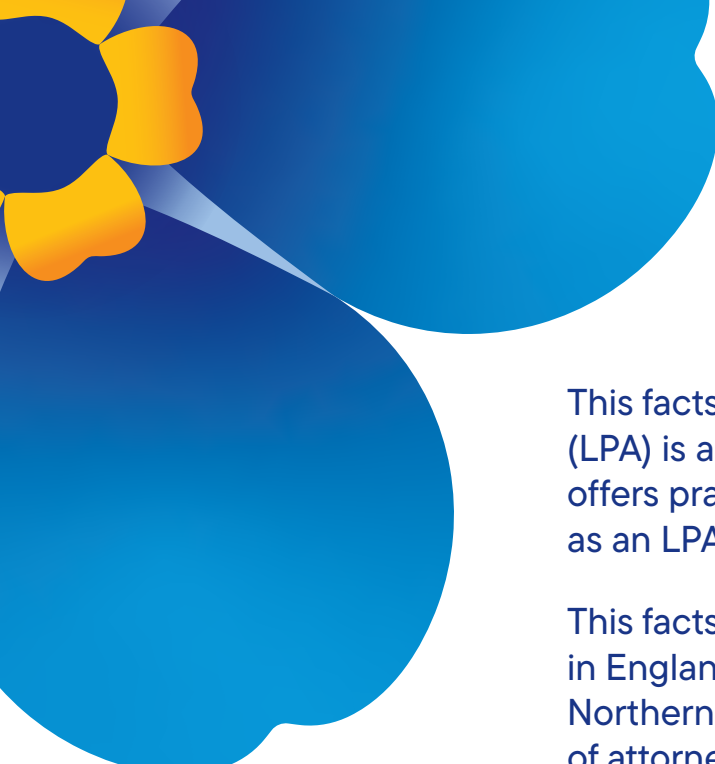


Lasting power of attorney



Together we are help & hope
for everyone living with dementia



This factsheet explains what a Lasting power of attorney (LPA) is and why you might want to make one. It also offers practical advice about how to appoint someone as an LPA and what powers you can give them.

This factsheet is for people living with dementia in England and Wales. It is not for people in Northern Ireland, where the laws about 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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1 Planning ahead

Many people with dementia will reach a point where they can no longer make some decisions for themselves. This is known as lacking 'mental capacity' to make those decisions. When this happens, someone else – often a carer or family member – will need to decide on behalf of the person with dementia.

After a diagnosis of dementia it is a good idea to plan for the future. It may be hard, but it can also be reassuring to know that you have made your wishes and preferences clear. It can also help you to know that you have chosen people you trust to make decisions for you when you need them to. Planning ahead can make things easier for your family and friends as well.

Lasting powers of attorney are not the only way to plan for the future. You can make arrangements, choices and decisions about your property, finances, future care and medical treatment. For example, you can:

- make a will (or update a will you have already made)
- make sure that your finances are in order. This might include getting financial advice (see 'Other useful organisations' on page 15 for some suggestions about how to do this)
- make an advance decision or advance statement. These allow you to refuse certain medical treatments or to express your preferences about your future care and things that are important to you.

For more information see factsheet 463, **Advance decisions and advance statements** and booklet 1510, **Planning ahead**.

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2 What is a Lasting power of attorney?

A lasting power of attorney lets you choose someone (or several people) you trust to make decisions for you. This person is referred to as your 'attorney', and you can choose what decisions they can make for you.

There are two different types of LPA:

- 1 Property and affairs LPA** lets the person you appoint make decisions about your property and finances.
- 2 Health and welfare LPA** lets the person you appoint make decisions about your care and medical treatment.

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.

LPAs must be registered at the Office of the Public Guardian (OPG) before they can be used. The OPG is a government body that is responsible for the registration of LPAs (for more information see 'Office of the Public Guardian (OPG)' on page 14).

You need to be over 18 and have what is called 'mental capacity' to make an LPA. This means that you must be able to understand what an LPA is and what making one means. Dementia is progressive which means that it will become more difficult for you to make plans and decisions over time. It is therefore a good idea to start thinking about making an LPA as soon as you can.

For more information about mental capacity see factsheet 460, **Mental Capacity Act 2005**.

Talking about LPAs with your family or close friends can be a good way to think about what you want for the future. It will also help them to know and understand your wishes and preferences.

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 do this for you. This can include managing your bank accounts, paying your bills, collecting your income and benefits, or selling your house. However, if you want to, you can limit the decisions the attorney can make, or when they can make them.

There are two different options for property and affairs LPAs. You must select one of these on the form. These two options are:

- Your attorney can only make decisions for you when you can't make them for yourself.
- Your attorney can also make decisions that you can make for yourself, if you allow them to. This can be a good way to give yourself extra support.

