

THE MENTAL CAPACITY ACT AND LASTING POWER OF ATTORNEY/COURT APPOINTED DEPUTIES.

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that can be made by anyone over the age of 18, who has mental capacity. It allows them to specify who should make decisions on their behalf if they lose capacity to make those decisions in the future.

What kind of decisions are covered by a LPA?

There are two types of LPA relating to the following types of decision:-

- Health and Welfare
- Property and Finance

A Health and Welfare LPA, relates to decisions about someone's health and welfare, such as where they should live, the care they receive or decisions about medical treatment.

A Property and Finance LPA, relates to decisions about the management of a person's finances and or property. It can be decisions about managing someone's bank account, savings, paying bills or buying or selling a home or other property. An attorney under a LPA for health and welfare does not have the power to make decisions about property and finances. An attorney under a LPA for property and finance does not have the power to make decisions about health and welfare. However, sometimes a

person may make LPA for both health and welfare and property and finance with the same person or people specified as attorneys.

Who can make a LPA?

Anyone over the age of 18 can make a LPA for themselves, provided they have the mental capacity to do so. If they do not have the mental capacity to do so they cannot make a LPA, and no-one else can make a LPA on their behalf.

Who can be an attorney under a LPA?

Anyone over the age of 18 can be an Attorney under an LPA, however they must have been chosen by the person making the LPA to undertake the role and this must be specified in the LPA forms.

A person making a LPA can choose to have more than one attorney and can decide if these attorneys have to make decisions jointly, or if they can make decisions separately.

How can I make a LPA?

You can make an LPA by completing forms which can be completed online or in paper format. These forms and guidance, can be accessed on the Government website for The Office of The Public Guardian. As part of the process of completing these forms someone has to verify that you have the mental capacity to make an LPA and that you are not being forced to make it. You will also

need the forms witnessed and the agreement of those you have chosen to be attorneys, to undertake the role.

Alternatively, you can pay a solicitor to complete the process on your behalf.

Once the forms have been completed you need to register them with the Office of the Public Guardian. **Until they have been registered, they are not legally valid.** There is a fee for registering the documents, but these may be waived if you are on a very low income and in receipt of certain benefits. Further information on how to register can be found on the Office of The Public Guardian website.

When does a LPA come into force?

For a property and finance LPA the person can request that their attorney start acting on their behalf whilst they still have capacity. For example, a person who is not physically able to go to a bank, can ask the attorney to do so on their behalf. Whilst they still have capacity, they can still make their own decisions about their property and finances and the attorney will only act according to their instructions. However, if they lose capacity to make decisions about their property or finances the attorney will make the decision on their behalf.

For a health and welfare LPA, these only become active when the person loses capacity to make decisions about their health and welfare.

If a person regains mental capacity after a period of lacking capacity, the LPA will become inactive, as the person is able to make decisions for themselves.

A person can revoke an LPA at any time if they have the mental capacity to do so.

What happens if someone does not have an LPA in place, but they have lost capacity to make decisions for themselves?

If a person has lost capacity to make an LPA, then they cannot make an LPA and no one can make one on their behalf. However, if there are significant decisions that need to be made then a person over the age of 18 or an organisation such as a Local Authority can make an application to the Court of Protection to request that they appoint a Deputy. The decisions that the Deputy can make for the person, will be outlined in the court order. A copy of this order will then be sent to the Office of The Public Guardian .

Deputyship orders can be for specified health and welfare decisions or specified property and finance decisions.

What are the responsibilities of an Attorney or Deputy?

Any Attorney under an LPA or any court appointed deputy, **Must** act in the best interest of the person and **Must** follow the Best Interest process that is outlined in section 4 of the Mental Capacity Act

2005. That includes involving the person in any decisions as much as possible and informing them of any decisions they have made.

Any attorney or deputy in relation to the management of property and finances, must keep accounts of any money spent on behalf of the person and be able to show why any expenditure, investment or sale of property, is in the person's best interest

What can I do if I have concerns about an attorney or deputy?

If you are concerned that an attorney or deputy is not acting in a person's best interest you can approach the Office of The Public Guardian with your concerns. They will then undertake an investigation into the actions of the attorney or deputy.

If they decide that the concerns are valid, they can then approach the Court of Protection to ask that the LPA or Deputyship is revoked or suspended.

If you have concerns that a person is experiencing some form of abuse at the hands of an attorney or deputy, you can raise your concerns directly with your Local Authority safeguarding Adults team or discuss it with any health or care practitioner involved with the person's care.

Useful Information:-

The following are links to websites which provide information related to the Mental Capacity Act, LPAs and adult safeguarding:-

[Office of the Public Guardian - GOV.UK](https://www.gov.uk/government/organisations/office-of-the-public-guardian)

<https://www.gov.uk/government/organisations/office-of-the-public-guardian>.

[Mental Capacity Act 2005](https://www.legislation.gov.uk/ukpga/2005/9/contents)

<https://www.legislation.gov.uk/ukpga/2005/9/contents>

[Mental Capacity Act Code of Practice - GOV.UK](https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice)

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Adult social care contact details for safeguarding concerns:-

Tel: 01452 426868 Email: socialcare.enq@gloucestershire.gov.uk