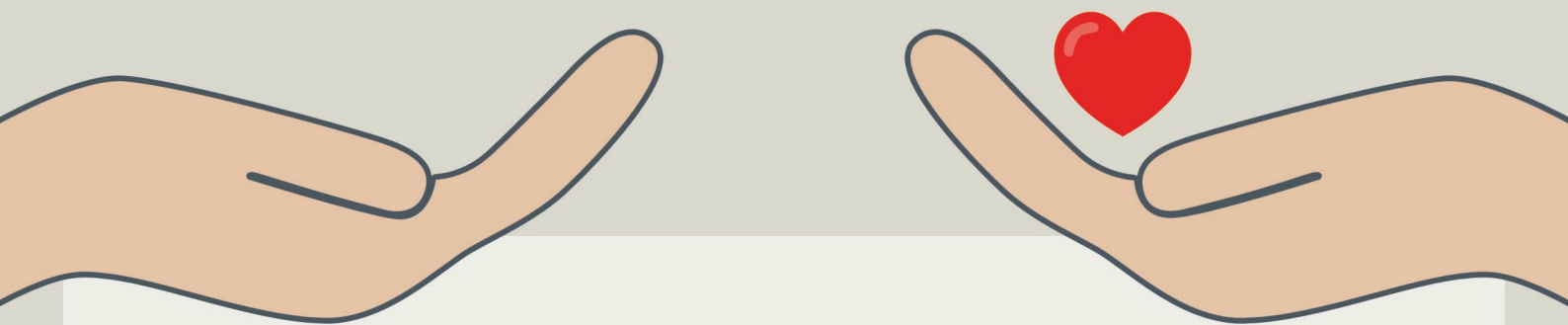


# LASTING POWERS *of* ATTORNEY

## Fact Sheet



### **What is the Lasting Power of Attorney?**

A Lasting Power of Attorney (LPA) is a legal document that allows you to choose someone to make decisions for you should the time ever come when you no longer have the mental capacity to do so.

The person creating the LPA is usually referred to as the "Donor". The Donor chooses someone they know and trust to act on their behalf, whom is then referred to as the Attorney.

# Enduring Power of Attorney

**An Enduring Power of Attorney (EPA) is the older form of Powers of Attorney.**



Donors could create the EPA document when they had mental capacity, but Attorneys were only able to register the EPA once the Donor was no longer able to make their own decisions.



LPAs were introduced in October 2007 under the Mental Capacity Act 2005, which replaced EPAs. Any EPAs made prior to 2007 are still valid, but it is no longer possible to create new ones.



If I have an Enduring Power of Attorney, should I also make an LPA?



EPAs only extended to Property and Financial Affairs, so Donors were unable to authorise Attorneys to deal with matters relating to Health and Welfare.



People who have previously set up EPAs and would like to extend their Power of Attorney to cover Health and Welfare need to create an LPA for Health and Welfare.

## What does mental capacity mean?

**The Mental Capacity Act 2005 contains guidelines for assessing a person's mental capacity and outlines how Attorneys can make decisions on behalf of the Donor when they are unable to do so themselves.**

People can have fluctuating capacity and can lose mental capacity permanently or temporarily. Determining whether or not a person is capable of making their own decisions is something that has to be assessed on an individual basis.



**Mental Capacity Act 2005**

**The MCA says**

"A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of the impairment of, or a disturbance in the functioning of, the mind or brain."

