificate provider.** This is someone who confirms that you understand what the LPA is and haven't been put under any pressure to sign it. They must be someone you know well or a professional such as a doctor, social worker or solicitor, but can't be a family member.

**4. The LPA must be registered with the Office of the Public Guardian before it can be used.** There is a fee of £82 to register your LPA. If you're on 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. It can't be used during the registration process, which takes around nine weeks. You can contact the OPG to find out if your LPA has been registered (page 26). If you lose mental capacity but signed the LPA while you still had capacity, your attorney can register it for you.

### **When is an LPA valid?**

An LPA will only be valid if you have the mental capacity to set it up and haven't 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 that person power to make decisions about your life.

You can state on the form whether your attorney can start using the LPA for financial decisions, once registered, before or after you lose capacity. The LPA for health and care decisions can only be used once you have lost capacity.

You can cancel your LPA at any time while you have mental capacity. Contact the OPG for more information (page 26).

LPAs were introduced in October 2007, replacing the old system of enduring powers of attorney (EPAs). EPAs created before October 2007 may still be valid (see page 9).

If you registered an LPA or EPA between 1 April 2013 and 31 March 2017, you can claim a partial refund of the fee by 31 January 2021. call the refunds helpline on 0300 456 0300 or visit [www.gov.uk/power-of-attorney-refund](http://www.gov.uk/power-of-attorney-refund).

# Mental capacity

Mental capacity is the ability to make a specific decision at the time it needs to be made. To have mental capacity you must understand the decision you need to make, why you need to make it, and the likely outcome of your decision.

Some people will be able to make decisions about some things but not others. Mental capacity can change over time and someone may not be able to make a decision at one time, and then be able to make the same decision at another time.

Someone with mental capacity is able to communicate decisions through speech, signs, gestures or in other ways. Taking time to understand or communicate may be mistaken for a lack of mental capacity, but having dementia, for example, doesn't necessarily mean someone can't make any decisions themselves.

If someone is having difficulty communicating what sort of decision they want to make, an attempt should always be made to overcome that difficulty and help the person decide for themselves.

Before someone can make a decision for you, they must assess whether you can make the decision yourself. The person making a decision for you must make sure they are acting in your best interests (see pages 10–11).

## **For more information**

To find out more about mental capacity and making decisions, visit [www.gov.uk/make-decisions-for-someone](http://www.gov.uk/make-decisions-for-someone).



# Ordinary powers of attorney

You can set up an ordinary power of attorney if you want to give someone, known as your attorney, the authority to make decisions and take action about your finances while you still have mental capacity.

## **When is an ordinary power of attorney valid?**

An ordinary power of attorney is only valid while you (the ‘donor’) remain mentally capable of making your own decisions about your finances.

## **How can ordinary powers of attorney be used?**

Ordinary powers of attorney can be useful if, for example, you’re going into hospital or on holiday and you want someone to be able to look after your finances for a period of time. Or perhaps you’re unwell and it’s difficult to get to the bank or post office. You can limit the power you give to your attorney so that they can only deal with certain assets, for example, your bank account but not your home.

## **How do I set up an ordinary power of attorney?**

If you want to set up an ordinary power of attorney contact your local Citizens Advice (page 25) or get advice from a solicitor, as there’s standard wording that must be used. To find a solicitor, contact the Law Society (page 25) or Solicitors for the Elderly (page 26).

# Who should I choose to make decisions for me?

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

You could choose a family member, friend, your spouse, partner or civil partner. Alternatively, you could choose a professional, such as a solicitor. Think about who you believe would be able to carry out the role and make decisions in your best interests (see pages 10–11). Give the person you ask time to think about the role.

It can be a good idea to appoint more than one attorney, but you must decide whether they are to make decisions together or separately. You could also consider appointing replacement attorneys in case something happens to one of them and they can't act on your behalf anymore.

Attorneys must be over 18 and shouldn't be paid care workers unless there are exceptional circumstances, for example, if they are the only close relative of the donor.

Your attorney can claim back any expenses they incur while acting on your behalf – for example, postage, travel or photocopying costs. They can claim these from your money, keeping an account of any expenses and relevant receipts. However, they can't claim for time spent carrying out their duties unless they are a professional attorney, such as a solicitor, who will charge fees.

## **For more information**

See our free factsheet *Arranging for someone to make decisions on your behalf*.

# What if I have already created an enduring power of attorney?

If you set up an enduring power of attorney (EPA) before 1 October 2007, naming someone as your attorney, it should still be valid.

An EPA doesn't have to be registered with the Office of the Public Guardian before it's used, so your attorney may not have registered the EPA but already have your permission to use it so they can act on your behalf.

