

Powers of Attorney

What is a power of attorney?

A power of attorney is a way of managing someone else's affairs for them. This can include:

- looking after their bank accounts.
- buying and selling their property
- claiming and spending their welfare benefits
- deciding where they live
- making decisions about their day-to-day personal care or healthcare.

Power of attorney

When someone makes a **power of attorney**, they appoint someone else to act on their behalf. The person making the power of attorney is called a **donor** and the person appointed to act on their behalf is called an **attorney**.

Remember - A **power of attorney** just gives you the legal authority to deal with third parties such as banks or the local council. Don't let being called an 'attorney' worry you.

There are only two types of power of attorney. These are:

- **Ordinary** power of attorney
- **Lasting** power of attorney

There also used to be something called an 'Enduring power of attorney' - These were no longer issued after October 2007, so don't worry about it.

General rules about power of attorney

Who can make a power of attorney?

The person making a power of attorney is called a donor. In order to make a power of attorney, that person must be capable of making decisions for yourself. This is called having **mental capacity**, and we'll cover this later.

Who can be an attorney?

The person appointed to act on behalf of the donor is called an **attorney**. Anyone can be an attorney, as long as:

- they are capable of making decisions
- they are 18 or over.

Remember - if an attorney becomes bankrupt, power of attorney may be taken away.

Can there be more than one attorney

A donor can appoint more than one attorney. This can work in one of two ways:

- Attorneys appointed to act together (also known as **joint** attorneys) – this means they must always act together. The advantage of this arrangement is that it makes it harder for an attorney to commit fraud or do something against the interests of the donor. The disadvantage is that the whole power of attorney comes to an end if one attorney dies or becomes mentally incapable.
- Attorneys appointed to act together and independently (also known as **joint and several** attorneys) When attorneys are appointed in this way, it means that the signature or action of one attorney is as valid as if they were the only attorney. It also means that the power of attorney will continue in force if anything happens to one of the attorneys.

Responsibilities of an attorney

You must keep separate up-to-date accounts of the donor's financial affairs. When you are acting on the donor's behalf and have to sign any documents, you should sign your usual signature and add, beneath the signature, the words Attorney for [insert donor's name here].

If you're acting under a lasting power of attorney, there are rules about how to make a decision for a donor who has lost their mental capacity which you must follow. You can find guidance on the Age UK website at www.ageuk.org.uk.

When does someone lack mental capacity?

If someone can make a decision for themselves, they can be said to have the mental capacity to make that decision.

There are guidelines to help you work out whether someone has the mental capacity to make a decision. Someone is unable to make a decision if they can't:

- understand the information needed to help them make the decision
- remember that information
- use or weigh the information to help them make the decision
- communicate their decision in any way.

Who can make decisions when someone loses mental capacity and there's no power of attorney?

Once the person has lost their mental capacity, it's no longer possible to make a power of attorney. Instead, it's possible to apply to the Court of Protection for a decision to be made on a particular matter. However, if there is a continuing need to make decisions on the person's behalf, you can ask the Court of Protection to appoint you as a deputy. A deputy was previously known as a receiver.

If you are appointed as a deputy, you are entitled to have reasonable expenses paid, and may also be paid to carry out your duties.

You will have to be able to show the Office of the Public Guardian that you're acting in the best interests of the person who has lost their mental capacity. The Court can cancel your appointment if it decides that your appointment is no longer in the best interests of that person.

There is information about becoming a deputy on the GOV.UK website at www.gov.uk.

If necessary, you can apply to the Court of Protection for an emergency order, which can be made in as little as 24 hours. You might need to do this if an

urgent decision needed to be made to protect someone's health or safety. It is also possible to apply for an interim order, for example, if urgent action was needed to pay someone's care home fees.

Further information

The [Office of the Public Guardian](#) is responsible for:

- registering lasting power of attorneys
- appointing and supervising deputies
- making sure an attorney or deputy is carrying out their duties properly
- dealing with complaints and objections about attorneys and deputies.

