

Power of attorney



Planning for the future

Information written with you in mind.

This information guide has been produced with the help of older people, carers and expert peer reviewers.

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What this guide is about

It's never nice to think that there might come a time when you're no longer able to make your own decisions. But having a power of attorney set up can make things much easier if and when that time comes – so it's worth considering now.

This guide explains how you appoint someone to make decisions on your behalf if – for whatever reason – you're no longer able to make your own decisions or communicate what those decisions are.

It takes you through the different types of power of attorney, helps you decide which ones are right for you, and explains how to go about setting them up – whether it's making a temporary arrangement to pay your bills while you're in hospital, or appointing someone you trust to manage your affairs in the longer term.

“After I explained how important a power of attorney can be, my mum set one up. It feels like we have one less thing to worry about now.”

Sandy, 67



The information in this guide is applicable to England and Wales. For information about powers of attorney in Northern Ireland, contact Age NI, and in Scotland, contact Age Scotland.

Good to know



The Office of the Public Guardian is referenced throughout this guide. It can provide more information on a lot of the topics covered, so it's a good idea to keep the contact details handy.

Tel: **0300 456 0300**

Online: **www.gov.uk/government/organisations/office-of-the-public-guardian**



Mental capacity

The term ‘mental capacity’ appears throughout this guide. Having mental capacity means being able to make your own decisions. No one can make a decision on your behalf unless it can be shown that you lack mental capacity.

A lack of mental capacity means you’re unable to do one or more of the following:

- understand the information relating to a decision
- weigh up that information
- remember that information for long enough to make the decision
- communicate your decision (whether verbally, using sign language, or by other means).

Whether someone has mental capacity or not can change from situation to situation. Some people might be able to make decisions about certain things but not others. Others might be unable to make a decision at a certain time, but be able to make the same decision later on.

Taking time to weigh up or communicate a decision shouldn't be mistaken for a 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 a decision to someone, they should always make an effort to help you. And if there comes a time that you lack mental capacity, any person making a decision for you must make sure they're acting in your best interests (see pages 16-17).

“We set up a power of attorney after my wife was diagnosed with Alzheimer’s.”

Fred, 81



Next steps

To find out more about mental capacity and making decisions, visit www.gov.uk/make-decisions-for-someone.



Types of power of attorney

No one has the right to choose to take control of your finances or your care – not even your spouse or partner. They need your authority to do so.

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

There are three types of power of attorney:

Lasting power of attorney (LPA)

There are two different LPAs: one for health and care decisions and one for financial decisions. The LPA for health and care decisions can only be used if you lose mental capacity. The LPA for financial decisions can also be used while you still have mental capacity, if you choose this option while creating it.

Enduring power of attorney (EPA)

This old form of power of attorney is used for financial decisions. If you created one before October 2007, it's still valid – but you can't make a new one. LPAs (see above) are now used instead.

Ordinary power of attorney (OPA)

This power of attorney is for financial decisions only, and it's only valid while you still have mental capacity.

1. Lasting power of attorney (LPA)

You can only create an LPA if you have mental capacity to do so and you haven't been put under any pressure. There's an explanation of mental capacity on pages 6-7.

An LPA isn't necessarily permanent. You can cancel it at any time while you have mental capacity by writing to your attorney(s) and the Office of the Public Guardian and advising them of your decision.

There are two types of LPA: one for making financial decisions and another for making health and care decisions.

a) LPA for financial decisions

If you create this type of LPA, your attorney can make decisions about things like:

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

Key facts:

- You decide when you want this type of LPA to start. This might be while you still have mental capacity, or if and when you lose mental capacity.
- You choose whether your attorney can make all financial decisions on your behalf – or only certain types of decision.
- Your attorney has to keep your money separate from theirs, and keep accounts to show this.
- You can ask for regular updates on how much money you have – and how much has been spent. These updates can also be sent to your solicitor or a family member if you'd like.

b) LPA for health and care decisions

If you create this type of LPA, your attorney can make decisions about things like:

- where you live
- your medical treatment
- the care and support you receive
- who you have contact with
- what kind of social activities you take part in.

