

POWER OF ATTORNEY

Being prepared for the eventuality that one day they may not be able to make their own decisions can give the person you care for peace of mind.

If the person you look after currently makes their own decisions but needs help to manage their affairs they can apply for Power of Attorney for you and/or somebody else.

What is Power of Attorney?

Power of Attorney is a legal document where one person (the donor) gives another person (the attorney) the right to make decisions on their behalf. If a person wants someone to act on their behalf in financial or medical decisions, they will need to give Power of Attorney over their affairs to that person.

A person can only set up a Power of Attorney while they still have the ability to weigh up information and make decisions for themselves, known as 'mental capacity' - so it's worth putting one in place early on.

Ordinary Power of Attorney (PoA)

An Ordinary Power of Attorney gives another person authority to act on an individual's behalf for a limited time period. As soon as they lose mental capacity, the Ordinary Power of Attorney will expire. This means it's not suitable if they need someone to manage affairs after they have lost the ability to do for themselves.

This option is most useful if a person temporarily wants someone to make decisions for them, for example, while recovering from an injury or during an extended overseas trip.

If they choose, the individual can specify a time period for an Ordinary Power of Attorney, or restrict it to specific activities. There is no need to register an Ordinary Power of Attorney with the Office of the Public Guardian.

Changing or ending the Ordinary Power of Attorney

Power of Attorney ends automatically if:

- the donor or attorney dies.
- the attorney is unable to make decisions due to mental capacity.

- the donor or attorney becomes bankrupt.
- a marriage or civil partnership is dissolved or annulled between the donor and the attorney.

If the Power of Attorney is changed due to misconduct, a complaint can be made via the Office of the Public Guardian's safeguarding unit.

Lasting Power of Attorney (LPA)

Lasting Power of Attorney legislation came into force in October 2007. You don't need to be a British citizen, or be living in the UK, to make a Lasting Power of Attorney.

Lasting Power of Attorney is the most common form of Power of Attorney. It is ongoing with no expiry date and allows a person to make decisions on someone else's behalf. This can take effect immediately - meaning the attorney will have the power to act for the other person straight away - or be effective from when they lose mental capacity. An LPA has to be registered with the Office of the Public Guardian.

The Lasting Power of Attorney can be cancelled at any time. However, the donor must inform their attorneys and the Office of the Public Guardian so it can be removed from the register. The donor must have the mental capacity to make that decision at that time.

There are two different types of Lasting Power of Attorney:

1. Health and welfare

Gives the attorney the power to make decisions about medical care, life-sustaining medical treatment, moving in to a care home and decisions about the donor's daily routine.

2. Property and financial affairs

Gives the attorney the power to make decisions about property and money, paying bills, managing a bank or building society account, collecting the donor's pension or benefits and if need be, selling their home.

Changing or ending the Lasting Power of Attorney

A Lasting Power of Attorney can be changed if the donor has the mental capacity to do so. If they wish to appoint a new attorney, changes will need to be submitted through their solicitor or through a 'Partial Deed of Revocation'.

If a person wishes to end a Lasting Power of Attorney, it is necessary to send a 'Deed of Revocation' to the Office of the Public Guardian. A form like this:

<https://www.lawdepot.co.uk/contracts/revocation-of-power-of-attorney/> can be used, however it will need to be witnessed.

A Lasting Power of Attorney can be cancelled by the Court of Protection if an attorney doesn't act in a person's best interests. For example, making excessive 'gifts' to others or themselves.

Choosing an Attorney

An attorney must be 18 years old or over and could be a friend, relative, partner, husband, wife or a professional (for example, a solicitor). The attorney must also have the mental capacity to make their own decisions.

When choosing an attorney, it is a good idea for the donor to think about how well they know them, how well they look after their own finances and if they believe they will make decisions in their best interests.

A donor can appoint more than one attorney, which can be done in two ways:

1. Attorneys appointed to act together (joint attorneys) – this means they must always act together.
2. Attorneys appointed to act together and independently (joint and several attorneys) – this means that the attorneys can act independently.

