



Reassurance & peace of mind for the future

As we grow older, there could well come a time when we find it more and more difficult to make the decisions we take for granted now.

The ability to make these decisions is called mental capacity. It's something you can lose through an accident, disability or a condition such as dementia.

You may be worried about what would happen if a loss of capacity means you or a relative are suddenly unable to pay the bills, make safe choices about the daily routine or understand what medicines to take.

However healthy we feel today, it's something we should all consider. Waiting until it is too late could burden your loved ones with a costly court process to take control of your affairs. No-one should assume that relatives can just access a bank account even with the best of intentions such as to pay for your care.

The recommended way to prepare for a loss of capacity is to appoint a close friend, relative or trusted professional such as your lawyer or accountant as an 'attorney' who can make decisions for you as and when the time comes.

Moving into a care home can be an emotive occasion and there will be much to think about. Agreeing a 'power of attorney' in advance can help to relieve stress and be a prudent and important step.

You will need to draw up a legal document known as a Lasting Power of Attorney (LPA), something that can be done at any time provided the person making it has capacity.

We hope this guide will help you understand the benefits of an LPA, how to go about making one, who you can appoint as your Attorney and what the various safeguards are.

Why do I need an LPA and what does it cover?

Loss of mental capacity is a concerning issue which is affecting more and more people. By acting early, you choose who will have legal authority to act on your behalf should you become incapable in the future. An LPA brings peace of mind knowing that your affairs will be managed quickly and efficiently by the people of your choice in the way that you want.

An LPA for Property and Financial Affairs allows you to appoint a close friend, relative or someone else you trust to manage your property and finances. An LPA for Health and Welfare operates in a similar way but for personal issues such as choosing where you live, deciding on day-to-day activities and managing medical treatment.

The two types of LPA are separate documents and you can make both, or just one, as you wish.

What happens if I don't have an LPA?

Without a valid LPA, no-one has legal authority to look after your financial affairs or to make personal decisions for you. Even your spouse or children would have no automatic right to 'take over' on your behalf.

In that situation, your family or friends would have to apply to the Court of Protection which is far from ideal because:

- The process is lengthy and means delays just at the time when your affairs most need urgent attention. While the application is in progress, no-one can act for you and so there could be real difficulties in paying your bills or making other personal decisions.
- Applying is expensive, with hefty fees to pay.
- The Court makes the ultimate decision on who acts for you as opposed to you deciding personally when you have made an LPA.
- Your family and friends will find it stressful to have to deal with a Court application at an already difficult time.

How easy is the LPA process?

Making an LPA is relatively easy and can save a huge amount of time, distress and cost in the future. You can only do it while you have the mental capacity to understand and sign the forms. As a result, we believe it's never too early. Everyone should make an LPA sooner rather than later. The process can take two or three months and so it's important to put an LPA in place before there is any urgency to the situation.

It's all about planning for the future. An LPA doesn't mean that your Attorneys will 'take over' your affairs straight away. You carry on dealing with matters and making your own decisions in exactly the same way as before. The LPA is only used if needed in the future.

LPA forms must be completed carefully and legally registered before use. There is a detailed procedure to follow. You don't have to take legal advice but we

strongly recommend that you do. A solicitor who specialises in this area will help ensure everything is correct and legally binding.

Can I appoint more than one Attorney?

Yes, it is possible to appoint two or more Attorneys in your LPA. There are different ways that a multiple appointment can be arranged and we recommend that you seek legal advice on the best option for you.

Who can I appoint as my Attorney or Attorneys?

Generally you can appoint any person who is over 18 and has mental capacity. A person who is bankrupt cannot be appointed as a Property and Financial Affairs Attorney.

It is vital that you choose an Attorney carefully as it is such an important role. You should look for someone trustworthy, who knows you well and who you are confident has the skills to manage your property and financial matters or to make decisions about your health and welfare.

The choice is entirely a personal decision. They could be a family member such as your spouse, partner, civil partner, children or other relative. You may prefer to appoint someone outside of the family such as a close friend or a professional advisor. It is possible to appoint a combination of different people if you wish. You may wish to consider appointing different Attorneys for the financial and personal welfare LPAs, as they require different skills.

Remember to discuss the proposed appointment with your chosen Attorney(s) to ensure that they are happy to take on the role.

What safeguards are in place if I make an LPA?

There are various safeguards:

- When making an LPA, you are obliged to talk it through with an independent person. That person signs a certificate on the LPA form confirming that you understand the effect of the document you are signing and that you have not been put under any undue pressure to make it.
- It's possible to include restrictions on your Attorneys' powers. If you are considering this, it is important to take legal advice on the wording of any proposed restrictions to ensure they are workable.
- Appointing joint Attorneys means more than one person is involved in making a decision. Again it is important to take professional advice on the options available for joint appointments.
- An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. Aside from Attorneys, you can name up to five people to be notified when an application to register is made. They can be family, friends or professionals who will then have the opportunity to raise any queries or concerns with you or the OPG.
- Your Attorneys cannot do whatever they like. They are bound by the terms of the LPA and have strict legal duties and responsibilities under the Mental Capacity Act 2005 and an accompanying Code of Practice. The central concept is that they must always act in your best interests. Your Attorneys owe a duty of care to act in good faith at all times, to give effect to your instructions and not to take advantage of their position or benefit themselves.
- When acting under your LPA, your Attorneys are required to involve you as much as possible in making decisions and to help you make your own decisions wherever possible.

- If you or anyone else believe that your Attorneys are not acting in your best interests, or are misusing your LPA or acting dishonestly, the OPG or Court of Protection will investigate.
- If your Attorneys fail to meet the standards required they could be removed or, in some circumstances, face charges of fraud or negligence.

I have an Enduring Power of Attorney (EPA) - is this sufficient?

If you have an EPA from before October 2007 we recommend that you review it with a solicitor in order to check that it is still valid and reflects your wishes. If not, you could consider making a new LPA to replace it. It is no longer possible to make new EPAs.

You should also bear in mind that EPAs only cover property and financial affairs. You may wish to consider making an LPA for Health and Welfare matters to go along with your existing EPA, so that everything is covered.

For more information on making an LPA, we recommend you speak with your solicitor. Our CEO, Mark Aitchison is also happy to answer any questions. He can be contacted via our Lymington Office on 01590 676 033.