

Enduring Power of Attorney and controllership

When a person with dementia is no longer able to manage their own finances, there are two ways for them to be managed: Enduring Power of Attorney and controllership. This factsheet explains the processes involved in Northern Ireland. Different arrangements apply in England and Wales – for information see factsheet 472, Enduring Power of Attorney and Lasting Powers of Attorney.

You should consider giving somebody Enduring Power of Attorney (EPA) if you have property, savings, investments or any income apart from benefits. This enables you to select one or more people to act for you now (if you wish), and in the future, should you become unable to make decisions for yourself. Your attorney does not have to be a solicitor; you can appoint a relative or a friend. This option gives you the opportunity to have a say about your future, and it will also make it easier for your carers to act on your behalf in the future.

You can set up an EPA as long as you are aware of what is involved and can show that you understand the process.

If you don't have an EPA, a controller (see 'Controllership' below) may have to be appointed to manage your affairs if you become unable to do so. This can be complicated and expensive.

If you have a query or complaint about an EPA or controllership, contact the Office of Care and Protection (OCP) (see 'Other useful organisations').

Enduring Power of Attorney

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal process in which you give the legal right to one or more people, the 'attorneys', to manage your financial affairs and property. This power can come into effect immediately. This means that your attorney(s) can manage part or all of your financial affairs on your behalf, or you can continue to manage them yourself while you are able. Later, if you become unable to deal with your affairs, your attorney(s) can take over.

An EPA has the same status as an Ordinary Power of Attorney. The difference is that an Ordinary Power of Attorney becomes invalid if you become unable to manage your finances. An EPA remains effective, provided the necessary steps are taken to register the EPA with the Office of Care and Protection (OCP).

If you become unable to make decisions yourself, your attorneys must apply to register your EPA with the OCP. While the registration is being processed, they can use your finances on your behalf to pay for essentials, such as food or bills. However, they are not able to arrange larger transactions, such as the sale of your house, until the EPA has been registered.

You can specify that the EPA can only come into effect once you become unable to manage your affairs. However, there are drawbacks to restricting the EPA in this way. For example, even if you are not assessed as being mentally incapable, you are likely to find it increasingly difficult to deal with financial affairs as your dementia progresses.

First steps

If you are considering making an EPA it is advisable to seek independent legal advice from a solicitor. For ways of finding a solicitor, see factsheet NI467, Financial and legal tips.

An EPA must be recorded on a specific form, which is available from a solicitor or a stationer specialising in legal documents. Ensure that an up-to-date form is used and that it is completed correctly, or it will not be valid. Your solicitor can advise you on this. Once the form has been completed, it must be signed by you and witnessed. It must then be signed by the attorney(s) and witnessed. The attorney(s) must sign the form before you become unable to manage your affairs. Attorney(s) may not act as witness(es) for each other's signatures.

If the original document is held by an attorney or lodged with a solicitor or a bank, you should keep a copy for yourself. The solicitor can provide certified copies of the document.

It may help to avoid later misunderstandings if you call a family conference to explain your reasons for making an EPA, so that your family can know of your wishes.

Selecting an attorney

Consider the age and circumstances of any prospective attorney, and whether they will have the time and energy for such a commitment.

Consider whether to appoint one or more attorneys and, if you decide to appoint more than one, decide how they should act. There are two ways in which they could act: 'jointly' or 'jointly and severally'.

If attorneys are appointed 'jointly', they must act together. If one of them dies or resigns, the EPA is no longer valid, as the Enduring Powers of Attorney Order (Northern Ireland) 1987 does not allow for replacements, although it is possible to appoint substitutionary attorneys to act in the event that the original attorney(s) are unable to act.

If the attorneys are appointed to act 'jointly and severally', they can act both together and separately. This means that if an attorney dies or resigns, the surviving attorney(s) can still act.

The attorney's powers

Consider what authority you wish to give your attorney(s). You can give:

- a general authority, which allows an attorney to carry out any transactions on your behalf that you are legally able to delegate
- a limited authority, to deal with certain aspects of your property and affairs, as detailed by you on the EPA form.

Both the general and limited authorities can be qualified by certain conditions or restrictions. You can also appoint different attorneys to have different responsibilities, although it is advisable to keep arrangements as simple as you can. The kind of activities an attorney can carry out on your behalf include:

- signing cheques and withdrawing money from savings accounts
- buying or selling shares or property
- using your assets to finance your residential or nursing care.

The attorney(s) may also have limited powers to use your assets to benefit anyone for whom you might have been expected to make provision. These circumstances might include buying gifts on special occasions (for example for family or friends on their birthdays), or to continue to make donations to charities that you have donated to in the past.

However, an attorney has no power over you. The attorney(s) cannot direct where you live or what medical treatment or care you receive.

The attorney's duties

An attorney is expected to act in the best interests of the person, and to consider the person's needs and wishes as far as possible.

They must not take advantage of your position to gain any benefit for themselves. They must keep your money and property separate from their own and from that of other people. They should also keep accounts of any dealings on your behalf.

Registering the EPA

When the attorney(s) consider that you are lacking in capacity or unable to manage your affairs, they should notify you and certain close relatives of their intention to register the EPA. Notification must be made on an EP1 form. Your solicitor or the OCP can explain which relatives need to be informed.