How to set-up a Lasting Power of Attorney (LPA)

It is recommended that both a property and financial affairs LPA and a health and welfare LPA are set up at the same time.

Online applications for Lasting Power of Attorney can be made on the gov.uk website, [Make a lasting power of attorney](#). For an application pack contact the Office of the Public Guardian on telephone: 0300 456 0300 or by post:

Office of the Public Guardian
PO Box 16185
Birmingham B2 2WH.

It may be possible to get legal aid for issues with personal welfare LPA, but not for property and financial LPAs. [The Law Society](#) can help you find a suitable solicitor, [The Law Society, for public visitors](#). Their telephone number is 020 7242 1222.

Before a Lasting Power of Attorney comes into force, it needs to be registered. It can be registered on the gov.uk website, [Register a lasting power of attorney](#).

Lasting Power of Attorney fees and registration

There is a fee of £82 for submitting an application for each type of Lasting Power of Attorney. Therefore, it costs £164 to register both Health and Welfare and Property and Affairs. Please note that if more than one attorney appointed additional fees are payable.

For amendments, the fee is charged again. However, for repeat applications the fee is reduced to £41.

If the person is earning less than £12,000 per annum they can apply for a reduction. It may be possible to apply for an exemption if they are on benefits such as Income Support.

This form on the gov.uk website has more information about eligibility, [Lasting or enduring power of attorney fee: exemption or remission](#).

The charges will increase if a solicitor is appointed (whose charges may range from £400 to £1000), but this is recommended, in order to ensure that the documents are accurate.

Either the person making the application for Power of Attorney (the donor) or the person that will have Power of Attorney (the attorney) can register it. In case of any objections, there is a 6-week notice period. The original document will be returned to the applicant once the Power of Attorney has been registered. The donor will also be notified by the Office of the Public Guardian when the LPA has been registered.

Enduring Power of Attorney (EPA)

It is no longer possible to make a new EPA, however, EPA's made before October 2007 are still valid. EPA's only deal with financial and property affairs.

For further information on Enduring Power of Attorneys, visit the gov.uk website, [Enduring power of attorney: acting as an attorney](#).

An Attorney's duty of care

Acting as an attorney places you in a position of trust and obliges you to maintain a duty of care to the donor, not to benefit yourself. It's important to avoid any potential conflicts of interest.

You can only do the things the donor has authorised you to do. You can't ask anyone else to carry out any of your duties, unless the donor has authorised you to do so.

You must keep the donor's money and property separate from your own and keep accurate accounts in all of your dealings as an attorney.

Guardianship - when a person is unable to make their own decisions and there is no Power of Attorney

A Guardianship Order is a court appointment that authorises someone to make decisions and take action on behalf of an adult who has lost capacity – whether due to old age, ill health or other unforeseen circumstances. Usually, one or two people will be appointed as guardians, although it can be more.

If the person you look after is unable to make their own decisions and needs help to manage benefits, finances and health/care decisions, you could apply to become their court appointed guardian. A guardian will usually have the same power as an attorney to manage the financial affairs of the person who has lost mental capacity.

You will have to pay an application fee and it can take several months to get the paperwork properly sorted out.

When you apply for a Guardianship which includes welfare powers, a Mental Health Officer at the local authority will be appointed to consider the suitability of the proposed guardian. Two reports from doctors confirming the adult's incapacity are also required, one of which requires to be an approved medical practitioner in terms of the legislation. If financial powers are sought it may also be necessary to obtain a report on your suitability as a financial guardian. The reports require to be dated within 30 days of the application to the court for guardianship.

Further information can be found on the gov.uk website, [Requesting information about a guardianship order](#) or on solicitors' websites, such as [Caritas Legal Limited](#) (*AfFC has no relationship with, and is not recommending, Caritas Legal, this link is for information only*).