The [Directgov](#) website has:

- information about making decisions for someone who lacks mental capacity
- detailed guidelines to help you work out whether someone lacks mental capacity

The [Ministry of Justice](#) website has:

- a complete list of all application forms and guidance notes for lasting powers of attorney and enduring powers of attorney.

The contact details of the Office of the Public Guardian are:-

The Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH
Tel: 0300 456 0300
E-mail: customerservices@publicguardian.gsi.gov.uk
Website: www.justice.gov.uk

Ordinary power of attorney

If you want someone to look after your financial affairs for a long period of time, you can give them an ordinary power of attorney (POA).

Remember – it does not give them the right to make health and care decisions for you.

You might want to give someone an ordinary power of attorney if you have a physical illness or injury. However, you should not use an ordinary power of attorney if you think you may develop mental incapacity: if that happens the ordinary POA will no longer be valid and a lasting POA is needed.

How to grant an ordinary power of attorney

There is a standard form of words to use if you want to grant an ordinary power of attorney. If you want to grant an ordinary power of attorney, you should contact a solicitor or a Citizens Advice adviser.

Remember - You do not have to give someone power of attorney to deal with **all** your financial affairs. If you only want them to deal with certain matters (like selling property) you can give them a limited power of attorney. This applies to both ordinary and lasting powers of attorney.

Lasting power of attorney

If you want someone to look after your affairs for a long period of time, you can give them a lasting power of attorney. A lasting POA is different from an ordinary power of attorney because:

- you can make an LPA which looks after your health and care decisions, as well as one to look after your property and financial affairs
- an LPA must be registered before it can be used
- an LPA is intended for use by people who are at risk of losing their mental capacity.

Types of lasting power of attorney

There are two types of LPA:

- A property and financial affairs LPA
- A health and welfare LPA.

Depending on your personal situation, you could decide to make:

- Only a property and financial affairs LPA
- Only a health and welfare LPA
- Both of them.

You don't have to make both types of LPA at the same time.

Property and financial affairs lasting power of attorney

A property and financial affairs LPA can give someone the authority to deal with and make decisions about things like:

- buying or selling property
- bank, building society and other financial accounts
- welfare benefits or tax credits
- debts

Remember – this can be limited to only cover certain things.

A property and financial affairs LPA must be registered before it can be used. However, a property and financial affairs LPA will come into effect as soon as it is

registered, so the attorney will be able to start making decisions about your property and financial affairs straight away - even if you are still capable of making your own decisions – unless you clearly say you don't want this.

Health and welfare lasting power of attorney

An LPA about health and welfare can give someone authority to deal with and make decisions about things like:

- where you live
- your day-to-day care, including what you wear and what you eat
- your healthcare treatment
- what contact, if any, you should have with certain other people

Remember – this can be limited to only cover certain things.

The LPA must be registered before it can be used, and can't be used until you have lost mental capacity.

Make a lasting power of attorney

There are three ways you can make an LPA. You can:

- make a lasting power of attorney online
- download the forms - you'll need to fill them in, then print them off and sign them
- get the forms posted to you

There is one form for a property and affairs LPA and a different form for a health and welfare LPA. If you want someone to look after your financial affairs and your health and welfare, you will need to make two **separate** LPAs and fill in both forms.

Register a lasting power of attorney

Once you've filled in these forms, it needs to be registered – by you or the attorney - with the Office of the Public Guardian.

To register the LPA, you should fill out form [LPA2](https://www.gov.uk/government/collections/lasting-power-of-attorney-forms) at <https://www.gov.uk/government/collections/lasting-power-of-attorney-forms>. Send this to the Office of the Public Guardian along with your LPA form and the

registration fee. If you make both types of LPA, you will need to pay two lots of fees.

If the LPA has been correctly completed, the Public Guardian must register it after three weeks, and then notify the donor and any attorneys that has been done.

End a lasting power of attorney

There are a number of ways for an LPA to an end. These include:

- the person who made the LPA (the donor) can cancel it if they still have mental capacity.
- the attorney can say they no longer want to be an attorney - they need to fill in a form to do this.
- the donor may pass away
- the donor or attorney becomes bankrupt.