Key facts:

- Unlike an LPA for financial decisions, your attorney can only use this LPA if you no longer have mental capacity.
- You can give your attorney permission to make decisions about life-saving treatment.
- If you lose mental capacity and don't have this type of LPA in place, any decisions about your health or care will be made by the professionals relevant to your situation, such as your doctor or your local council's social services department. They must consult your family (or anyone else with an interest in your welfare) when deciding what is in your best interests – 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 sign 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 an LPA?

Firstly, get LPA forms and an information pack from the Office of the Public Guardian. You can download the forms online at www.gov.uk/lasting-power-of-attorney or call **0300 456 0300**.

If you're happy to, you can fill out the forms yourself. It's important to be careful, because mistakes might mean your LPA is rejected and you need to pay a fee later to reapply. The Office of the Public Guardian provides guidance on its website – alternatively, you can call them on the number above. You could also consider asking a trusted family member or friend to help you.

While you don't need to use a solicitor to create an LPA, it could prevent problems later on – especially if you're unsure of the process or your affairs are complex. It's more costly than filling out the forms yourself, but you might feel that the reassurance of having professional advice is worth it.

Next, you need to have the LPA signed by a ‘certificate provider’ – someone who confirms that you understand what the LPA is and that you haven’t been put under any pressure to sign it. This must either be someone you’ve known well for at least two years or a professional such as a doctor, social worker or solicitor. Certain people aren’t allowed to be your certificate provider – including your partner or any other family members.

You then need to register the LPA with the Office of the Public Guardian. Your LPA cannot be used until registration is complete, which can take several weeks.

Registering an LPA costs £82 – but if you’re on a low annual income (under £12,000), you might be eligible for a 50% discount. If you’re receiving certain benefits you won’t have to pay anything at all.

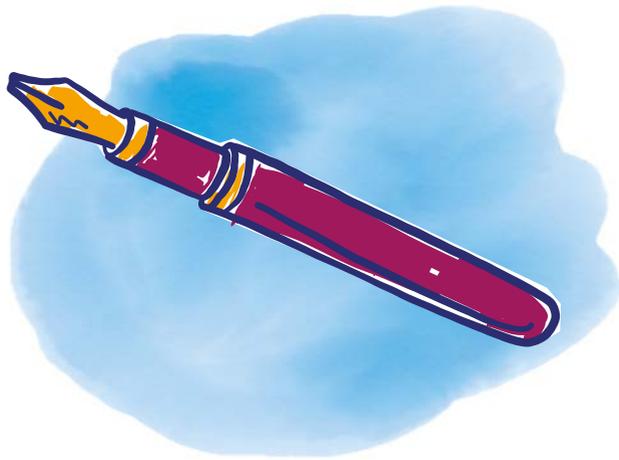
“I was worried about setting up a power of attorney as I don’t really have any close friends or family. But I was able to appoint a professional instead.”

Jean, 93



Next steps

Our factsheet **Arranging for someone to make decisions on your behalf** has more information about LPA discount eligibility.



2. Enduring power of attorney (EPA)

While LPAs are now used instead of EPAs, any EPA you have should still be valid if you set it up before October 2007.

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

Next steps

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



3. Ordinary power of attorney (OPA)

An OPA is only valid while you have mental capacity. It's for financial decisions only – it can't be used for anything else, such as health and care.

When would I use an OPA?

An OPA can be useful if you need someone to look after your finances temporarily – for example, because you're going into hospital or away on holiday. Or it might be that you find it difficult to get to the bank or post office, and having someone to act on your behalf would make things easier for you.

You can limit the power you give to your attorney – for example, you could allow them to deal with your bank account but not your property.

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 – there's no standard form to complete, but rather particular 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 over your affairs – so you need to choose a person (or people) you trust completely.

Who should I choose?

You could choose someone you're close to, such as a family member or friend. Alternatively, you could choose a professional, such as a solicitor. Think about who would make decisions in your best interests (see pages 16-17).

It's important that you give the person you ask to be your attorney time to think properly about whether they're prepared to take on the responsibility.

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

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. It's worth appointing replacement attorneys in case someone you've chosen becomes unable to act on your behalf.

Good to know



While a non-professional attorney, such as a family member, can only claim expenses in their role (for example, travel costs), a professional attorney can also charge for their time. It's important to consider costs carefully before you decide.

How will my attorney make decisions?

All attorneys need to understand and follow certain principles, which are set out in the Mental Capacity Act 2005 and its code of practice.

