

Power of Attorney

A power of attorney is a legal document that allows someone to make decisions for you, or act on your behalf, if you are no longer able to, or if you no longer want to, make your own decisions. There may be a number of reasons why you might need this, for example:

- A temporary situation if a person is in hospital and needs help with everyday tasks such as paying bills
- Longer term plans if, for example, a person has been diagnosed with dementia and may lose the mental capacity to make their own decisions in the future

Mental Capacity

Mental Capacity means the ability to make or communicate specific decisions at the time they need to be made. To have mental capacity you must have all the necessary information, 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. For example, they may be able to decide what to buy for dinner, but be unable to understand and arrange their home insurance. Alternatively, their ability to make decisions may change from day to day.

Needing more time to understand or communicate does not mean a person lacks mental capacity and having dementia does not necessarily mean that someone is unable to make any decisions for themselves. Where someone is having difficulty communicating a decision, an attempt must always be made to overcome those difficulties and help the person decide for themselves.

Find out more at <http://www.gov.uk>

Different types of Power of Attorney

Ordinary Power of Attorney

This covers financial affairs and is valid while a person has mental capacity. It is suitable if cover is needed for a temporary period.

For example:

- When someone is on holiday or in hospital
- The person is finding it more difficult to get out and about to the bank or post office and they may need someone to access their account
- The person may want someone to act for them while at the same time they are able to supervise their actions

The power given to the attorney can be limited, so they can only deal with certain assets, for example a bank account but not the person's home

Lasting Power of Attorney (LPA)

An LPA covers decisions about financial affairs, or health and care. It comes into effect if the person loses mental capacity, or if they no longer want to make decisions personally. An LPA would be set up if someone wants ensure they are covered in the future.

This is a way of giving someone they trust, their attorney, the legal authority to make decisions on their behalf if they lose the mental capacity to do so in the future, or if they no longer want to make decisions themselves.

There are two types of LPA

LPA for financial decisions

AN LPA for financial decisions can be used while a person still has mental capacity or they can state they only want it to come into force if they lose capacity.

An LPA for financial decisions can cover such things as:

- Buying and selling property
- Paying the mortgage
- Investing money
- Paying bills
- Arranging repairs to property

The decisions an attorney can make can be restricted, or they can be given the power to make all decisions on the person's behalf.

An attorney for financial decisions must keep accounts and make sure their money is kept separate from that of the person. The person can ask for regular details of how much is spent and how much money they have. These details can be sent to a solicitor or a family member if the person loses mental capacity. This offers an extra layer of protection.

LPA for health and care decisions

This can only be used once the person has lost mental capacity. An attorney for health and care can generally make decisions about things such as:

- Where the person should live
- Their medical care
- What they should eat
- Who they should have contact with
- What kind of social activities they should take part in

An attorney for health and care can also be given special permission to make decisions about life saving treatment.

Do not assume

If a person is married or in a civil partnership, they may assume the spouse would automatically be able to deal with their bank account and pensions and make decisions about their healthcare, if they lose the ability to do so. This is not the case, without an LPA the spouse or partner will not have the authority.

Setting up an ordinary power of attorney

There is a standard form of wording that must be used for setting up an ordinary power of attorney so it is wise to contact a local Citizens' Advice centre or get advice from a solicitor.

Setting up a lasting power of attorney

The forms and an information pack can be obtained from The Office of the Public Guardian; the forms can be downloaded or completed on line.

It is a good idea to take professional advice or seek the help of a local agency when completing these forms; this can prevent problems at a later date.

The LPA should be signed by a certificate provider; this is someone who confirms the person understands it and has not been put under pressure to sign it. The certificate provider must be someone who knows the person well, or a professional person such as a GP, social worker or solicitor.

The LPA must be registered with the Office of the Public Guardian before it can be used. The LPA must be registered while the person still has mental capacity and it cannot be used during the registration process, which takes about nine weeks.

If the person loses mental capacity but has signed the LPA while they still had mental capacity, their attorney can register it for them.

The fee is £82 so it costs £164 to register both an LPA for property and financial affairs and an LPA for health and welfare. If the person is on a low income they may be eligible for a 50% discount and if they are receiving certain benefits they may not have to pay anything.

Enduring Power of Attorney (EPA)

EPAs were replaced by LPAs in October 2007. However if one has been made and signed before 1 October 2007 it should still be valid. An EPA covers decisions about property, financial affairs and comes into effect if a person loses mental capacity or they want someone to act on their behalf.