This is fine, until you become unable to make your own decisions about your finances and property. If this happens, your attorney must register the EPA with the Office of the Public Guardian before they can take any further action on your behalf.

An EPA only covers decisions about your property and financial decisions. You might want to consider setting up an LPA for health and care decisions, which can work alongside the existing EPA.

## Who can I contact?

Contact the Office of the Public Guardian for more information about EPAs (page 26).

# Acting in your best interests

When someone is acting as your attorney, they must understand and follow certain principles to support you to make your own decisions as much as possible, and to make the right decisions on your behalf if you can't. These principles are set out in the *Mental Capacity Act 2005* and its code of practice for attorneys.

The attorney should:

- **Act in your best interests.** When someone makes a decision in your best interests they must:
  - do everything possible to encourage you to be part of the decision
  - consider your past and present feelings, especially any expression of wishes you made, such as an advance statement (see page 15)
  - 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 respect your right to privacy and recognise 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 (see page 14).
- **Assume that you have mental capacity.** The attorney must first assume that you're able to make the decision yourself before they make a decision for you.

- **Help you 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 better 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 using pictures or sign language.
- **Allow you to make 'unwise decisions'.** You shouldn't be treated as unable to make a decision just because you make decisions that others might not agree with.
- **Choose the least restrictive decision.** 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.

#### **For more information**

You or your attorney may want to read the code of practice to the Mental Capacity Act. It gives clear and practical guidance on how to carry out the role of attorney or deputy. You can download it free at [www.gov.uk/government/publications/mental-capacity-act-code-of-practice](http://www.gov.uk/government/publications/mental-capacity-act-code-of-practice) or buy a copy from bookshops.

## ‘Having a lasting power of attorney has enabled Irene and Jenny to make proper provision for the future.

**Irene, 72, and her partner Jenny have been together for 37 years. Since Jenny was diagnosed with vascular dementia, Irene has become her full-time carer. While she still had capacity to do so, Jenny set up a lasting power of attorney (LPA).**

‘I had so much on my plate when Jenny was first diagnosed, and the practicalities weren’t top of the list. However, my friends persuaded me to get things in order.

‘I got some advice, and a friend helped us fill in the forms to set up an LPA for financial decisions. We already had our bank accounts in both our names. But we both also had some money that we wanted to invest so it could be used to pay for Jenny’s care if she ever needed it, so I went to a financial adviser too.

‘I got a copy of the LPA and gave it to the company that had invested money on our behalf. This means they’ll accept that I can deal with Jenny’s share of the money, so I can access it when I need to.

‘I’ve been in charge of making all the decisions for two years. I wouldn’t do anything without discussing it with Jenny, but she isn’t really interested. She trusts me to make the best decisions for her. Having an LPA has enabled us to make proper provision for the future.’



‘She **trusts me** to  
make the **best**  
**decisions** for her’

# Making your wishes known

While you have capacity you can indicate how you would like to be cared for and the types of medical treatment you would want to refuse, should you be unable to make or communicate your own decisions in future.

## **An advance decision to refuse medical treatment**

You can make an advance decision to refuse medical treatment in case in the future, you can't make and communicate your own decisions. You must set out the exact treatments you don't want and the circumstances in which you want to refuse them.

You don't have to put it in writing, unless you want to refuse any life-sustaining treatment – in which case you must put this in writing, sign and date your statement, noting that the advanced decision should apply even if your life is at risk. If you make a verbal statement, make sure details of your wishes are added to your medical notes, so any doctor treating you is aware of them.

In England and Wales an advance decision is legally binding so health professionals treating you must follow it. Let your family and any medical professionals know that you have an advance decision, and review it frequently to check it still reflects your wishes.

## **How does an advance decision interact with an LPA?**

If an advance decision and an LPA for health and care deal with the same decision, whichever was made more recently takes priority. If you create an advance decision after creating an LPA for health and care, your attorney can't consent to any treatment refused in the advance decision.



If you have made an advance decision and want to create an LPA for health and care decisions, you'll need to send a copy of your advance decision with your LPA application form to identify any conflicts.

### **Advance statement to say how you want to be looked after**

An advance statement covers your preferences and values regarding your future care, such as any religious beliefs, what you like to eat or whether you prefer to have a bath or a shower. The statement isn't legally binding, but can be used to record your wishes and preferences about future treatment and care, to inform anyone involved in your care.

#### **For more information**

Read our factsheet *Advance decisions, advance statements and living wills*.

You can make **an advance decision** to refuse medical treatment if, in the future, **you can't make and communicate** your own decisions

# What happens if I lose capacity before setting up an LPA?

If there does come a time in the future when you can't make a particular decision because you have lost mental capacity, and you haven't created a valid LPA or EPA, the Court of Protection may need to become involved. The Court of Protection can:

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

It also has broader powers to resolve disputes and protect those who have lost capacity.

