



**DementiaUK**

Helping families face dementia

# **Lasting power of attorney**

## **Planning for the future**



## What is lasting power of attorney?

For a person with a diagnosis of dementia, there may come a time when they are unable to make decisions about their care and their finances. This happens when someone is found to no longer have the capacity to make these decisions. We will discuss capacity in more detail throughout this leaflet (please also see Sources of support at the end of this leaflet for the Dementia UK leaflet on Capacity).

A lasting power of attorney (LPA) is a legal document appointing one, or more, trusted people to be a person's attorney(s). An attorney is a person responsible for making decisions on their behalf.

There are two types of LPA. It is possible to draw up one, or both. The same attorney(s) can be appointed for both, or someone different can be appointed for each. They are:

**Health and welfare**, which appoints an attorney to make decisions regarding medical care, future care needs such as

moving into a care home, and life-sustaining treatment. It can only be used once the person can no longer make their own decisions.

**Property and financial affairs**, which appoints an attorney to make decisions regarding managing a bank or building society account, paying bills, collecting benefits or a pension, or buying and selling a house. This can be used immediately if the person making it gives their permission.

An LPA is only valid in England and Wales. People in Northern Ireland can contact the Office of Care and Protection for advice on 0300 200 7812 (or visit [www.nidirect.gov.uk/contacts/contacts-az/office-care-and-protection](http://www.nidirect.gov.uk/contacts/contacts-az/office-care-and-protection)).

People in Scotland can contact the Office of the Public Guardian (Scotland) on 01324 678398 ([www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)).



## What is the difference between an LPA and an enduring power of attorney?

LPAs were introduced by the Mental Capacity Act in 2005. Anyone who made a power of attorney document before this time would have drawn up an enduring power of attorney (EPA) instead. EPAs are still legally valid, but they only cover decisions about finances and property.

## Why would someone need an LPA?

Some people, including people with dementia, will come to a point where they are unable to make decisions about their finances or care anymore. This is called loss of ‘mental capacity’. A person is judged to have lost mental capacity when they can no longer understand the information needed to make the decision, weigh the information up, retain the information for as long as is necessary to make the decision, and communicate their decision

to others. Appointing an attorney in an LPA before the person with dementia loses mental capacity means that important decisions that best reflect their stated wishes can still be made about their care and affairs once capacity is lost.

A health and welfare LPA will only come into effect once the person has lost the mental capacity to make that particular decision. Whether someone has the mental capacity to make a decision is usually decided by a health or social care professional, who is knowledgeable about the Mental Capacity Act and its Code of Practice.

The assessment of whether a person has mental capacity to make a decision only covers that particular decision, at that particular time – for example, receiving medical treatment. This is because mental capacity can be temporarily lost, for example, while unconscious, sedated by medication, delirious through fever or infection etc. (Please see Sources of support for more information on Capacity).

A property and financial affairs LPA will come into effect as soon as it is registered, unless alternative instructions are stated in the LPA.

People in a civil partnership or marriage might assume their partner can deal with their finances and make decisions about their healthcare should they lose the ability to do so, but this is not necessarily the case.

If someone has not drawn up an LPA when they are assessed to have lost capacity, and their partner or friend wants to make decisions on their behalf, they may have to apply to the Court of Protection to be appointed as the person's Deputy. This can be a very long, complex and expensive process, and it is advisable to speak to the Office of the Public Guardian on 0300 456 0300 beforehand. Setting up an LPA in advance is strongly recommended.

You can apply to the Court of Protection to get an urgent or emergency court order in certain circumstances, for example when someone's life or welfare is at risk and a decision has to be made without delay.







You will not get a court order unless the court decides it's a serious matter with an unavoidable time limit. For more information about applying to become a Deputy, or applying for an urgent or emergency court order, see the Government website:

[www.gov.uk/courts-tribunals/court-of-protection](http://www.gov.uk/courts-tribunals/court-of-protection)

Or contact the Court of Protection: 0300 456 4600. There are other alternatives to a health and welfare LPA. These include an Advance Decision (to refuse treatment); a legally binding document stating the person's wishes regarding their future medical care.

## How to set up an LPA

An LPA can only be set up by a person who has mental capacity. This means that they can understand information, weigh it up, retain the information for as long as is necessary to make the decision, and communicate their decision.

The steps are:

### 1. Choose an attorney

An attorney needs to be 18 or over. They could be a relative, a friend, a professional e.g. a solicitor, or a spouse or partner. The applicant should choose someone they trust, who manages their own affairs well, and who is happy to be the attorney.

It is possible to appoint the same person as attorney for both types of LPA. An attorney for an LPA for property and financial affairs cannot be subject to a Debt Relief Order or currently bankrupt.

The person applying for the LPA can have more than one attorney – for example, their children. If so, the attorneys can make decisions together (‘jointly’) or separately (‘severally’), or a combination of

both in different circumstances. If jointly, both attorneys must always act together, agreeing all decisions and both signing documents. If jointly in some matters and severally in others, then the applicant can decide that certain decisions require all attorneys to agree, but in other decisions they can act independently. For example, the applicant might decide that all attorneys must agree to selling property or decisions about medical treatment, but they can decide independently of one another for day-to-day decisions such as diet or dress.

The implications of appointing on a joint or joint and several basis need to be thought through carefully. For example, if one of the attorneys appointed jointly dies, the joint power cannot be exercised by the surviving attorney alone, which may not be what is wanted.

