A Lasting power of attorney (LPA) is a legal tool that gives another adult the legal authority to make certain decisions for you, if you become unable to make them yourself. The person who is given this authority is known as an ‘attorney’. They can manage your finances, or make decisions relating to your health and welfare. This factsheet explains what an LPA is and why you might consider making one. It also provides practical advice and information about how to appoint an attorney, and what powers you can give them.

The information in this factsheet is for people living in England and Wales, and isn’t intended for those living in Northern Ireland, where the laws governing powers of attorney are different. For information about the laws in Northern Ireland see factsheet NI472, Enduring power of attorney and controllership.

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Lasting power of attorney

Many people with dementia will eventually reach a point where they are no longer able to make decisions for themselves – this is known as lacking ‘mental capacity’. When this happens, someone else – often a carer or family member – will need to make decisions on their behalf.

Advance care planning

After a diagnosis of dementia, lots of people decide to put plans in place for their future. There are a number of ways that you can do this. Collectively, this is known as ‘advance care planning’. It may be difficult at this time to think about the future, but it can also be reassuring to know that you have made your wishes and preferences clear, and have people who will be able to make decisions in your best interests.

Advance care planning allows you to make choices and decisions about your future care, in case there is a time when you can’t make them for yourself. Lasting powers of attorney are just one way to plan ahead. Other ways to plan ahead include advance statements or advance decisions. These allow you to put in writing that you want to refuse certain treatments, or your preferences about other care choices. For more information see factsheet 463, Advance decisions and advance statements, or booklet 1510, Planning ahead.

Other things you might think about are putting your finances in order and making a will, or updating a will you have already made.

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About LPAs

Lasting powers of attorney (LPAs) let you choose a person (or people) you trust to act for you. This person is referred to as your ‘attorney’, and you can choose what decisions they are allowed to make for you.

There are two different types of LPA. One of them covers decisions about your property and finances, and the other covers decisions about your health and welfare. You can choose to make both types or just one. You can appoint the same person to be your attorney for both, or you can have different attorneys.

An LPA can only be used after it has been registered at the Office of the Public Guardian (OPG). The OPG is responsible for the registration of LPAs (for more information see ‘Office of the Public Guardian’ below).

Property and affairs LPA

A property and affairs LPA covers decisions about your finances and property. If there comes a time when you can’t manage your finances anymore, the person you appoint as your attorney will be able do this for you. This can include paying your bills, collecting your income and benefits, or selling your house. However, if you want to, you can limit the decisions they are allowed to make, or place conditions on what they can do.

Once registered, a property and affairs LPA can be used even if you are still able to deal with these things yourself.

Health and welfare LPA

A health and welfare LPA allows the attorney to make decisions on your behalf about your health and welfare, if there comes a time when you are unable to make these decisions for yourself. A health and welfare attorney could make decisions about where you live, for example, or your day-to-day care, including your diet and what you wear.

You can also give your health and welfare attorney the power to accept or refuse life-sustaining treatment on your behalf. You will be asked whether you wish to do this or not on the form, and you will need to state your intention clearly.
It’s important to be aware that this decision can have an effect on any advance decision that you have previously made. If you allow your attorney to make decisions about life-sustaining treatment, this will overrule your advance decision. If you choose not to give your attorney this power to decide on life-sustaining treatment, your advance decision will still stand.

As with a property and affairs LPA, a health and welfare LPA can only be used once it has been registered at the OPG. However, in contrast to the property and affairs LPA, it cannot be used while you still have the mental capacity to make decisions about your own welfare or treatment.

Once a person has lost mental capacity, they will not be able to appoint an LPA. It is a good idea to make an LPA as soon as you feel ready.

**Benefits of making an LPA**

- It can be reassuring to know that, if you are unable to make a decision for yourself in the future, the person you choose will make these decisions for you.

- Making an LPA ensures that the person you want to make decisions for you will be able to do so. This prevents a stranger, or someone you may not trust, from having this power.

- Making an LPA now will make things easier for your family and friends in future. It will be more expensive, difficult and time-consuming for them to get the authority to act on your behalf when you are not able to give it.

- Making an LPA can start discussions with your family or others about what you want to happen in future.
Who can make an LPA

Anyone who is over the age of 18 and has the mental capacity to do so can make an LPA.

Once a person has lost mental capacity, they will not be able to appoint an LPA. If the person’s family or friends then want to be able to make certain decisions on their behalf, they will need to apply for deputyship.

For more about mental capacity see factsheet 460, Mental Capacity Act 2005. For more about deputyship see factsheet 530, Becoming a deputy for a person with dementia.

Who can be an attorney

You can choose anyone you want to be your attorney, as long as they are over 18. For a property and affairs LPA, however, the person you choose cannot be bankrupt.

It’s important to think carefully about who to appoint. Think about who knows you well and who you trust to make these decisions for you, and also whether the person is reliable and has the skills to carry out the role. You can choose to have more than one attorney.