Someone who wants to make decisions on your behalf can apply to the court to be appointed as deputy, a role similar to that of attorney. The court will consider whether you'll need someone to make ongoing decisions for you, and whether the person applying is suitable for the role. The court usually does everything by post, rather than holding a hearing.

## What does a deputy do?

The deputy has similar responsibilities to an attorney. They can only act within the powers granted to them, and must follow certain principles (see pages 10–11), taking all steps possible to allow you to make your own decisions and ensuring any decisions they do make are in your best interests.

There are two types of deputy: property and financial affairs deputy and personal welfare deputy. Personal welfare deputies are usually only appointed in rare circumstances, for example where those providing care or treatment disagree on what to do in the person's best interests. The order of the court sets out the extent of the deputy's authority to act, so they must always make sure 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 for their own benefit.

Becoming a deputy involves a lot of responsibility, so anyone asked to be a deputy should consider whether they want to take on the role, or whether there may be someone else who would be more appropriate to do so.

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.

#### **Who can I contact?**

Contact the Court of Protection (page 25) for more information about becoming a deputy.

#### **For more information**

Read the gov.uk guide *How to be a property and affairs deputy* online, or read our factsheet *Arranging for someone to make decisions about your finance or welfare*.



Even without a **specific reason**, it's a good idea to **plan ahead and make sure you're in control** over what happens to you in future.

# What if no one can speak for me?

If, in the future, you're unable to make certain important decisions and there's no one who's 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.

In this situation, an IMCA must be involved in decisions about serious medical treatment or a change of accommodation. They may also be involved in decisions relating to a care review or adult protection procedures. The staff in the NHS or your local council – for example, doctors, social workers or care home staff – are responsible for instructing an IMCA.

## **Who can I contact?**

Contact the Office of the Public Guardian (page 26) for information about the role of an IMCA.

# Deprivation of Liberty Safeguards

If someone lacks mental capacity, for example due to having dementia, there may be times when their freedom or independence is restricted in order to keep them safe. For example, they may not be able to leave a care home or hospital, or the type of care they receive may be decided for them by staff.

Deprivation of Liberty Safeguards protect those who lack the capacity to consent to being placed in a care home or hospital for long-term care and support. They aim to make sure that people are only deprived of their liberty when this is needed to keep them safe and provide the care or treatment they need. This must be authorised before being agreed.

If you have created an advance decision refusing a certain treatment or type of care, staff should check that your wishes are upheld. If you have a valid LPA for health and care decisions or a court-appointed deputy, the staff should check whether this conflicts with your attorney or deputy's decisions. Staff shouldn't authorise the decision if it conflicts with your wishes.

## **For more information**

Read our factsheet *Deprivation of Liberty Safeguards*.

# If you have concerns about the actions of an attorney

If you are a friend or relative of the donor and have concerns over the way an attorney or deputy is acting, or are worried that they are not making decisions in the best interests of the donor, you should raise this with the Office of the Public Guardian (page 26).

The Office of the Public Guardian is responsible for registering and monitoring attorneys and deputies, and can investigate allegations of mistreatment or fraud. It can report concerns to another agency, such as the police or social services, if appropriate.

## Who can I contact?

Raise your concerns with the Office of the Public Guardian (page 26). To speak to someone confidentially about your concerns of financial misuse or abuse, call the Action on Elder Abuse helpline (page 25).

## For more information

Read our guide *Protecting yourself* and our factsheet *Safeguarding older people from abuse and neglect*. Age Cymru has their own version of this factsheet.

# Other ways of managing your money

You might be perfectly able to make your own decisions but need help organising your finances, or have health problems that make it difficult to get to the bank or post office. These are some ways that could help you manage your money:

- **Use a pre-paid card** to allow someone to spend a limited amount of money for you. You can buy pre-paid cards online or over the telephone and put money onto them using a local PayPoint, at post offices, online, by cheque or by bank transfer.
- **Use gift vouchers or gift cards** to allow others to shop on your behalf. These can often be purchased over the phone or online.
- **Set up a standing order** with your bank to pay someone a set amount. This is useful if someone regularly does your shopping or pays your bills.
- **Set up direct debits** to pay bills directly from your bank account, to utility companies for example. The company collects what you owe them, but they must tell you how much they will take in advance.
- **Set up third party bill management** with your phone, internet or television provider, which allows a friend or relative to receive copies of your bills and pay them.
- **Set up a third party mandate** for your bank or building society to let someone manage your bank account on your behalf. You may be able to limit what the person can do, for example only allowing them to check your balance or withdraw a restricted amount.



