

Lasting Power of Attorney

Financial Abuse Briefing Note 3

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) covers decisions about financial affairs or health and care. It comes into effect if mental capacity is lost or if you no longer want to make decisions for yourself. You would set up an LPA if you want to ensure you are covered in the future.

- Age UK

Why would I need an LPA?

A Lasting Power of Attorney (LPA) is a way of giving someone you trust, your attorney, or legal authority to make decisions on your behalf if you lose mental capacity at some time in the future, or if you no longer want to make decisions for yourself.

There are two types of LPA: an LPA for financial decisions and an LPA for health and care decisions.

What is an LPA for financial decisions?

An LPA for financial decisions can be used while you still have mental capacity or you can state that you only want it to come into force if you lose capacity.

A financial LPA covers things such as:

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

You can restrict the types of decisions that your attorney can make, or let them make all decisions on your behalf. If you set up an LPA for financial decisions, your attorney must keep accounts, and make sure their own money is kept separate from yours. You can ask for regular details of how much is spent and how much money you have. You can also request that these details are sent to your solicitor or a family member if you lost mental capacity.

What is an LPA for health and care decisions?

An LPA for health and care decisions can be used while you still have mental capacity, or you can state that you only want it to come into force if you lose capacity.

A health and care LPA covers things such as:

- Medical care;
- New clothes or hairdressing;
- Decorating their home or room in a care home; and
- Paying for extra support so that you can go out more, e.g. to visit friends or relatives, or to go on holiday.

To refuse or consent to treatment, the attorney will need to show the LPA to care staff, sign medical consent forms and to make decisions in your best interests. The attorney cannot always make decisions about your medical treatment in cases where you have a living will or if you have been sectioned.

Who can I choose as my LPA?

The role of attorney involves a great deal of power and responsibility, so it is important that you trust the person or people you choose.

You could choose a family member, friend, your spouse, partner or civil partner. Alternatively, you could choose a professional, such as a solicitor. Think carefully about who you believe would be able to carry out the role, and make decisions in your best interest. Give the person you ask time to think about the role, so they can make sure they are making the right decision about whether to take it on. You can have more than one attorney, but you must decide whether they are to make decisions together or separately. Attorneys must be over 18, and must have the mental capacity to make their own decisions. Your appointee doesn't need to live in the United Kingdom or be a British citizen. You cannot choose an appointee who is subject to a Debt Relief Order (DRO), or who is already bankrupt. More information can be found on the [GOV.UK website](https://www.gov.uk).

How do I set up an LPA?

To apply for an LPA, you can get the forms and an information pack from the [Office of the Public Guardian](#) (OPG) or [download the forms or fill them out online](#) via the www.gov.uk website.

You don't need a lawyer to help you set up and register an LPA, but a local advice agency such as the Citizens Advice Bureau can help you. You can speak to a solicitor if you prefer. Taking professional advice can prevent problems later on.

The LPA must be registered with the Office of the Public Guardian before it can be used. This process can take up to ten weeks. There is a fee to register your LPA, which the Office of the Public Guardian can tell you about. If you are on a low income, you may be eligible for a 50% discount, or if you are receiving certain benefits, you will not have to pay anything at all. LPAs must be registered whilst you have the mental capacity to do so. If you lose mental capacity but you signed the LPA while you still had mental capacity, your attorney can register it for you.

Acting as your attorney – making decisions on your behalf

When someone is acting as your attorney, they have to follow certain principles to ensure you still make your own decisions as much as possible, and that they make the right decisions on your behalf if you cannot. The principles are:

- **A presumption that you have mental capacity:** it must be assumed you are able to make your own decisions, unless it can be established that you cannot.
- **The right to be supported to make a decision:** you must be given as much practical help as possible to make your own decisions before anyone decides you are unable to.
- **The right to make what appears to be unwise decisions:** you should not be treated as unable to make a decision just because you make an unwise decision.
- **Best interests:** any decision made or action taken on your behalf must be made in your best interests.
- **Least restrictive intervention:** anyone making a decision for you should consider all the alternatives and choose the one that is the least restrictive of your rights and freedoms.

What do I do if my attorney is not acting in my best interests?

If you, or someone you are close to, are worried that your attorney or deputy is not making decisions in your best interests, there are ways to make a complaint.

- [NHS Complaints Advocacy Service](#) can offer support via telephone on 0300 330 5454.
- [Healthwatch](#) can provide more information via telephone on 01952 739540.
- [Office of the Public Guardian](#) can be contacted anonymously if you prefer via email at opg.safeguardingunit@publicguardian.gsi.gov.uk or via telephone on 0115 934 2777.

What happens if I don't have an LPA and lose mental capacity?

If you lost mental capacity and do not have an LPA for financial decisions in place, your family or friends will not be able to make decisions on your behalf regarding your finances.

In this situation, the Court of Protection would need to get involved.

Can an LPA end or be cancelled?

You can choose to end your LPA yourself, if you have mental capacity to make that decision. If this is something that you want to do, you need to send the OPG both the original LPA and a written statement called the [Deed of Revocation](#).

Your LPA may also end if your attorney:

- Loses the ability to make decisions – loses mental capacity;
- Divorces you or ends your civil partnership if they're your husband, wife or partner;
- Becomes bankrupt or subject to a DRO if they're a financial affairs attorney;
- Is removed by the Court of Protection; or
- Dies.

If you die, your LPA will end automatically.

Further information can be found on the www.gov.uk website.

What is the Court of Protection?

The Court of Protection can:

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

Someone that wants to make decisions on your behalf can apply to the court to be appointed as deputy, a role similar to that of an attorney. The court will consider whether you will need someone to make ongoing decisions for you, and whether the person applying is suitable for the role. The court usually does everything by post, rather than holding a hearing. You can't personally choose your deputy and the process of appointing one can be lengthy and costly. It is much better to have an LPA in place.

If you or someone you know has been a victim of financial abuse, please contact **West Mercia Police** on **101** (non-emergency) or **999** if a **crime is in progress**.

The **Adult Safeguarding Team** can be contacted for further information and advice via Family Connect on **01952 385385**.