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What happens if you don't make an LPA?

Although it can be difficult to think about the future, and to plan for life with dementia, it is important. Planning can make things much easier as your condition progresses.

If you don't make an LPA and later become unable to make certain decisions for yourself, there may come a time when no one can legally make those decisions for you. This can make things difficult and very drawn-out, such as paying bills or care costs, or making decisions about your future care.

If this happens, someone may need to apply to become your deputy through the Court of Protection. This gives them similar powers to an attorney. A family member or friend can apply to be your deputy, or a professional may be appointed.

However, the process of becoming a deputy is more time-consuming and expensive than an LPA and the deputy is chosen by the court, not by you. A deputy must also do some other tasks, such as paying an annual fee and submitting an annual report. This means it is usually cheaper and easier for someone to be an attorney, rather than a deputy.

It's also unusual for a deputy to be appointed to deal with decisions about your health and welfare. A deputy is normally only appointed to deal with your property and finances. If you have not made either a health and welfare LPA or an advance decision that applies, health or social care professionals will normally make care and treatment decisions for you – if you are unable to decide for yourself. In this instance, the professionals would make decisions based on what is in your 'best interests'. They would still need to consider your wishes and feelings (including the ones in any advance statement you have made), but it would be these professionals who would make the final decision.

For more about deputyship see factsheet 530, **Deputyship**.

3 The benefits of making a Lasting power of attorney

Lasting powers of attorney (LPAs) can help to make things easier for you and the people you are close to as your dementia progresses. There are many benefits of having an LPA in place, including:

- It can be reassuring to know that, if you are unable to make a decision for yourself in the future, someone you have chosen and trust will make that decision for you.
- With a property and affairs LPA, you can allow your attorney to make decisions even if you can still make them yourself. You don't have to choose this option but it can be a useful way of giving yourself some extra support. It can also help your attorney to get familiar with all your financial and legal arrangements.
- Making an LPA now will make things easier for the people close to you in the future. It will be more expensive, difficult and time-consuming for them to get permission to act on your behalf when you are not able to give your consent.
- Making an LPA can start discussions with your family or others about what you want to happen. This means decisions they have to make in the future will be based on your wishes.

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4 Who can be an attorney?

You can choose anyone you want to be your attorney, as long as they are 18 or over. You can have as many attorneys as you wish, but it is usual to have between one and four. If you have more than one, you can also say how you want them to work together. See 'Having multiple attorneys' on page 8.

For a property and affairs LPA, the person you choose cannot be bankrupt or the subject of a 'debt relief order' (which can be used to help someone deal with their debts if they are in financial difficulty).

Your attorney will have very important decisions to make, and a lot of responsibility to make choices that reflect your wishes. You should choose someone who knows you well, who you trust to make these decisions for you, is reliable and has the skills to carry out the role. Think about how well they manage their own finances or make decisions about their own wellbeing or the wellbeing of others.

Most people choose a family member or a close friend to be their attorney, especially for a health and welfare LPA. This person may not be needed to make decisions until some time in the future. Take this into account when you are thinking about who to ask – someone younger may be appropriate. Talk to the person you want to appoint as your attorney before you make the LPA. You can tell them about your wishes and preferences and you can make sure that they are happy taking on the role.

You can also ask a professional, such as an accountant or solicitor to be your attorney. This is something to think about for a property and affairs LPA if you don't have anyone you feel happy about choosing or if there are conflicts within your family. A professional will charge for their time and these charges can vary. Talk to the professional before you make the LPA to understand the costs and what will be involved.

You can also appoint a replacement attorney. This is a person who you would want to make decisions for you if your first choice of attorney is no longer able or willing to carry out their role. This is a good idea, and can give you extra reassurance, especially if you are only appointing one person to act as your attorney.

5 What an attorney has to do

Anyone you appoint as an attorney has certain duties when they are making decisions for you. They must:

- act in your best interests
- consider your past and present wishes and feelings
- keep you involved in the decisions they make, as far as you can be
- not take advantage of you to benefit themselves
- keep records and keep your money and property separate from their own.

Your attorney must consider whether you have mental capacity to make a decision for yourself before making it for you. They should assume that you have that capacity unless it is shown otherwise. If they don't think you have capacity to make a decision, they should think about whether you could make it at another time in the future. They should also consider if it's possible to delay the decision until you can make it.

Your attorney might need to give you extra support so that you can make the decision yourself, for example by using different types of communication such as pictures. For more information see factsheet 460, **Mental Capacity Act 2005**.

If you want, you can include instructions on the LPA form for your attorney to follow. You can also include preferences that you would like them to take into account when making decisions for you. For example, you might say that you would prefer to live somewhere with access to a garden or that you would prefer to invest in ethical funds. You don't have to do this but some people find it useful.

