Power of attorney

Making sure your wishes are respected
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What this guide is about

It’s not easy to think about a time when you’re no longer able to make your own decisions. But if that time comes, having set up a power of attorney can make life that bit easier.

This guide can help you make sure that your wishes are followed if – for whatever reason – you’re no longer able to make your own decisions or tell people what they are.

Whether it’s making a temporary arrangement to pay bills while you’re in hospital or appointing someone you trust to manage your affairs for the longer term, this guide will take you through all the options, help you decide which ones are right for you and how to go about getting them sorted.
“After I explained the importance of power of attorney my mum set one up. It feels like we now have one less thing to worry about.”

Sandy, 67

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.

This symbol indicates where information differs for Scotland, Wales and Northern Ireland.

**Good to know**

The Office of the Public Guardian is referenced throughout this guide and can help with a lot of the topics covered. It’s a good idea to keep the contact details handy. You can find out more by calling or visiting the website:

Tel: 0300 456 0300

Mental capacity

Throughout this guide, we’ll be using the term ‘mental capacity’. Having mental capacity means you are able to make your own decisions and understand any implications of that decision.

Assessing mental capacity
Before anyone else can make a decision for you, you (and they) need to know whether you can make it by yourself.

If someone can’t understand information relating to a decision they need to make, keep that information in their mind, make a decision based on that information or communicate their decision (by talking, using sign language or any other means) they are said to be unable to make that decision.
Mental capacity is different for everyone and it can change from day to day. For example, some people will be able to make decisions about certain things. Others may be unable to make a decision at one time, but then be able to later on.

Taking time to understand or communicate a decision should not be mistaken for lack of mental capacity. Nor should having a certain condition. Having dementia, for example, doesn’t necessarily mean you can’t make any decisions.

If you’re having difficulty communicating your decision to someone, they should always make an effort to help you through that difficulty so you can make your wishes known. And the person making a decision for you must make sure they are acting in your best interests (see pages 16-17).

“We were advised to set up a power of attorney after my wife was diagnosed with Alzheimer’s.”
Fred, 81
The different powers of attorney

No one has the right to automatically take control of your finances or your care (not even your spouse). They need your authority.

A power of attorney is a way of giving someone you trust the legal authority to make decisions for you, if either you can’t make them yourself or don’t want to.

There are three different types of power of attorney:

**Lasting power of attorney (LPA)**
There are two types of LPA: one for health and care and one for financial decisions. The LPA for health and care can only be used if you lose mental capacity. The one for financial decisions can be used straight after it’s been registered.

**Enduring power of attorney**
This is what lasting power of attorney used to be called, except it was only for property and finances.

**Ordinary power of attorney**
For decisions about your finances only – but is only valid while you still have mental capacity.
1. Lasting power of attorney

You can only register a lasting power of attorney (LPA) if you have the mental capacity to give this authority – and haven’t been put under any pressure. Please see page 6 for information on mental capacity.

An LPA is not permanent. You can cancel it at any time while you have mental capacity.

What decisions can my attorney make?
There are two different types of LPA: one for making decisions about **finances** and another for **health and care**.

**a) LPA for financial decisions**
With this option, your attorney can make decisions on things like:

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

**Key facts:**

- You decide when you want this type of LPA to start. It could be while you still have mental capacity, or if you lose capacity.
- You choose if your attorney can make all or only certain types of financial decisions on your behalf.
- Your attorney has to keep your money separate from theirs, and keep accounts to show this.
- You can ask for regular details of how much money you have – and how much has been spent. You can also ask that these be sent to your solicitor or a family member.
b) LPA for health and care decisions
With this option, your attorney can make decisions on things like:

• 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.

Key facts:

• Unlike LPAs for financial decisions, your attorney can only use this LPA if you no longer have mental capacity.

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

• If you lose mental capacity and don’t have an LPA in place, any decisions about your healthcare will be made by doctors. They will consult your family but the final decision lies with them.

Good to know

You must register an LPA while you have the mental capacity to do so. If you signed an LPA while you still have mental capacity but lose capacity before registering it, your attorney can register it for you. Contact the Office of the Public Guardian for more information (page 28).
How do I set up a lasting power of attorney?
There are four simple steps:

1. **Order LPA forms and an information pack from the Office of the Public Guardian.** You can download the forms (and even fill them out) online at [www.gov.uk/lasting-power-of-attorney](http://www.gov.uk/lasting-power-of-attorney) or call them on 0300 456 0300.

