

How do I make arrangements for others to look after my affairs?

Ordinary (or General) Powers of Attorney

An ordinary Power of Attorney gives someone else the power to handle your financial affairs on your behalf. You can give someone (or more than one person) a general power to do anything which you could do yourself, or you can restrict their power so that they are only allowed to do certain things.

However, an ordinary Power will come to an end if you lose mental capacity to make decisions about your finances.



Lasting Powers of Attorney

Property and affairs LPAs

You can set up an LPA to give others authority to deal with your finances (a property and affairs LPA) at any time from 1st October 2007. The LPA cannot be used until it is registered at the Office of the Public Guardian. This can be done at any time - you can register it yourself so that it can be used immediately, or your attorney(s) can register it if you lose capacity to make your own decisions. Under a property and affairs LPA your attorney(s) can make decisions on your behalf even if you still have mental capacity, as long as the LPA is registered, unless you have stated on your LPA form that you do not want this to happen.

You can appoint more than one attorney under an LPA. You can specify that they must act together on all decisions, or you can give each of them the power to act independently.

You can limit the powers you give your attorney(s), so for example you might not want to give them the power to sell your house. Or you can give the attorney(s) unrestricted authority to make any decisions on your behalf. The types of decisions and actions which could be covered by a property and affairs LPA include:

- buying or selling property;
- paying your mortgage;
- investing your money;
- paying your bills;
- giving people access to your financial information; and
- arranging repairs to your property.

Personal welfare LPAs

Like a property and affairs LPA, a personal welfare LPA can only be used once it has been registered at the Office of the Public Guardian. There is however a big difference in that the personal welfare LPA can only be used if you have lost mental capacity to make that particular decision about your care and treatment yourself. If you are able to, you should make those decisions for yourself. You can register a personal welfare LPA as soon as it is created so that if the time comes when your attorney(s) need to use it, there will not be a delay whilst they register it themselves. This might be important if a treatment decision needs to be made.

You can limit the types of decisions which your attorney(s) can make on your behalf, or you can give a general power without restrictions. The types of decisions and actions which could be covered include:

- where you should live;
- whether or not you should have a certain type of medical treatment;
- what you should eat;
- with whom you should have contact; and
- what kinds of social activities you should be involved in.

Personal welfare LPAs (cont...)

Your attorney(s) can refuse or consent to medical treatment on your behalf as long as you have not restricted their authority to make those decisions. But if a decision has to be made about life-sustaining treatment, the attorney can only refuse that treatment if you have said in the LPA document that you want them to be able to make that kind of decision for you.

How to make a Lasting Power of Attorney?

There are separate forms for making a property and affairs LPA and a personal welfare LPA. When you complete the form(s), you must have your signature witnessed. The form must also be signed by a 'certificate provider', who must confirm that in their opinion you understand the effect of signing the LPA and that you are not being pressured by someone else into doing it. A certificate provider can be a professional such as a doctor or solicitor, or someone who has known you for at least two years.

The form must be registered at the Office of the Public Guardian before it can be used. There is a fee of £150 payable to the Office of the Public Guardian for registering an LPA, so if you are registering both a property and affairs LPA and a personal welfare LPA, you will have to pay a total of £300 to the Office of the Public Guardian. You may be exempt from having to pay the fee if you cannot afford it. Ask the Office of the Public Guardian about the fee remissions scheme.

Who to choose as your attorney?

When deciding whom to choose as your attorney(s) you should make sure that you choose someone whom you can trust to act in your best interests. For a personal welfare LPA, in particular, you should be confident that they know you well enough, and understand your values and beliefs well enough, to be able to make decisions which take into account your wishes. For a property and affairs LPA you should choose someone who is good at handling their own money and who has the knowledge and expertise to be able to deal with your finances and keep your accounts. You should always check with the person whom you wish to appoint that they are willing to take on the responsibility.

Whoever you choose as your attorney(s) they must follow the principles set out in the Mental Capacity Act when they are making decisions or acting on your behalf. So they must always do whatever is in your best interests. Mental capacity can vary over time and someone may be able to make certain decisions but not others, so your attorney(s) must do everything practicable to help you make the decision yourself, rather than assuming that you lack capacity on each occasion.

What is an Enduring Power of Attorney (EPA)?

Enduring Powers of Attorney were replaced by LPAs under the Mental Capacity Act 2005 effective from 1st October 2007 and can no longer be created.

However, EPAs which were created before that date are still valid and can be used.

An EPA can be used whilst you are still able to manage your affairs but once you lose mental capacity to make your own decisions, the attorney(s) must register it at the Office of the Public Guardian (OPG). If it has not been registered, it is not valid if you have lost your mental capacity to make your own financial decisions.

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