### 2. Fill in the LPA form

A friend or solicitor can help the applicant or fill in the forms for them. The lasting power of attorney form can be filled in

online at [www.gov.uk/power-of-attorney/make-lasting-power](http://www.gov.uk/power-of-attorney/make-lasting-power). The online form has an accompanying guide. The LPA form will still need to be printed out, signed and posted.

The form can be downloaded from [www.gov.uk/power-of-attorney](http://www.gov.uk/power-of-attorney).

Otherwise, copies of the forms can be requested from the Office of the Public Guardian on 0300 456 0300.

The forms need to be signed by:

- the person making the LPA
- the person being nominated as attorney
- witnesses to the signatures of the person making the LPA and the attorney
- a ‘certificate provider’, who confirms the applicant is making the LPA by choice and understands what they are doing. This must be someone they have known for two years or more, or a professional person such as a doctor, social worker or solicitor. This can be the same person who witnesses the applicant’s signature

Witnesses and certificate providers must be 18 or over. The person applying for the LPA cannot act as a witness.

If they wish, the person applying can name up to five people in the LPA who will be notified about it. The applicant will need to fill in another form – Form to Notify (LP3), available from the same places as above – and send copies to those people before they can register the LPA. They can post it or hand it to them. The named people are then given three weeks to register any concerns or objections. This helps to check that the applicant is not being put under pressure to make the LPA. Naming people to be notified is optional and the applicant does not need to fill in this part of the form if they do not want to.

### 3. Register the LPA

The paper form must be signed and sent to the Office of the Public Guardian. The address is on the form. Make sure you include the original LPA form and the fee. It costs £82\* to register each LPA unless you get a reduction or exemption. This means it costs



£164\* to register both a property and financial affairs LPA and a health and welfare LPA [\*as of September 2020].

There are two options for payment. If you choose to pay by credit or debit card, the Office of the Public Guardian will contact you to process the payment. Or you can make a cheque payable to 'Office of the Public Guardian' and write your name on the back. Send it to the Office of the Public Guardian with your forms.

A person with dementia can

register an LPA if they have mental capacity. If mental capacity is lost after the forms are signed but before registering, the attorney can register the LPA. It is advisable to register as soon as the forms are filled in, so that any errors on the form can be picked up and corrected. If errors are discovered after the person is judged to have lost capacity, the LPA cannot be registered.

It usually takes between eight and ten weeks to register an LPA if there are no mistakes in the application.



This includes a four week ‘cooling off’ period when anyone named in the form can change their minds about their involvement. The LPA is not a valid document (ie ‘live’) during this time. Once it is registered, the Office of the Public Guardian will send a Registration Notice to both the applicant and the attorney to let them know.

### Once the LPA is registered

The attorney must follow the Mental Capacity Act when making decisions on behalf of the person with dementia. This means that they:

- must act in the person’s best interests
- must consider the person’s past and present wishes
- cannot take advantage of the person to benefit themselves
- must keep all of the person’s money separate from their own

If an attorney fails to follow these rules, the LPA could be cancelled. The Office of the Public Guardian will investigate if an attorney is

suspected of taking advantage of the person with dementia and if so, the attorney could be prosecuted.

It is possible for health professionals to override the views of the attorney(s) in the case of the Health and Welfare LPA, if they believe the person’s best interests are not being met. In this instance, the attorneys and the person’s friends and family have the right to object to the health professionals’ decisions. If a person with dementia is detained under the Mental Health Act 1983, this will override the authority of the person’s attorney.

Anyone planning to act as an attorney for someone else must read the Mental Capacity Code of Practice, a Government publication explaining the responsibilities of an attorney. The Code of Practice can be accessed at [www.gov.uk/government/publications/mental-capacity-act-code-of-practice](http://www.gov.uk/government/publications/mental-capacity-act-code-of-practice)

## Sources of support

### **Dementia UK resource on Advance Care Planning**

[www.dementiauk.org/advance-care-planning](http://www.dementiauk.org/advance-care-planning)

### **Dementia UK leaflet on Capacity**

[www.dementiauk.org/capacity](http://www.dementiauk.org/capacity)

## **Our Admiral Nurses can help**

If you have any questions or concerns about dementia, you can call the dementia specialist Admiral Nurses on our Helpline for free.

Call **0800 888 6678** or email [helpline@dementiauk.org](mailto:helpline@dementiauk.org)

Opening hours:

Monday-Friday, 9am-9pm

Saturday-Sunday, 9am-5pm

The information in this booklet is written and reviewed by dementia specialist Admiral Nurses.

We are always looking to improve our resources, to provide the most relevant support for families living with dementia. If you have feedback about any of our leaflets, please email [feedback@dementiauk.org](mailto:feedback@dementiauk.org)

We receive no government funding and rely on voluntary donations, including gifts in Wills.

For more information on how to support Dementia UK, please visit [www.dementiauk.org/donate](http://www.dementiauk.org/donate) or call **0300 365 5500**.

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If you're caring for someone with dementia or if you have any other concerns or questions, call or email our Admiral Nurses for specialist support and advice.

Call **0800 888 6678** or email [helpline@dementiauk.org](mailto:helpline@dementiauk.org)

Open Monday – Friday, 9am – 9pm  
Saturday and Sunday, 9am – 5pm



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