

INFORMATION SHEET
**Lasting Power
of Attorney**



A power of attorney is a legal document where a person appoints one or more attorneys who will have authority to make certain decisions on his or her behalf.

Types of Lasting Powers of Attorney (LPAs)

There are two types of LPAs:

- A property and financial affairs LPA, which gives your attorney authority to deal with your property and finances, as you specify, for example immediately the LPA is registered or only if you were to lose capacity to manage your finances yourself.
- A health and welfare LPA, which gives your attorney authority to make health and welfare decisions on your behalf, but only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment.

Your Attorney

As with any power of attorney, it is an important document and you should take care when deciding who you appoint. The selected person should be someone trustworthy who has the appropriate skills to make decisions for you.

If you appoint more than one attorney, you can appoint them to always act together (jointly) or together and independently (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

You may also choose to appoint a replacement attorney, in case the original attorney dies or otherwise cannot act for you.

If you do not have a trusted family member you can appoint (for example because they live abroad), you can choose a professional such as a Member of Mullis & Peake LLP. Because we have over 100 years of experience, a strong track-record, are regulated and fully insured you can be confident that we will only ever make decisions in your best interest. We also have one of the few professional Deputies in the country who is approved by the Court of Protection.

When can the Attorney act?

The attorney will only be able to act when the LPA has been registered, once signed by you and your attorney, and certified by a person that you are fit enough to understand the nature and scope of the LPA and have not been unduly pressured into making the power.

The LPA must then be registered with the Office of Public Guardian before it can be used. The property and financial affairs LPA can be used both when you have capacity to make decisions, as well as if you lack mental capacity to do so. The health and welfare power can only be used if you lack mental capacity to make a welfare or medical decision.

What is an Enduring Powers of Attorney ('EPA')?

Before October 2007, the formal mechanism for appointing an attorney was using an EPA. If you have a validly drawn EPA it can still be used today but only in respect of your property and financial affairs. If you wish to give authority over your health or welfare you will need to make a health and welfare LPA.

What happens if you have not made an LPA?

An LPA can only be made if you have the necessary mental capacity to understand the process. It cannot be made if you do not have capacity and cannot be made retrospectively after you have lost capacity to make decisions for yourself. In respect of your property and financial affairs, in those circumstances it may be necessary for an application to be made to the Court of Protection.

This is where an independent judge will make a decision as to whether someone should be appointed to look after your property and financial affairs after taking into consideration independent medical advice. If an appointment is made, that person will be known as a Deputy. The Deputy will then be able to make decisions on your behalf.

Whilst an application to the Court of Protection for the appointment of a Deputy can be very valuable, it can also be more costly and time consuming than making an LPA in advance.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes, you can give your attorney(s) authority to make decisions on your behalf by making a health and welfare LPA.

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