2. **Fill out the forms – either yourself, or with the help of a solicitor or local advice agency.** Taking professional advice could prevent problems later on, especially if you’re unsure of the process or your affairs are complex. This will cost you more, so it’s important to bear that in mind. If your affairs are quite straightforward, you may be better off registering an LPA without legal advice using the guidance that comes with the forms for registering. This will make the process less costly, but could also result in mistakes so consider which you’d rather do carefully.
3. **Have the LPA signed by a certificate provider.** This must be someone you know well or a professional such as a doctor, social worker or solicitor, but it can’t be a family member. It’s their job to confirm that you understand what the LPA is and haven’t been put under any pressure to sign it.

4. **Register the LPA with the Office of the Public Guardian.** Your LPA cannot be used until this is done. Registration takes around nine weeks and costs £82. If you’re on a low income (under £12,000), you may be eligible for a 50% discount. If you’re receiving certain benefits you won’t have to pay anything at all.

“I was worried about setting up a power of attorney as I don’t really have any close friends or family. I was advised to appoint a professional.”
Jean, 93

**Next steps**

Read our factsheet *Arranging for someone to make decisions on your behalf* for more information about discount eligibility. You can also contact the Office of the Public Guardian on 0300 456 0300 to find out if your LPA has been registered.
2. Enduring power of attorney

LPAs replaced enduring powers of attorney (EPAs) in October 2007, but if you set up and signed an EPA before this date, it should still be valid.

If you still have mental capacity, your EPA doesn’t need to be registered before it’s used. If you don’t, your attorney needs to register the EPA with the Office of the Public Guardian before they can make any decisions on your behalf.

Good to know

If you registered an LPA or an 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.

For more information about EPAs, contact the Office of the Public Guardian (page 28).
3. Ordinary power of attorney

An ordinary power of attorney (OPA) is only valid while you have mental capacity. It can also only be used to make decisions about your finances – not your care or anything else.

How can I use it?
An OPA 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 while you’re away. 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 they can only deal with certain assets, for example, your bank account but not your home.

How do I set one up?
If you want to set up an OPA, contact your local Citizens Advice (page 27) or get advice from a solicitor, because there’s standard wording that must be used. To find a solicitor, contact the Law Society (page 28) or Solicitors for the Elderly (page 28).
Choosing an attorney

Your attorney will have a lot of power and responsibility so you need to choose a person (or people) you trust.

Who should I choose?

You could choose someone you’re close to, like a partner, family member, or friend. Alternatively, you could choose a professional, such as a solicitor. Think about who you believe would be able to make decisions in your best interests (see pages 16-17) and make sure you give them time to think about the role in advance.

Whoever you choose, they need to be 18 or over and can’t be your paid carer unless there are exceptional circumstances, for example, if they’re your only relative. There are some restrictions on who can be an attorney. Our factsheet Arranging for someone to make decisions on your behalf has more information on this.

Choosing more than one attorney

It can be a good idea to appoint more than one attorney, but you need to decide whether they’ll make decisions jointly or not. Also think about appointing replacement attorneys in case someone can’t act on your behalf anymore.

Good to know

While a non-professional attorney (such as a family member or friend) can only claim expenses, such as reasonable travel costs, in their role, a professional attorney can also charge for their time.
Acting in your best interests

How should an attorney help you make decisions – or make them on your behalf? All attorneys need to understand and follow certain principles, which are set out in the Mental Capacity Act 2005 and its Code of Practice.

The Act says that every attorney should do the following:

- **Assume you have mental capacity.** The attorney must first assume that you’re able to make a decision yourself before they make it 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’.** The fact that you might make decisions others don’t agree with doesn’t mean you’re unable to make them.

- **Choose the least restrictive decision.** Your attorney should consider all the options and choose the one that least restricts your rights and freedoms.