Most people will choose a relative or close friend to be their attorney, especially for a health and welfare LPA. You can also ask a professional however, such as an accountant or solicitor. You might want to think about whether this would be a good option for a property and affairs LPA.

A professional may charge for their time, and you need to name an individual rather than an organisation or company. The person must also be willing and able to carry out the role.

You can also appoint a replacement attorney. This is the person who you would want to make decisions for you if your first choice attorney is no longer able or willing to carry out their role. You might want to think about this, especially if you are only appointing one person to act as your attorney.
How an attorney acts

If you choose to have more than one attorney – for example, your children, if you have more than one – you must decide how your attorneys will act. They can make decisions together (‘jointly’) or act separately (‘severally’), or a combination of both.

- **Jointly** – this means that the attorneys must always act together, and therefore must agree all decisions and both sign documents.
- **Jointly and severally** – attorneys can act together, but can also act on their own.
- **Jointly in respect of some matters and severally in respect of others** – for certain decisions all your attorneys must agree, but for other decisions they can act independently. For example, you might decide all of your attorneys must agree to selling property or decisions about medical treatment, but they can act on their own for day-to-day decisions such as diet or dress.

When making decisions, your attorney must follow the Mental Capacity Act. This means that they:

- must act in your best interests
- must consider your past and present wishes
- cannot take advantage of you to benefit themselves
- must keep all of your money separate from their own.

For more see factsheet 460, *Mental Capacity Act 2005*.

If your attorney fails to follow these rules, the LPA could be cancelled. If your attorney takes advantage of you, the OPG will investigate and the person could be prosecuted. Having an LPA in place can therefore protect you from potential future abuse.
How to make an LPA

To make an LPA you will need to complete a form. There are separate forms for the two different types. You can choose to fill in a paper copy, or fill it out online. Either way, the form needs to be printed, signed and sent to the Office of the Public Guardian. Both include guidance notes which are extremely useful and should be read carefully.

If you don’t have access to the internet, or don’t feel able to complete the forms on a computer, Alzheimer’s Society offers a digital assistance service. Lasting power of attorney form are completed on your behalf by one of our trained volunteers using an online tool created by the government. Call Alzheimer’s Society Dementia Helpline on 0300 222 1122. The service does not offer legal advice.

Signatures required

Once you have completed the LPA form, you will need to get someone to sign it to state that you have the mental capacity to make an LPA. This means:

- you have the ability to make this decision
- you understand what an LPA is, what your options are, and the consequences of making it, and
- you made the decision yourself.

There is a section within the application form for them to sign, and the person who signs this part is called the certificate provider. They can be:

- a professional, such as your doctor, social worker or a solicitor
- someone who has known you for two years, but is independent – that is, they aren’t a family member or an attorney and they will not benefit from the LPA (there is more information about this in the guidance notes).
You also need to get someone to witness you signing the form. Each attorney must also sign the form to say that they agree to act as your attorney if needed in the future, and that they understand the duties this involves.

You will also have the option to list one or more ‘people to notify’ on your form. These are people who you want to be alerted when the LPA is registered, if you don’t plan on registering it right away. This could be anyone you choose, for example a friend or relative. The purpose of this is to give you an additional safeguard. It is only an option, so you don’t have to name someone. However, many people like the protection it can offer, and the reassurance of knowing that people will be kept informed of what is happening.

**Next steps**

When you have completed an LPA form, you will need to register it with the Office of the Public Guardian (OPG) before it can be used. Some people choose to wait to register the form, and there is no set timescale on when it must be registered. However, it can be reassuring to get it registered so that you know it is valid. If there are mistakes on the form, it can’t be registered. If this happens and you only find out later, when you no longer have capacity, you wouldn’t be able to make a new one. It takes an average of 9–12 weeks for the form to be registered, so many people find it helpful to register the LPA straight away so it is ready when it is needed.

There is a fee for registering each LPA, so if you are registering a property and affairs LPA and a health and welfare LPA, you will have to pay twice. The OPG can offer advice about what to do if you are unable to pay the fee.

It can be reassuring to get your LPA registered straight away so that you know it is valid. If there are mistakes on the form, it can’t be registered. If this happens and you only find out later, when you no longer have capacity, you wouldn’t be able to make a new one.
Office of the Public Guardian

The Office of the Public Guardian is a national body that protects people who lack the mental capacity to make decisions for themselves. It is responsible for registering LPAs, maintaining a record of all LPAs, and dealing with objections. There is also a contact centre that will be able to answer any questions you have, such as how to get an application form, or offer you help in completing the form (although they cannot provide legal advice). See ‘Other useful organisations’ below for contact details.

The OPG also deals with any issues or complaints about the way in which an attorney is acting. If they find any serious problems, they may pass the case on to the Court of Protection, who can:

- decide whether a person has capacity to make particular decisions for themselves
- make declarations, decisions or orders on matters affecting people who lack capacity to make these decisions, on either financial or welfare issues
- decide whether an LPA is valid
- remove attorneys who fail to carry out their duties
- listen to cases where someone objects to the registering of an LPA (someone may object if they feel that the person was forced into making it, or that the proposed attorney is not suitable).
Frequently asked questions

I already have an Enduring power of attorney, do I need to make an LPA as well?
Enduring power of attorney (EPA) was the system that was in place before LPAs. You can no longer make an EPA. However, if you made an EPA before October 1 2007 and it was correctly filled in, it is still valid and can still be registered and used.

