



Power of Attorney

January 2023

A Power of Attorney is a legal document that lets you appoint or more people to act on your behalf. This gives you more control if you lose the mental or physical capacity to act for yourself.

There could be several reasons why you might need this. You might need it for a temporary situation, for example if you are in hospital and need help with everyday tasks such as paying bills, or you are on a long holiday and want someone to deal with your affairs while you are away.

Often, people will use a Power of Attorney to make longer-term plans. This can often be to cover long term mental or physical health issues, such as you have been diagnosed with dementia and you may lose the mental capacity to make your own decisions in the future.

What is mental capacity?

Every day we make decisions and our ability to make these decisions is called mental capacity. Some people have difficulty making these decisions.

Contact us



pensions@churchofengland.org



020 7898 1802



PO Box 2026, Pershore, WR10 9BW

This could be because they have:

- A learning disability
- Dementia
- A mental health issue
- A brain injury or a stroke

The Mental Health Capacity Act for England and Wales will affect people and their families, carers, health and social care staff and anyone who has contact with them, in these situations.

The Act covers all sorts of major decisions such as care and medical treatment, financial matters and every day decisions like what to eat and wear.

Needing more time to understand or communicate does not mean you lack mental capacity. Where someone is having difficulty communicating a decision, an attempt should always be made to overcome those difficulties. You can find out more about this at www.gov.uk/make-decisions-for-someone

Types of Power of Attorney

There are different types of Power of Attorney and you can set up more than one.

Ordinary Power of Attorney (OPA)

This covers decisions about your financial affairs and is valid while you have mental capacity. It is suitable if you need cover for a temporary period (hospital stay or holiday) or if you find it hard to get out and about, or you want someone to act for you.

We do not accept instructions under an OPA as the person remains capable of giving instructions – but see the ‘special circumstances’ section.

Key takeaways

Here are the key points to remember:

- **A Power of Attorney is a legal document that allows someone to act on your behalf**
- **There are different types of Power of Attorney, depending on whether you have lost capacity to act for yourself**
- **You should register a Power of Attorney with the Office of Public Guardian**
- **Check carefully what type of Power of Attorney different organisations will accept**
- **You do not need a solicitor to set up a Power of Attorney, but you may feel more comfortable with their advice, especially if you would like advice on Wills at the same time**
- **Choose your Attorney carefully, and review this from time to time, if you can**



Lasting Power of Attorney (LPA)

This covers decisions about your financial affairs, or your health and care. It comes into effect if you lose mental capacity, or if you no longer want to make decisions for yourself. You would set up an LPA if you want to make sure you're covered in the future.

You must register this with the Office of the Public Guardian before using it. An unregistered LPA will not give any legal powers to make decisions. You can register it while you have mental capacity.

As it has no effect until it is registered, we cannot accept an unregistered LPA.

If you lose the ability to deal with your bank account and pensions, and make decisions about your healthcare, your husband, wife or civil partner cannot make decisions for you without an LPA.

Enduring Power of Attorney (EPA)

EPAs were replaced by LPAs in October 2007. However, if you made and signed an EPA before 1 October 2007, it should still be valid. An EPA covers decisions about your property and financial affairs, and it comes into effect if you lose mental capacity, or if you want someone to act on your behalf.

We only accept registered EPAs. We cannot accept an unregistered solicitor's copy.

Set up a Lasting Power of Attorney

You can do this online at

lastingpowerofattorney.service.gov.uk/home

You will need to register the LPA before you can use it, but this costs. You may be exempt from paying the fee if you're on a low income or you receive certain income-related benefits.

Do I need a solicitor?

You do not have to use a solicitor to create an LPA. The application contains guidance to help you fill them out.

If you want to use a solicitor, you'll need to pay them to complete the form for you. Fees for creating an LPA vary, so you might want to contact a few to compare their fees and the service they offer.

Choosing an attorney

The role of your attorney involves a great deal of power and responsibility.

It is a good idea to give the person you ask time to think about the role, to make sure they feel comfortable doing it. Your attorney could be a family member, a friend, your spouse, partner or civil partner. It could also be a professional, such as a solicitor.

It can be a good idea to appoint more than one attorney, known as joint attorneys – but you must decide if they are to make decisions:

- **jointly** – meaning they work together on all matters, or,
- **jointly and severally** – where they may act together or separately, as they choose.

You may want to specify that attorneys must act jointly for specific decisions, such as selling a house, or jointly for all other decisions.

Your attorney can claim back any expenses they incur as part of the role – such as postage, travel costs or photocopying. They can claim these from your money, keeping an account of any expenses and relevant receipts.

However, they cannot claim for time spent carrying out their duties unless they are a professional attorney, such as a solicitor, who will charge fees.

How do I make changes to my Power of Attorney?

If you still have mental capacity, you can make changes to your LPA. All changes made to an existing power of attorney must go through the Office of the Public Guardian. Find out everything you need to know at gov.uk/power-of-attorney/change-your-lasting-power-of-attorney

What if someone has lost mental capacity but has not given Power of Attorney?

When someone has already lost mental capacity, they cannot complete a Power of Attorney. You can apply to the Court of Protection to be a “deputy”. The Order made by the Court will set out the extent of the deputy’s powers which will depend on the person’s needs.

Find out how to become a deputy at gov.uk/government/organisations/office-of-the-public-guardian

Special circumstances

Sometimes people cannot sign a form or letter even though they have mental capacity. For example, a person cannot write due to severe arthritis, or is blind. In these situations, we will accept an instruction from another person if:

- The person signing the form includes the statement “I hereby declare that this document has been signed on the instruction of [name] who retains mental capacity but is unable to sign because [reason why the person is unable to sign]”.
- The document is signed by two people - not relatives - who have witnessed the member giving the instruction.

This leaflet reflects our understanding of current legislation and practice. You should always talk to a financial or legal adviser if you need specific guidance or advice.
