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Lasting Powers of Attorney (LPA)

Making decisions about your health, care and finances

What is a Lasting Power of Attorney (LPA) and why would you need it?

You might be thinking about the future and whether or not you may need someone to make decisions for you or to act on your behalf. No one automatically has the right to determine how your finances are spent or the way in which you are cared for.

Your requirement could be a short-term agreement, perhaps due to a hospital stay that necessitates someone to pay your bills, or a long-term arrangement, for example if you have been diagnosed with dementia or an illness that impacts your mental capacity.

It may be that you simply wish to plan for the future, placing someone you trust, known as your attorney, in control of the important decisions when required.

Your Attorney

You can choose to have more than one attorney, in fact this is recommended to lessen the chance of abuse of power and ensure continuity in the instance that one of your attorneys is unable to act on your behalf. You should also consider selecting replacement attorneys in case your original attorney can no longer act for you.

- + If you have more than one attorney, you must decide whether they are to make decisions together or separately.
- + Your attorney should be someone that is absolutely trustworthy and who you feel confident has the requisite skills to make the right decisions on your behalf.
- + A family member, friend or spouse could all be considered for your attorney, or you may equally want to choose a professional.
- + Attorneys can claim back expenses incurred whilst acting on your behalf, for instance postage or travel costs; however they are unable to claim for time spent carrying out their duties.



Acting in your interests

When acting in your interests, your attorney must give you the practical help and support you need to make your own decisions, before anyone elects that you are unable to do so.

It should not be deemed that you are unable to make the right choices just because you come to a decision others do not agree with.

Your attorney is required to consider all of the available options, arriving at a decision that is the least restrictive of your rights and freedoms.

They should:

- + 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.
- + Take into account your beliefs and values.
- + 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.
- + Respect your right to privacy.
- + Know about any exceptions, such as if you have made an advance decision to refuse medical treatment.

You or your attorney may want to read the Mental Capacity Act Code of Practice, it provides clear guidance on carrying out the role. To download it, [click here](#).

Types of Power of Attorney

There are two distinct Powers of Attorney, known as **Lasting** and **Ordinary**:

1. **Lasting Powers of Attorney** are only valid in England and Wales, and replaced Enduring Powers of Attorney (EPA) in 2007.

If you have already set up an EPA before 1 Oct 2007, it should still be valid.

Your existing EPA will only cover decisions about your property and financial decisions. An LPA for Health & Care decisions could be set up to work along-side the EPA.

An existing EPA does not have to be registered with the Office of the Public Guardian until you are no longer able to make your own decisions; it must then be registered before any further decisions about finances or property can be made on your behalf.

2. **Ordinary Powers of Attorney** enable you to give someone the authority to make decisions about your finances while you still have mental capacity.

This is only valid while you are mentally capable of making your own financial decisions and is helpful if you are going into hospital or on holiday and want someone to take care of your finances for a short period of time.

LPA for Financial decisions

This will enable your attorney to act on your behalf on such things as:

- + Selling your home
- + Paying the mortgage
- + Paying the bills
- + Arranging repairs to your property

It is your decision as to whether your attorney makes all financial decisions on your behalf or if you provide specific instructions as to how they are able to manage your finances.

You are entitled to request details of how your finances are spent and how much money you have, this can also be sent to a professional, or a member of your family. Your attorney must keep accounts and ensure your money is kept separate from their own.

With an LPA for Financial decisions, you can decide when you would like your attorney to start acting on your behalf, either before or after, you lose mental capacity.

LPA for Health & Care decisions

Enables your attorney to make decisions on such things as:

- + Where you live
- + Social activities
- + Medical care
- + Food preferences
- + Those that you have contact with

Importantly, this also allows you to give permission for your attorney to make decisions in regards to life-saving treatments. If you wish to refuse life-saving treatment, this must be put in writing. This document should be signed and dated, noting that the advanced decision should apply even if your life is at risk.

An LPA for Health & Care can only come into force when you no longer have mental capacity. When your attorney starts making decisions on your behalf they must inform your friends, family and relevant healthcare professionals.

Mental capacity is considered to be the ability to make a specific decision at the time it is required to be made, whilst understanding why you need to make it and the likely outcomes.

To find out more about mental capacity, [click here](#).

Advance decision to refuse medical treatment

While you have capacity, you are able to state your preferences when it comes to the types of medical treatments you would want to refuse.

- + You must set out the exact treatments you don't want and the circumstances in which you want to refuse them.
- + Details of your advance decision should be given to your family and medical professionals. In England and Wales an advance decision is legally binding so health professionals treating you must follow it.
- + If you have both an advance decision and an LPA for Health and Care, the most recent document takes precedence.
- + When an advance decision has already been made, prior to the creation of your LPA for Health and Care, a copy of the decision should be sent with your LPA form in order to identify any conflicts.

Advance statement for care

This covers such things as your religious beliefs, what you like to eat and whether you like a bath or a shower. It is not a legally binding document but gives those involved with your future care a clear indication of how you would like to be looked after.

Losing capacity before an LPA is set up

If you lose mental capacity before an LPA is set up, it might be that the Court of Protection becomes involved.

They can then:

- + Ascertain whether someone has the mental capacity to make decisions.
- + Appoint a deputy on behalf of someone who lacks mental capacity.
- + Make an order relating to health and care or property and financial decisions.

Setting up an LPA

- + **M+A Partners** will work with you to understand your current circumstances, why you would like to put an LPA into place and any specific guidance you would like to give to your attorney to meet your future wishes.
- + We will assist you in filling out and submitting the relevant LPA form to the Office of the Public Guardian.
- + Your LPA should be signed by a certificate provider. This confirms that you have understood the implications of the LPA and have not been under any pressure to sign it. The certificate provider can be a professional or a doctor or social worker, but should not be a family member.
- + Prior to it being used, your LPA must be registered with the Office of the Public Guardian. There is a fee of £92 to register each LPA.
- + Your LPA is required to be registered while you have the mental capacity to do so and cannot be used during this process, which takes around 20 weeks.
- + In the instance that you lose mental capacity after the LPA has been signed, your attorney can register it for you.

When is an LPA valid?

With an LPA for Financial decisions, you will have the option to state if you would like your attorney to start using it before or after you lose mental 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.



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Our Vision - to be the firm of choice,
through our team fulfilling their potential
and delivering exceptional client service

For further information regarding Lasting Powers of Attorney (LPA) please contact our experts:



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