You can also limit the types of decisions that your attorney can make by writing this on the form. For example, you might say that the attorney can only make decisions about your house. However, it is more usual to give the attorney the general powers that the law allows.

If your attorney doesn't behave as they should, the LPA could be cancelled. If your attorney takes advantage of you or isn't acting in your best interests, this can be reported to the OPG who will look into it. In serious cases, the attorney could also be prosecuted.

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Having multiple attorneys

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, in the following ways:

- **Jointly** – this means that the attorneys must always act together, so they must agree all decisions and all sign documents.
- **Jointly and severally** – attorneys can act together, but can also act on their own.
- **Jointly in some matters and severally in others** – for certain decisions, all your attorneys must agree, but for other decisions they can act independently. For example, you might decide all 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 those about eating and drinking or paying regular bills.

It can be helpful to have more than one attorney so that they can share decision-making and bring different points of view to the role. It can be particularly useful if you own a property with someone who is your attorney. In this situation, if the property needs to be sold, it can become complicated and you should seek legal advice. Having another attorney, who does not have a share in the property, and who can act 'jointly and severally' with the first attorney, can make things easier.

Giving gifts

There are very strict rules about your attorney giving gifts on your behalf. An attorney can only give gifts in limited situations. These are if the gift is:

- to one of your family members, friends or acquaintances (including the attorney themselves) on a 'customary occasion' when gifts are given (such as a birth, a birthday, a wedding or civil partnership, an anniversary or a religious festival)
- to a charity that you donated to before or might have donated to.

In both cases, the gift must be of reasonable value compared with the value of everything else that you own.

Your attorney cannot give a gift on your behalf unless you are unable to make the decision about it yourself.

There are slightly different rules for EPA attorneys. An EPA attorney can only give gifts:

- to a family member or someone who is connected to you (including the attorney themselves). They must be of a seasonal nature (for example, a Christmas present) or given on, or on the anniversary of, a birth, marriage or civil partnership
- to a charity to which you donated or might have donated
- and they must also be of reasonable value compared with the value of everything else you own.

If your attorney is unsure about whether they can give a gift on your behalf, they can speak to the OPG for advice (see 'Other useful organisations' on page 15).

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Expenses

Your attorney will be able to claim expenses from your money, but only for things they need to do to carry out their role as an attorney. For example, they can use your money to cover travel costs for going to the bank to discuss your accounts. They will not be able to claim an allowance from your money for the time they spend carrying out the role (unless they are a professional attorney, such as a solicitor).

6 How to make a Lasting power of attorney

To make a Lasting power of attorney (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 – they are available from **www.gov.uk/lasting-power-of-attorney**

Either way, the form needs to be printed, signed by everybody involved and sent to the OPG. Both forms include guidance notes, which are very useful – you should read these carefully. You can get the forms and the guidance notes from the OPG (see ‘Other useful organisations’ on page 15 for their details).

You don’t have to get legal advice, or use a solicitor, to make an LPA. Many people find that they can complete the form without legal help.

However, an LPA is a powerful and important legal document. This means it can be a good idea to speak with a legal adviser who has experience of preparing LPAs. This is likely to cost money. 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.

If you don’t have access to the internet, or don’t feel able to complete the forms online. We offer a digital assistance service. LPA forms are completed on your behalf by one of our trained volunteers using an online tool created by OPG. Call our support line on 0333 150 3456. The service does not offer legal advice.

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Signatures required

Once you have completed the LPA form, you will need to sign it. Someone will also need to witness you signing it. There is guidance on the form about who can be a witness.

You then need someone to sign it to confirm that:

- they have discussed the LPA with you and you understand what you are doing
- you are not being forced to make the LPA. There is a section on 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, OR
 - someone who has known you personally for at least two years, but is independent. This means they cannot be a family member or an attorney or someone who could benefit from the LPA (there is more information about this in the guidance notes that go with the LPA forms). For example, you might ask a friend, neighbour or colleague.

Each attorney (and any replacement 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. Their signatures also need to be witnessed.

Next steps

When you have completed an LPA form, you will need to register it with the OPG before it can be used. Some people choose to wait to register the form, and there is no set timescale for 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 the capacity to make an LPA, you can't make a new one.

It takes an average of eight to ten weeks for the form to be registered, so many people find it helpful to register the LPA straight away, so that it's ready if 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. If you are on certain benefits or a low income, you may be able to pay less or not at all. The OPG can offer advice about this.

When you fill out the LPA form, you will have the option to list one or more 'people to notify'. These are people who you want to be alerted when the LPA is registered. This could be anyone you choose, for example a friend or family member. You don't have to do this but many people like the protection it can offer, and the reassurance of knowing that people will be kept informed of what is happening.