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**Good to know**

You can cancel your LPA as long as you have mental capacity. To cancel it you should:

- write to the attorney(s) and let them know your decision
- write to the Office of the Public Guardian and ask for it to be removed from their register.
• **Act in your best interests.**

This means:

- doing everything possible to encourage you to be part of the decision

- considering your past and present feelings, especially any wishes you expressed, for example, in an advance statement (see page 21)

- considering any of your beliefs and values that could influence the decision

- talking to other people – like family, carers or friends – who know about your feelings, beliefs and values, and can suggest what might be in your best interests

- always respecting your right to privacy and recognising that it might not be appropriate to share information about you with everyone

- knowing about any exceptions, such as if you have made an advance decision to refuse medical treatment (see page 20).

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**Next steps**

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 (there’s information about deputies on page 23). You can download it free by going to [GOV.UK](https://www.gov.uk) and searching for ‘Mental Capacity Act Code of Practice’ or buy a copy from bookshops.
My story

Having a lasting power of attorney has let Irene and Jenny prepare 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 encouraged 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. She trusts me to make the best decisions for her. Having an LPA has enabled us to make proper provision for the future.’
Communicating your wishes

While you have mental capacity, you can make choices about your care. This includes the types of medical treatment you want, or would refuse, if you were unable to make or communicate your own decisions in the future.

You have two options: an advance decision (sometimes called a ‘living will’) or an advance statement.

Advance decision

You can make an advance decision to refuse medical treatment. This means setting out the exact treatments you don’t want and the circumstances in which you’d refuse them.

If you decide to refuse any life-sustaining treatment, for example being put on a ventilator, you need to put this in writing and sign and date it. Otherwise, a verbal statement is fine, but you should make sure its details are added to your medical notes, so any doctor treating you can see them.

In England and Wales, an advance decision is legally binding so health professionals 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.

Good to know

If you’ve made an advance decision and now 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 decision vs lasting power of attorney
If you have an advance decision and a lasting power of attorney (LPA) for health and care – and they cover the same decision – the more recent one takes priority. If you create an advance decision after registering an LPA for health and care, your attorney can’t agree to any treatment you have refused in the advance decision.

Advance statement
An advance statement covers your preferences and values when it comes to future care. For example, this could include your religious beliefs, what you like to eat or even whether you prefer to have a bath or a shower. It isn’t legally binding, but is a record of your wishes and preferences for anyone involved in looking after you.

“I set up an advance statement to let those close to me know what kind of care I want.”
Andrew, 79

Next steps
Read our factsheet Advance decisions, advance statements and living wills.
If you lose mental capacity

If you lose mental capacity and have a power of attorney then they’ll be able to make decisions in your best interest. However, if you lose capacity and you don’t have a power of attorney, things can be more complicated.

What if I lose capacity before creating a power of attorney?

If there comes a time 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 you have the mental capacity to make a decision

• make an order relating to your health and care decisions or property and financial decisions if you lack mental capacity

• appoint a deputy to make decisions on your behalf if you lack 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 similar role to that of being an attorney.

The Court will consider whether you’ll need someone to make ongoing decisions for you, and whether the person applying is fit for the role. The Court usually does everything by post, so you won’t have to attend hearings.
What is a deputy?

A deputy has similar responsibilities to an attorney. They can only act within the authority set out by the Court, and have a duty to act in good faith, not taking advantage of their position for their own benefit. As such, they have to follow the same principles as an attorney (see pages 16-17), doing everything possible to help you 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.

Being a deputy involves a lot of responsibility, so anyone asked to become one should consider whether they want to take on the role, or whether there may be someone more appropriate.

Contact the Court of Protection (page 28) for more information about becoming a deputy.

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.

Good to know

You can’t choose your deputy, and the process of appointing one can be lengthy and expensive. It’s much better to have an LPA in place.
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, like 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.

Next steps

Contact the Office of the Public Guardian (page 28) for information about the role of an IMCA.
Protecting your freedom

If you lack mental capacity, there may be times when your freedom or independence is restricted to keep you safe. For example, if you have dementia you may not be able to leave a care home or hospital alone, or the type of care you receive may be decided for you by staff.

Deprivation of Liberty Safeguards exist to protect people in care homes or hospitals who lack the capacity to make decisions. The aim is to make sure that your freedom is only restricted when necessary to keep you safe and provide the care or treatment you need. This must be authorised before being agreed.

If you have created an LPA or advance decision refusing a certain treatment or type of care, staff should check that your wishes are being upheld by the decisions of an attorney or court-appointed deputy. Staff shouldn’t authorise the decision if it conflicts with your wishes.