If you have a valid EPA, you don’t necessarily need to make an LPA. However, EPAs only cover decisions about finances and property (like the property and affairs LPA). They do not cover health and welfare decisions, so some people who have a valid EPA might also want to make a health and welfare LPA to cover decisions about their care or treatment.

If I complete the forms now, does it mean that I will no longer be able to make decisions for myself?
No. The purpose of the form is to allow people to make decisions for you in the future, if you can no longer make them yourself. It does not mean that from the moment you complete the forms your attorney takes over making decisions for you.

If you make a health and welfare LPA, your attorney cannot make decisions unless there comes a point where you cannot make them yourself.

This is different for the property and affairs LPA, which allows you to say whether you want your attorney to be able to act while you still have capacity. If you do, they wouldn’t be taking over from you, as you will also be able to act. It means that your attorney will be able to help you manage your finances.

Do I need a solicitor?
You don’t have to seek legal advice, or use a solicitor, in order to make an LPA. Many people find that they are able to complete the form without legal help.

However, an LPA is a powerful and important legal document, and it can be a good idea to seek advice from a legal adviser with experience of
preparing them. This is likely to cost. You might want to look at the LPA forms and read the guidance notes first, and then see if you feel you need legal advice.

**Someone told me if I only appoint one attorney they wouldn’t be able to sell my house, is this true?**
This would depend upon the circumstances. If someone chooses to appoint their partner as their only attorney, and they owned the house together, then the partner would not be able to sell the house. This is because attorneys cannot make decisions to benefit themselves, and selling the house would not be seen as them acting independently. In this situation it would still possible to sell the house, but it would need to be placed into a trust and then sold. This is something that a solicitor would be able to do.

If someone appoints both their partner and another attorney – for example, a son or daughter – then the two attorneys together would be able to sell the house. Similarly, if only one attorney is appointed, and they don’t own part of the house, then they would also be able to sell the house.

**What happens if I don’t make an LPA?**
If you don’t make an LPA, and later become unable to make certain decisions for yourself, there may be a time when no one can legally make decisions for you. This can make things difficult, such as paying bills or care costs, or making decisions about your future care.

If this happens, someone may need to apply to the Court of Protection to become your deputy. This gives them similar powers to that of an attorney. A relative or friend can apply to be your deputy, or a professional may be appointed. The process of becoming a deputy is a lot more time-consuming and expensive than an LPA. A deputy must also do some things on an ongoing basis, such as paying an annual fee and submitting an annual report, so it is usually easier for someone to be an attorney rather than a deputy.
Other useful organisations

Age UK

England
Tavis House
1–6 Tavistock Square
London WC1H 9NA

0800 169 8787 (general enquiries)
0800 169 2081 (advice line)
www.ageuk.org.uk

Wales
Ty John Pathy
13–14 Neptune Court
Vanguard Way
Cardiff CF24 5PJ

029 2043 1555 (general enquiries)
08000 223 444 (advice line)
www.ageuk.org.uk/cymru/

Provides information and advice for older people in the UK.

Citizens Advice Bureau
Various locations

www.citizensadvice.org.uk

Your local CAB is often the best starting point for financial and legal advice, such as help with benefits or finding legal support. The service is free, confidential and independent. Most CABs have a solicitor and some have an accountant available at certain times to give free initial advice.
Court of Protection
PO Box 70185
First Avenue House
42–49 High Holborn
London WC1A 9JA

0300 456 4600
courtofprotectionenquiries@hmcts.gsi.gov.uk
www.gov.uk/courts-tribunals/court-of-protection

The Court of Protection is a specialist court for all issues relating to people who lack capacity to make specific decisions.

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

0300 456 0300 (customer services, 9am–5pm weekdays)
customerservices@publicguardian.gsi.gov.uk
www.justice.gov.uk/about/opg

Customer services provide free booklets on Lasting power of attorney, Enduring power of attorney and deputyship.

Solicitors for the Elderly
Mill Studio Business Centre
Crane Mead
Ware
Hertfordshire SG12 9PY

0844 5676 173
admin@solicitorsfortheelderly.com

Solicitors for the Elderly is an independent, national organisation of lawyers, such as solicitors, barristers and legal executives, who provide specialist legal advice for older and vulnerable people, their families and carers.
Factsheet 472LP
Reviewed May 2013 by Natalie Melling, Approved Mental Health Professional (Mental Health Act), Independent Social Worker, Best Interests Assessor (Mental Capacity Act); Irene Chenery, Partner, Chenery Maher Solicitors, member of Solicitors for the Elderly
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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 1122
9am–8pm Monday–Wednesday
9am–5pm Thursday–Friday
10am–4pm Saturday–Sunday

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