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7 Office of the Public Guardian (OPG)

The Office of the Public Guardian (OPG) is set up to protect people in England and Wales who lack the mental capacity to make certain decisions for themselves. It is responsible for registering Lasting powers of attorney (LPAs) and Enduring powers of attorney (EPAs). It keeps a record of all of them, and deals with objections to the appointment of attorneys. There is also a contact centre that can help answer any questions you have – for example, how to get an application form for an LPA, or get help with completing the form. It can also help with queries from attorneys about their role. However, they cannot provide legal advice. See ‘Other useful organisations’ on page 15 for contact details.

The OPG also deals with any issues or complaints about the way 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 with dementia has capacity to make particular decisions for themselves
- make decisions on either financial or health and welfare issues, where someone does not have capacity to decide for themselves
- decide whether an LPA or EPA is valid
- remove attorneys who don't carry out their duties
- listen to cases where someone objects to the registering of an LPA or EPA (someone may object, for example, if they feel that the person was forced into making an LPA or EPA, or that the proposed attorney is not suitable).

The OPG has a dedicated team for safeguarding (protecting people). They deal with cases of suspected abuse of a person who has made an LPA or EPA, and other concerns about how attorneys are acting. The OPG's safeguarding team also works with other organisations, such as local authorities, the NHS and the police. They have a phone number you can call to report any concerns. For contact details see ‘Other useful organisations’ on page 15.

Other useful organisations

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Age UK

0800 678 1602 (advice line, 8am–7pm every day)
www.ageuk.org.uk

Wales – Age Cymru

0300 303 44 98 (advice line, 9am–4pm Monday–Friday)
advice@agecymru.org.uk
www.ageuk.org.uk/cymru/

Northern Ireland – Age NI

0808 808 7575 (advice line, 9am–5pm Monday–Friday)
advice@ageni.org
www.ageuk.org.uk/northern-ireland

Age UK, Age Cymru and Age NI provide information and advice for older people in the UK.

Association of Lifetime Lawyers

020 8234 6186
www.sfe.legal

Association of Lifetime Lawyers is a national organisation of lawyers, such as solicitors, barristers and legal executives, who provide legal advice for older people, their families and carers.

Citizens Advice

0800 144 8848 (for England, 9am–5pm Monday–Friday)
0800 702 2020 (for Wales)
www.citizensadvice.org.uk

Your local Citizens Advice is a good starting point for advice about a range of issues, such as help with benefits, debt or finding legal support. The service is free, confidential and independent.

Court of Protection

0300 456 4600
courtofprotectionenquiries@justice.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.

MoneyHelper

www.moneyhelper.org.uk

MoneyHelper is a free service provided by the Money and Pensions Service, which is funded by the government. It can give you information about a range of financial issues and can help you find a financial adviser if you need one.

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Office of the Public Guardian (OPG)
0300 456 0300 (9am–5pm Monday, Tuesday, Thursday, Friday, 10am–5pm Wednesday)
customerservices@publicguardian.gov.uk
www.gov.uk/government/organisations/office-of-the-public-guardian

Safeguarding unit
0115 934 2777 (9.30am–5pm Monday, Tuesday, Thursday, Friday, 10am–5pm Wednesday)
opg.safeguardingunit@publicguardian.gov.uk

The OPG provides information on Lasting power of attorney, Enduring power of attorney and deputyship. The safeguarding unit works to protect people who have LPAs or EPAs. They deal with cases of suspected abuse, and concerns about attorneys.

Society of Later Life Advisers (SOLLA)
0333 2020 454
admin@societyoflaterlifeadvisers.co.uk
www.societyoflaterlifeadvisers.co.uk

SOLLA can provide information on accredited financial advisers who specialise in later life matters.



Factsheet 472

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This factsheet has also been reviewed by people affected by dementia.

To give feedback on this factsheet, or for a list of sources, please email publications@alzheimers.org.uk

This publication contains information and general advice. It should not be used as a substitute for personalised advice from a qualified professional.

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We are reviewing this publication. If you would like to give us any feedback, you can email us at publications@alzheimers.org.uk or call us at 020 7423 7455

At Alzheimer's Society we're working towards a world where dementia no longer devastates lives. We do this by giving help to everyone who needs it today, and hope for everyone in the future.

We have more information on **Practical arrangements after diagnosis**.

For advice and support on this, or any other aspect of dementia, call us on **0333 150 3456** or visit **alzheimers.org.uk**

Thanks to your donations, we're able to be a vital source of support and a powerful force for change for everyone living with dementia. Help us do even more, call **0330 333 0804** or visit **alzheimers.org.uk/donate**



Patient Information Forum



**Alzheimer's
Society**

Together we are help & hope
for everyone living with dementia

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0330 333 0804

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