**A lack of mental capacity can be caused by the following:**



Dementia



A learning disability



A mental health problem



A stroke or brain injury



Substance or alcohol misuse



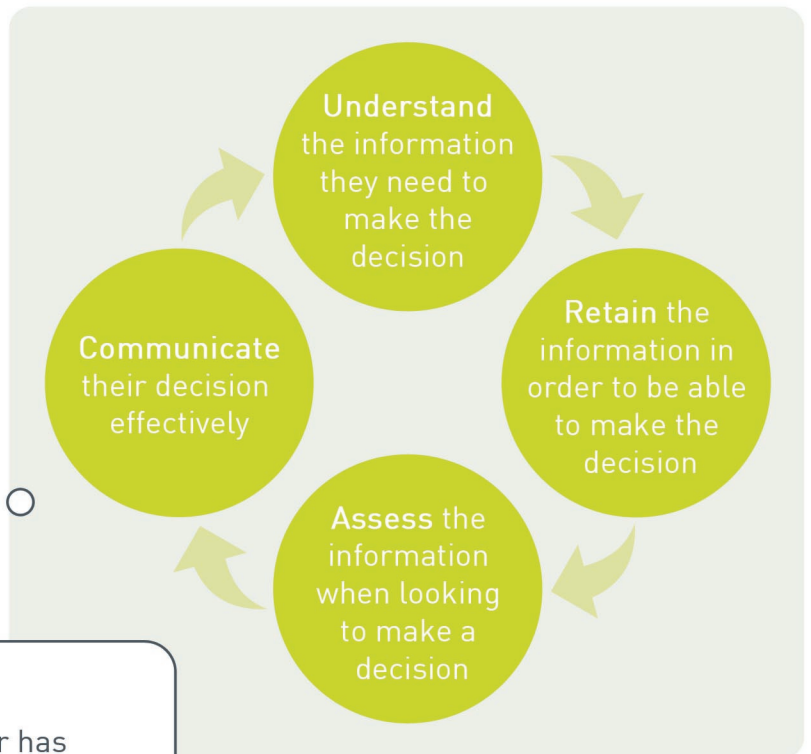
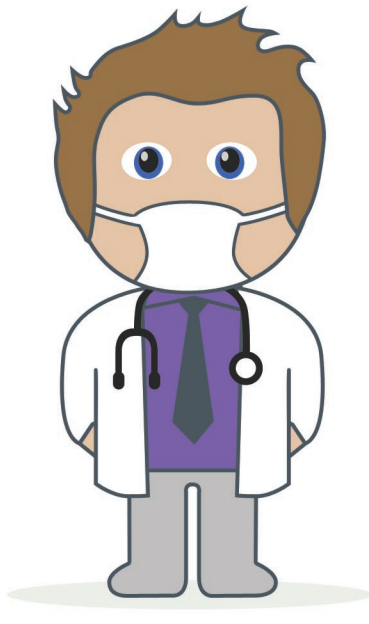
Confusion or unconsciousness from an illness or subsequent treatment



Losing capacity as a result of a severe accident

## How is mental capacity assessed?

A health or social care professional can determine whether someone can make decisions by seeing if they are able to do one or more of the following:



Attorneys and any professionals involved should presume that the Donor has capacity and empower them to make their own decisions for as long as possible. If it is found that the person does lack mental capacity, the Attorneys then have the authority to act under the LPA (or existing EPA). The MCA 2005 states that Attorneys must always make decisions that are in the Donor's best interests.

By 2015, the number of people with dementia is expected to rise from

800,000

to

1.7 million

potentially increasing the number of people who lose their mental capacity



## Step-by-step guide to setting up LPAs

There are specific forms that the Donor needs to complete, which provide information about themselves and their Attorneys.

### Step 1

#### Choosing Attorneys and Certificate Providers

**When an LPA is being put in place, the following people must be present:**



At least one person to act as the Attorney



At least one Certificate Provider



At least one person to be told, or a second Certificate Provider



At least one witness



**The Donor**

The Donor must have mental capacity when they create the LPA. If the Donor does lose mental capacity after creating the LPA then the Attorney can make decisions for all aspects of the Donor's life, including paying bills, choosing a nursing home, paying nursing home fees and deciding on medical treatments. Therefore, it is crucial that a trustworthy and reliable Attorney is chosen.

#### **The Attorney**

**A person can have more than one Attorney.**

It is usually advisable to have at least two to act together, or one Attorney and one replacement Attorney, in case something happens to someone. However, having too many Attorneys is typically not recommended as it can be impractical for making decisions. Attorneys should also be over the age of 18 and have mental capacity themselves.

The LPA documents must provide details about the Attorneys. If the Donor goes on to lose mental capacity then the Attorneys will become responsible for making important decisions for them.

The Mental Capacity Act 2005 sets out the key principles Attorneys must have regard for when acting on behalf of the Donor. They should always have their best interests in mind and take into account the Donor's circumstances, consulting them and others interested in their welfare where necessary.

As the Attorney will be making decisions about the Donor's finances, property, health and welfare, it is important that they know the Donor well and trust any other Attorney(s) involved.



**Certificate Provider**

A Certificate Provider is someone chosen by the Donor to sign the LPA and confirm that the Donor understands its purpose and how it works. They also verify that the Donor is not under any undue pressure to create an LPA and that there is no reason why one shouldn't be set up. The Certificate Provider must be a close personal friend of the Donor or a professional, such as a solicitor or GP.

## Step 2

### Seeking specialist legal advice

Q.

Do I need a solicitor?



A.

LPAs are powerful and important legal documents, so it is recommended that prospective Donors receive advice and support from highly experienced solicitors to ensure that the forms are completed and registered correctly. A legal specialist can also set out the Donor's wishes so that their future care plans are fully understood and acted upon if mental capacity is lost.

#### Deciding on LPAs

There are two different types of LPAs, which a legal specialist will be able to explain and advise upon during a consultation. These are:

Health and Welfare LPAs

Property and Financial Affairs LPAs

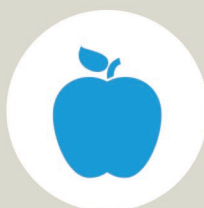
The Donor can choose to have one or both types in place.