- **Set up an appointee** who can claim and manage your benefits on your behalf. They should apply to the office that deals with your benefits, or to your local council if they need to deal with Housing Benefit or Council Tax Support (also known as Council Tax Reduction). Visit [www.gov.uk](http://www.gov.uk) for more information.
- **Change your bank account into a joint account** by adding the name of someone you trust. You can restrict the account so that it's only used for cheques, or ask the bank to set up a 'both mandate', which means that any cheques paid out of your account must be signed by both account holders. If you have a Post Office account, you can apply for someone to have permanent access to it. If one joint account holder loses mental capacity to operate the account, banks and building societies may temporarily restrict access to the account for essential transactions only, such as living expenses. In this case, you would need to use an appointee or have set up an LPA for financial decisions.
- **Use the government's Payment Exemption Service** if you don't have a bank account. This allows you to give someone else access to withdraw your benefits from PayPoint outlets, often located in local shops. See [www.gov.uk/payment-exemption-service](http://www.gov.uk/payment-exemption-service) for more information.

These are all short-term actions you can take. While they will allow someone to help you manage your money, they don't give a person the authority to make financial decisions on your behalf. Don't feel pressurised into doing something you don't want to do.

If you're beginning to find it harder to manage your money, and you would like some more help, you might want to consider drawing up a power of attorney.

# Useful organisations

## **Age UK**

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

Lines are open seven days a week from 8am to 7pm.

[www.ageuk.org.uk](http://www.ageuk.org.uk)

Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

In Wales, contact

**Age Cymru:** 0800 022 3444

[www.agecymru.org.uk](http://www.agecymru.org.uk)

In Northern Ireland, contact

**Age NI:** 0808 808 7575

[www.ageni.org](http://www.ageni.org)

In Scotland, contact

**Age Scotland:** 0800 124 4222

[www.agescotland.org.uk](http://www.agescotland.org.uk)

The evidence sources used to create this guide are available on request. Contact [resources@ageuk.org.uk](mailto:resources@ageuk.org.uk)

### **Action on Elder Abuse**

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

Tel: 080 8808 8141  
[www.elderabuse.org.uk](http://www.elderabuse.org.uk)

### **Citizens Advice**

National network of free advice centres offering free, confidential and independent advice, face-to-face or by telephone.

In Wales there is a national phone advice service on 03444 77 20 20. It is available in some parts of England on 03444 111 444.

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### **Court of Protection**

Provides information about being appointed as a deputy for someone who has lost mental capacity.

Tel: 0300 456 4600  
[www.gov.uk/courts-tribunals/court-of-protection](http://www.gov.uk/courts-tribunals/court-of-protection)

### **Gov.uk**

The official government website providing information on public services, benefits, jobs, the environment, pensions and health services.

[www.gov.uk](http://www.gov.uk)

### **Law Society**

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

Tel: 020 7320 5650  
[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

## **Office of the Public Guardian**

For information about making a LPA or applying to the Court of Protection.

Tel: 0300 456 0300

[www.gov.uk/government/organisations/office-of-the-public-guardian](http://www.gov.uk/government/organisations/office-of-the-public-guardian)

## **Solicitors for the Elderly**

Independent national organisation of solicitors that specialise in a wide range of legal issues affecting older people. Contact them for help in finding a solicitor.

Tel: 0844 567 6173

[www.sfe.legal/public](http://www.sfe.legal/public)





# Supporting the work of Age UK

Age UK aims to enable all older people to love later life. We provide vital services, support, information and advice to thousands of older people across the UK.

In order to offer free information guides like this one, Age UK relies on the generosity of its supporters. If you would like to help us, here are a few ways you could get involved:

**1 Make a donation**  
To make a donation to Age UK, simply complete the enclosed donation form, call us on **0800 169 8787** or visit **[www.ageuk.org.uk/get-involved](http://www.ageuk.org.uk/get-involved)**

**2 Donate items to our shops**  
By donating an unwanted item to one of our shops, you can help generate vital funds to support our work. To find your nearest Age UK shop, visit **[www.ageuk.org.uk](http://www.ageuk.org.uk)** and enter your postcode into the ‘What does Age UK do in your area?’ search function. Alternatively, call us on **0800 169 8787**

**3 Leave a gift in your will**  
Nearly half the money we receive from supporters come from gifts left in wills. To find out more about how you could help in this way, please call the Age UK legacy team on **020 3033 1421** or email **[legacies@ageuk.org.uk](mailto:legacies@ageuk.org.uk)**

**Thank  
you!**

# 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](http://www.ageuk.org.uk/moneymatters)

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



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 are not in the box below, call Age UK Advice free on **0800 169 65 65**.