An application to register must then immediately be made to the OCP on form EP2, accompanied by the original EPA document and the registration fee. Forms EP1 and EP2 are available from legal stationers or free from the OCP.

The current registration fee is £115. However, your attorney can apply for a reduction if paying this fee is likely to cause you hardship. If you are receiving income support, your care home fees are being paid by the health and social services trust, or your house is your only asset, the fee will generally be waived.

The OCP will hold the papers for 35 days from the date that the last EP1 was sent. This gives you and your relatives time to make any objections. If there are no problems, registration will take place.

Once the EPA has been registered, the attorney(s) can make binding decisions about your financial affairs. The OCP can ask attorneys to produce accounts for them to check, although this usually only occurs if there has been a query or complaint about the way the EPA is being handled. There is a charge for checking accounts.

Complaints

Attorneys are expected to act 'reasonably' and in your best interests. The OCP does not monitor the way an attorney acts under the EPA.

However, they will consider any complaints about the way an attorney acts once the EPA has been registered. The OCP will decide whether that person should remain an attorney or whether other arrangements should be made.

Controllership

If you have not made an EPA and you become unable to manage your affairs, it may be necessary to appoint a controller to manage them on your behalf. This is done through the OCP. However, if managing your financial affairs consists simply of managing your income from benefits, it may be done through appointeeship. For more information about appointeeship, see factsheet NI467, Financial and legal tips.

Who can become a controller?

A close relative usually acts as a controller, but it could be a friend or a solicitor. If nobody suitable can be found, the OCP can appoint the official solicitor to act as a controller.

A controller has a considerable number of responsibilities that can be very demanding and time-consuming. Anyone wishing to become a controller should consider whether they will be able to fulfil the obligations. They should read the free booklets produced by the OCP to ensure that they understand what being a controller involves.

First steps

The first step is to get the application forms from the OCP. The OCP can also help with queries about the forms, although it cannot give legal advice. The person filling in the forms can apply to be appointed as controller themselves or ask for someone else to be appointed. The completed forms should be returned to the OCP with the application fee (see 'Fees' below).

If the court is satisfied that this is the right course of action, the OCP will appoint a controller (or make a short procedure order, see below).

Both these arrangements give the person selected the legal authority to manage your financial affairs on your behalf, in accordance with the court's instructions. In either case, the court will set out the exact duties and responsibilities involved.

What can a controller do?

The controller will manage your income to ensure that your day-to-day needs are met and bills are paid. They will also ensure that any property is kept in a good state, your income tax affairs are kept up to date and important documents are in order and kept safely.

The OCP must authorise any use of your capital, such as your home or other property, on your behalf. The controller must liaise with the OCP about any investments, which are usually made by the OCP, and about the sale of property, which must be approved by the OCP.

The controller should be aware of your needs and wishes and consult you as far as possible on how you would like your money to be spent.

A controller has to submit annual accounts to the OCP and take out a security bond to safeguard your assets. They can reclaim the cost from your money.

Short procedure order

In some cases the OCP may decide to make a 'short procedure order', rather than appointing a controller. This is a simpler and more limited arrangement. It usually occurs when your assets do not exceed £21,000 in cash after debts have been paid. It can also occur when there is no property to be sold and you do not have a level of income that the court considers in need of being managed by a controller. A short procedure order may authorise someone to:

- use your pensions and income on your behalf
- use your social security benefits and money held in a bank or building society

- pay care home fees and any other debts and expenses
- make sure any documents and valuables are safely looked after.

Fees

There are a number of fees applicable. The OCP can give details of these.

The OCP charges are:

- commencement fee – personal application: £200
- fee on issue of controllership order: £115
- fee on issue of short procedure order: £75.

An annual fee is due on the anniversary date of the appointment of a controller. This is £350 if the person's funds are managed by the Court Funds Office and £250 if not. No annual fee applies to short order arrangements.

For details of Alzheimer's Society services in your area and information about a wide range of dementia-related topics, visit our website at **alzheimers.org.uk**

Other useful organisations

Age NI 3

Lower Crescent
Belfast BT7 1NR

T 028 9024 5729
E info@ageni.org
W www.ageuk.org.uk/northern-ireland

Provides information and advice for older people in Northern Ireland.

Office of Care and Protection

Room 2.2A, Second Floor
Royal Courts of Justice
Chichester Street
Belfast BT1 3JF

T 028 9072 4733

The Office of Care and Protection is part of the family division of the high court and is the administration office that deals with the registration of EPAs and the appointment of controllers.

The Law Centre

Belfast Office
124 Donegall Street
Belfast BT1 2GY

T 028 9024 4401
028 9023 9938 (textphone)
E admin.belfast@lawcentreni.org
W www.lawcentreni.org

Western Area Office
9 Clarendon Street
Londonerry BT48 7EP

T 028 7126 2433
E admin.derry@lawcentreniwest.org

The Law Centre provides a legal service in specific areas of law to people on low incomes who live or work in Northern Ireland.

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This factsheet has also been reviewed
by people affected by dementia.
A list of sources is available on
request.

Alzheimer's Society National
Dementia Helpline

England, Wales and Northern Ireland:
0300 222 11 22

9am–5pm Monday–Friday
10am–4pm Saturday–Sunday

alzheimers.org.uk

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leading support and research charity
for people with dementia, their
families and carers.

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