They must:

- **assume you have mental capacity.** Your attorney must only make decisions on your behalf if it can be shown you don't have mental capacity (see pages 6-7).
- **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 if you're better able to understand or communicate using pictures or sign language, then that should be supported.
- **avoid making assumptions based on 'unwise decisions'.** No one should decide that you lack mental capacity just because you make a decision others might consider unwise or eccentric.
- **make the least restrictive decision.** Your attorney should consider all options and choose the one that restricts your rights and freedoms the least.
- **act in your best interests.** Your attorney must consider a range of factors and reach a balanced conclusion about what decision is the right one for you. For a more detailed explanation of this, see the page opposite.

Your best interests

Your attorney must always make the decision that is in your 'best interests'. This means that they have to:

- do everything possible to enable you to express your preferences
- consider your past and present feelings – especially any wishes you put in an advance statement (see page 21)
- consider any of your beliefs and values that may influence the decision
- talk to other people – such as family, friends or carers – who know about your feelings, beliefs and values, and who might be able to suggest what would be in your best interests
- respect your right to privacy at all times, recognising that it might not always be appropriate to share information about you with people
- be aware of any exceptions where you've already made a decision – for instance, if you've made an advance decision to refuse medical treatment (see page 20).

Your attorney must weigh up these factors in order to reach a balanced decision about what is in your best interests.

Next steps

The Office of the Public Guardian provides guidance on its website about being an attorney: www.gov.uk/government/publications/how-to-be-an-attorney.

Our factsheet **Arranging for someone to make decisions on your behalf** might be helpful, too.

If you're concerned about an attorney or deputy

If you're concerned that your attorney or deputy isn't acting in your best interests – or that someone else's attorney or deputy isn't acting in their best interests – contact the Office of the Public Guardian.

The Office of the Public Guardian is responsible for maintaining a register of attorneys and deputies. It can investigate allegations of mistreatment or fraud, and report concerns to the police or social services, if necessary.

If you have concerns about an appointee for benefits, contact the Department for Work and Pensions (DWP).

If you have any concerns that abuse or neglect is taking place, you should also contact the local council's safeguarding team.

If you're worried that you or someone else is in immediate danger, contact the police. You can also talk to someone confidentially on the Hourglass helpline: **0808 808 8141**.

Next steps



For more information, see our factsheet **Safeguarding older people from abuse and neglect**. Age Cymru has its own version of this factsheet.

Irene's story

Setting up a lasting power of attorney enabled Irene and Jenny to prepare for the future.

Irene, 72, and her partner Jenny have been together for 37 years. When Jenny was diagnosed with vascular dementia, Irene became her full-time carer. While she still had mental capacity, Jenny set up an LPA so that Irene could make financial decisions for her.

Irene says: 'I had so much on my plate when Jenny was first diagnosed, and practicalities weren't top of the list. But my friends encouraged me to get things in order.'



'A friend helped us fill in the forms to set up an LPA for financial decisions. Jenny and I already had our bank accounts in both our names. But we also had money that we wanted to invest so it could be used to pay for her 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 invested our money for us. This means that I can deal with Jenny's share on her behalf.'

'I've been in charge of making financial decisions for two years. I wouldn't do anything without discussing it with Jenny first – but she trusts me to make the best decisions for her. Having an LPA has meant we can prepare properly for the future.'

Communicating your wishes

While you have mental capacity, you can make decisions in advance about your future care, such as the types of medical treatment you want – or don't want.

There are two options: an advance decision (sometimes called a 'living will') or an advance statement.

Advance decisions

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

You need to sign your advance decision. If you want to refuse any life-sustaining treatment – such as being put on a ventilator – your advance decision needs to be signed by a witness, too.

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.

Before making an advance decision, you might find it helpful to talk to your doctor about treatments you might be offered in the future, and what refusing them might mean. The NHS website (page 28) has more information about making advance decisions.

Good to know



If you've made an advance decision and you 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.

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

Andrew, 79



Advance decision vs lasting power of attorney

If you have an advance decision and an 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 statements

An advance statement covers your preferences and values when it comes to future care. For example, it might cover your religious beliefs, what you like to eat, or whether you prefer to have a bath or a shower. It isn't legally binding – but it's a record of your wishes for anyone involved in looking after you.