Next steps

Read our factsheet Deprivation of Liberty Safeguards.
If you’re concerned about an attorney’s actions

If you, or a friend or relative, believe an attorney may not be acting in your best interests, you can contact the following organisations for advice:

Your local NHS Complaints Advocacy (England) can offer support if you are concerned about the healthcare decisions your attorney is making. Contact your local Healthwatch for more information (page 28). In Wales, your local community health council should run a Complaints Advocacy Service (page 28).

Your local social services adult protection team can help with any social care decisions your attorney is making that you are worried about.

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 the police or social services, if appropriate.

If the situation is urgent and you could be in danger, contact the police. You can also talk to someone confidentially about any of your concerns at the Action on Elder Abuse helpline on 0808 808 8141.

Next steps

Read our factsheet Safeguarding older people from abuse and neglect. Age Cymru has its own version of this factsheet.
Useful organisations

**Age UK**
We provide advice and information for people in later life through our Age UK Advice line, publications and website.

**Age UK Advice:** 0800 169 65 65
Lines are open seven days a week from 8am to 7pm.
www.ageuk.org.uk

In Wales, contact Age Cymru: 0800 022 3444
www.agecymru.org.uk

In Northern Ireland, contact Age NI: 0808 808 7575
www.ageni.org

In Scotland, contact Age Scotland: 0800 124 4222
www.agescotland.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

**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
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

GOV.UK
The official Government website providing information on public services, benefits, jobs, the environment, pensions and health services.
www.gov.uk

Healthwatch
A local Healthwatch provides information, advice and support to users of health services in your area. It can also put you in contact with your local NHS Complaints Advocacy service. To find your local Healthwatch contact:
Tel: 03000 683 000
www.healthwatch.co.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

Office of the Public Guardian
For information about making a LPA or applying to the Court of Protection.
Tel: 0300 456 0300

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
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If you would like to, please complete the donation form below with a gift and return to: Freepost Age UK REPLY. 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.

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Home address: [ ] Postcode: [ ]

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For further details on how your data is used and stored: www.ageuk.org.uk/help/privacy-policy

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Signature: [ ]

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† We, includes the charity, its charitable and trading subsidiaries, and national charities (Age Cymru, Age Scotland and Age NI). 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 Tavis House, 1–6 Tavistock Square, London WC1H 9NA. Age UK provides a range of services and your gift will go wherever the need is the greatest.
Help us be there for someone else

We hope you found this guide helpful. When times are tough, it’s so important to get some support. Did you know you could help us reach someone else who needs a little help? Here’s how:

1. **Give your views on guides like this**
   Our Readers’ Panel helps make sure the information we produce is right for older people and their families. We’d love you to join. Go to [www.ageuk.org.uk/publications/readers-panel](http://www.ageuk.org.uk/publications/readers-panel).

2. **Donate to us**
   Every donation we receive helps us be there for someone when they need us. To make a donation, call us on **0800 169 8787** or go to [www.ageuk.org.uk/donate](http://www.ageuk.org.uk/donate).

3. **Volunteer with us**
   Our volunteers make an incredible difference to people’s lives. Get involved by contacting your local Age UK or at [www.ageuk.org.uk/volunteer](http://www.ageuk.org.uk/volunteer).

4. **Campaign with us**
   We campaign to make life better for older people, and rely on the help of our strong network of campaigners. Add your voice to our latest campaigns at [www.ageuk.org.uk/campaigns](http://www.ageuk.org.uk/campaigns).

5. **Remember us in your will**
   A gift to Age UK in your will is a very special way of helping older people get expert support in the years to come. Find out more by calling **020 3033 1421** or visit [www.ageuk.org.uk/legacy](http://www.ageuk.org.uk/legacy).
What should I do now?

You may want to read some of our other relevant guides, such as:

- Thinking about end of life
- Wills and estate planning
- Living with early-stage dementia

You can order any of our guides or factsheets by giving our Advice Line a ring for free on 0800 169 65 65 (8am-7pm, 365 days a year).

Our friendly advisers will also be able to help answer any questions you have about anything you’ve read.

All of our publications are available in large print and audio formats.

There’s plenty of really useful information on our website, too. Visit [www.ageuk.org.uk/planningahead](http://www.ageuk.org.uk/planningahead) to get started.