#### Lasting Power of Attorney for health and welfare

This LPA allows the Donor to appoint someone to make decisions about their health and personal welfare, which would cover the following areas:



Medical treatment and care



Diet and nutrition



Living arrangements



Day-to-day issues

As an example, a health and welfare Attorney can decide whether it would be in a Donor's best interests to move them into a residential care home or accept help from social services.



This LPA is particularly important if the Donor requires someone to step in and make important decisions as they do not have any family or their family lives far away.

### **Lasting Power of Attorney for property and financial affairs**

This LPA gives the Attorney responsibility for dealing with financial affairs, such as:



Paying bills



Collecting benefits



Dealing with the bank



Organising the sale of a house

LPAs for Property and Financial Affairs can be used by the Attorney when the Donor is still deemed to have mental capacity; this can be practical if the Donor is elderly and unable to visit the bank or deal with a house sale, for example. However, an Attorney can only act under the Donor's express instructions in this circumstance.



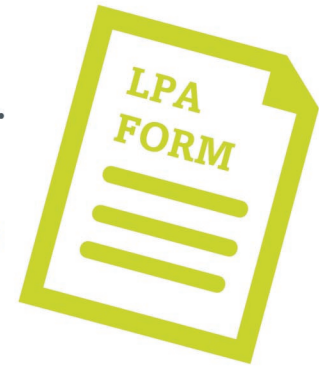
If the Donor does lose mental capacity then the Attorney can step in straight away to prevent there being any difficulties or delays in meeting the Donor's immediate care needs.



### Step 3

### Setting up LPAs

**A Donor needs to set up LPAs using an LPA form.**



#### **Safeguarding Procedures:**

Giving someone the ability to make decisions on another person's behalf is a serious matter.

Therefore, it is important that safeguarding procedures are in place from the start so that everything is done correctly.

There are certain requirements that both a Donor and prospective Attorney must have fulfilled so that the arrangement works and issues are prevented from occurring further down the line.

- **A Donor must register with The Office of Public Guardian before an LPA can be used.**
- **A suitable professional or personal friend must act as a Certificate Provider and sign the LPA to confirm that the Donor understands the significance and purpose of the LPA.**
- **If there is only one Certificate Provider, at least one other person must be notified. This individual should raise any concerns or objections about the LPA being registered, for example, if they feel the Donor is being unduly influenced or pressured.**
- **The signatures must be witnessed.**
- **Attorneys must act in the Donor's best interests and follow the Code of Practice of the Mental Capacity Act 2005. If they do not, the OPG can step in and the Attorney will be held accountable.**



## Step 5

### Using the LPAs

Once Lasting Powers of Attorney are registered, they are ready to use as soon as the Donor loses mental capacity. If the Attorney needs to use the LPA within a bank or building society, proof of the LPA is then expected for security reasons.

Q.

If I set up a LPA, will I still be able to make my own decisions now?

A.

Yes. Your Attorney will only be able to start making decisions on your behalf if there comes a point where you are unable to make these choices for yourself. It is possible for the Attorney to use the LPA for Property and Financial Affairs even if you still have mental capacity, but you will still need to give clear instructions to them.

Q.

If I have an Enduring Power of Attorney, should I also make an LPA?

LPA?

A.

EPAs only extended to Property and Financial Affairs, so Donors were unable to authorise Attorneys to deal with matters relating to Health and Welfare.



**50%** of people who deal with another's affairs without an LPA find the process extremely frustrating as well as time-consuming.



Without an LPA loved ones can find dealing with another person's affairs frustratingly difficult and costly.



If a person becomes unable to make decisions and there is no LPA in place then no one can access their bank accounts, make payments on their behalf or make arrangements to meet the Donor's care needs.

### **Is there an alternative to an LPA?**



Office of the  
Public Guardian

If someone loses capacity and has not set up an LPA, the other option available is expensive and can cause delays.

A suitable person must apply to the Court to become a "Deputy". The Court process can take at least six months and it is more costly than creating LPAs. The Deputy, who will usually be a family member, friend or professional, can then make choices about the person's property, finances, health or welfare. There are more onerous safeguarding procedures for the Deputy to comply with and they must report to the Office of the Public Guardian each year.

### **Sources:**

<http://www.money-marketuk.com/Consumer/3908-lasting-power-of-attorney-is-crucial.html>  
[http://www.justice.gov.uk/downloads/publications/research-and-analysis/opg/OPG\\_LPA\\_Ipsos-MORI\\_Nov\\_13.pdf](http://www.justice.gov.uk/downloads/publications/research-and-analysis/opg/OPG_LPA_Ipsos-MORI_Nov_13.pdf)

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