Next steps

See our factsheet **Advance decisions, advance statements and living wills** for more information.



If you lose mental capacity

If you lose mental capacity and you have an LPA or an EPA set up, then your attorney will be able to make decisions in your best interests. However, if you lose mental capacity and you don't have one set up, things can be complicated.

EPAs and LPAs need to be registered before an attorney can make decisions for someone lacking mental capacity. For more information, see page 10.

Good to know

If you receive benefits and you lose mental capacity, it's possible for the Department for Work and Pensions (DWP) to appoint someone to manage your benefits income, including your State Pension. This person is known as your 'appointee'.

For more information, see the DWP website (page 27).

What if I haven't made a power of attorney?

If there comes a time when you can't make a particular decision because you've 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 mental capacity
- 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.

A deputy is similar to an attorney – it's someone who makes decisions for you if you lack mental capacity. For more information, see the next page.

Someone can apply to the Court to be appointed as your deputy, and the Court will consider 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 they have a duty to act in good faith. They must follow the same principles as an attorney (see pages 16-17), doing everything possible to help you make your own decisions – and ensuring that any decisions they make on your behalf are in your best interests.

There are two types of deputy: for property and financial affairs and for personal welfare. Personal welfare deputies are usually only appointed in rare circumstances, though – 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 carefully whether they want to take on the role – or whether there may be someone more appropriate.

Contact the Office of the Public Guardian (page 28) for more information about becoming a deputy.

You might also find it helpful to read the GOV.UK guide **How to be a property and affairs deputy** online, or our factsheet **Arranging for someone to make decisions on your behalf**.

Good to know



You can’t choose your deputy, and the process of appointing one can be lengthy and expensive. If possible, it’s much better to have an LPA in place (pages 9-12).



What if no one can speak for me?

If you're ever unable to make certain important decisions and there's no one able to speak on your behalf beyond health and care staff – such as a family member or friend – an independent mental capacity advocate (IMCA) must be appointed to support and represent you.

The decisions your IMCA might be involved in could relate to serious medical treatment, a long-term hospital or care home stay, or a care review, for instance. The NHS organisation or local council providing your care are responsible for appointing an IMCA.

Next steps

For information about the role of an IMCA, see our factsheet **Arranging for someone to make decisions on your behalf.**



Keeping you safe in a care home or hospital

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 by yourself, or you may be closely supervised at all times.

The Deprivation of Liberty Safeguards, which form part of the Mental Capacity Act 2005, exist to protect people in care homes or hospitals who lack mental capacity. The aim is to make sure that your freedom or independence is only restricted when necessary to keep you safe or to deliver the care or treatment that is in your best interests. This must be authorised before being agreed.

Next steps

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

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 Advice: **0300 303 44 98**

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

Citizens Advice

National network of centres offering free, confidential and independent advice.

In England, call Adviceline: **0800 144 8848**

In Wales, call Advicelink: **0800 702 2020**

www.citizensadvice.org.uk

Court of Protection

Court responsible for appointing deputies and for making decisions on financial or welfare matters if someone lacks mental capacity and doesn't have an LPA or EPA in place.

Tel: **0300 456 4600**

www.gov.uk/courts-tribunals/court-of-protection

Department for Work and Pensions

Government department responsible for welfare and pensions. Provides information about being an appointee for benefits.

www.gov.uk/government/organisations/department-for-work-pensions

GOV.UK

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

www.gov.uk

Hourglass

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

Tel: **0808 808 8141**

www.wearehourglass.org

Law Society

Representative body for solicitors in England and Wales.

Contact them to find a local solicitor.

Tel: **020 7320 5650**

www.lawsociety.org.uk

NHS

National network of healthcare systems. Website provides information on advance decisions and advance statements.

www.nhs.uk/conditions/end-of-life-care

Office of the Public Guardian

Government organisation to help people in England and Wales stay in control of their health and financial decisions. Provides information about managing an LPA or applying to the Court of Protection.

Tel: **0300 456 0300**

www.gov.uk/government/organisations/office-of-the-public-guardian

Solicitors for the Elderly

Independent national organisation of solicitors who 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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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/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.

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.

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.

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.

What should I do now?

You may want to read some of our relevant information guides and factsheets, 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 are there to help answer any questions.

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** to get started.

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



0800 169 65 65
www.ageuk.org.uk



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