

Lasting Power of Attorney



Plan in case you lose the ability to manage your own affairs.

- What is a Lasting Power of Attorney?
- Why should you make a Lasting Power of Attorney?
- How do you make a Lasting Power of Attorney?
- How much does it cost?



Introduction

A Lasting Power of Attorney (LPA) gives someone **you trust** the ability to act on your behalf, should you be unable to act yourself.

There are two types of Lasting Power of Attorney – one for **financial decisions** (including property) and the other for **health and care decisions**. Both types must be registered before they are valid. This guide explains why everyone aged 18 or older should have both types of Lasting Power of Attorney, and how you can go about making them.

If you have any questions or would like to book a free appointment for advice without obligation, just us on **01792 420844** or email info@swansealegalsolutions.co.uk. Our offices are in Swansea.

Contents

| | |
|---|----|
| 1. “What exactly is a Lasting Power of Attorney?” | 3 |
| 2. “Why do I need a Lasting Power of Attorney?” | 4 |
| 3. “What does it mean to have ‘mental capacity’?” | 5 |
| 4. “Who should I choose to be my attorney?” | 7 |
| 5. “But I’m not ill!” | 8 |
| 6. “I’ve been diagnosed with dementia – can I still make an LPA?” | 9 |
| 7. “What happens if I don’t have a Lasting Power of Attorney?” | 9 |
| 8. “Can my executors make decisions for me if I lose mental capacity?” | 10 |
| 9. “My bank says I should just set up a third party mandate...” | 10 |
| 10. “I have an Enduring Power of Attorney (EPA) – do I need a Lasting Power of Attorney?” | 11 |
| 11. “What’s an Ordinary Power of Attorney?” | 12 |
| 12. “How do I make a Lasting Power of Attorney?” | 13 |
| 13. “How much does it cost to make a Lasting Power of Attorney?” | 14 |

1. “What exactly is a Lasting Power of Attorney?”



You can choose to use your Financial Decisions Lasting Power of Attorney any time you need help managing your finances, even though you haven't lost mental capacity.

There are **two types** of Lasting Power of Attorney and it is advisable to have both.

The **Financial Decisions** Lasting Power of Attorney can be used by your attorney (s) for decisions such as:

- Paying household, care and other bills.
- Claiming, receiving and using benefits, pensions and allowances.
- Making or selling investments.
- Buying or selling your home.

This type of Lasting Power of Attorney is a very convenient document that can be used, once registered, if:

- You lose mental capacity because of illness or injury.
- You are away from home and want someone to handle a problem for you.
- You are in hospital and want someone else to manage your affairs.

In fact, this document can be used *any* time after it has been registered, with your permission (even though you have not lost mental capacity).

The **Health and Care** Lasting Power of Attorney can be used by your attorney (s) for decisions such as:

- The type of medical care you receive.
- Whether you stay in your home or move into residential care.
- What you eat from day to day.
-
- Your daily routine – dressing, hairdressing, manicure, pedicure, going out etc.

This document can only be used (once registered) if you have lost mental capacity.

“ Ask yourself who you would trust to make these types of decisions if you could not make them yourself.

Typically an attorney is– a close family relative, such as your spouse, a partner or a grown-up child who you trust. But without a Lasting Power of Attorney, this person will have no power to make those decisions for you on a day to day basis.

2. “Why do I need a Lasting Power of Attorney?”

Accident, illness, injury or suffer from a mental disorder.

Also we associate losing mental capacity with old age but in fact, this can affect **anybody** at **any point** during their life. For example, did you know:

- One in four strokes in the UK happen in people under the age of 65 ([Stroke Association](#))
- 1 in 3 people over 65 will develop dementia
- There are currently 850,000 living with dementia in the UK
- According to the Alzheimer’s society 225,000 with develop dementia this year
- There are 340,000 people in the UK diagnosed with cancer every year
- Accidents can affect anybody at any time, rendering them unable to manage their own affairs.

There are many health conditions that can result in loss of mental capacity. Often, by the time you receive a diagnosis, it is then too late to make a Lasting Power of Attorney. It therefore makes perfect sense to organise this document while you are still in good health mentally.

“LESS THAN 1% OF THE UK ADULT POPULATION HAS AN LPA”

*Many people assume that if they lose mental capacity, their partner or ‘next of kin’ will automatically be able to take over handling their finances and make decisions for them, but this is not the case. Sometimes the bank will even **freeze joint accounts** and **refuse to allow access to funds** when one party becomes incapacitated – even if the funds are needed to pay for their care.*

Everyone aged 18 or over should have both types of Lasting Power of Attorney in place. Rather than leave the choice of who will be making decisions for you to chance, you can make a Lasting Power of Attorney now and **decide for yourself** who you’d like to be in charge of your affairs.

3. “What does it mean to have ‘mental capacity’?”



“ ‘Mental capacity’ is about being able to make your own decisions.
You won’t be able to make an LPA if you lose mental capacity.

You’ll hear the term ‘mental capacity’ a lot when you’re reading about Lasting Powers of Attorney. Most of us make decisions daily about every aspect of our lives.

Being able to make these decisions is called mental capacity.

Illness, injury or various conditions prevent us from making decisions, or mean that we cannot make all of the decisions ourselves. For example, learning disabilities, brain injuries, dementia or a stroke can all impact our ability to make decisions.

However, some people get confused with the term ‘mental capacity’, thinking that it refers to mental illness. Having a mental health condition does not necessarily mean that a person lacks capacity. Just because they are suffering from depression, schizophrenia or bipolar, for example, does not prevent them from making decisions for themselves.

The law actually defines under what circumstances someone lacks mental capacity. The Mental Capacity Act 2005 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 an impairment of, or a disturbance in the functioning of, the mind or brain.

The Act further explains that a person is unable to make decisions for themselves if they cannot:

- understand the information relevant to the decision,
- retain that information,
- use or weigh that information as part of the process of making the decision, or
- communicate their decision (whether by talking, using sign language or any other means).

When you make a Lasting Power of Attorney, you must have mental capacity. A ‘Certificate Provider’ will sign to certify that you are capable of making the choice. Often, this will be a professional that you are preparing the document with – but it can also be someone you’ve known for two years or someone with relevant professional skills such as a social worker or doctor.

4. “Who should I choose to be my attorney?”



You could choose your spouse, grown up children, brothers or sisters to be your attorneys.



Almost anyone aged 18 or over can be your attorney including your partner, your grown-up children, other family members, close friends or a professional. There are a few restrictions on who you can choose, which your advisor will discuss with you.



Questions? Call us on 01792 420844
or email info@swansealegalsolutions.co.uk

The application forms have space for four attorneys but you can have as many as you choose. However, consider that the more people you have, the more difficult it will be for them to reach an agreement!

You can decide whether your attorneys will have to make decisions together, or whether they can make decisions individually. Assuming you are choosing people you trust, allowing them to making decisions individually should not be a problem. If they have to make every decision collectively, this can cause considerable difficulties – especially if you have an even number of attorneys who simply cannot agree!

It's also wise to name replacement attorneys in case your choice of attorneys are unable to act. If you appoint two or more attorneys and specify that they must make decisions jointly, then fail to nominate a replacement attorney, the Lasting Power of Attorney will no longer be valid if one of them becomes unable or unwilling to act.

This is a good example of why it is important to use an experienced professional to prepare your Lasting Power of Attorney. There are many potential pitfalls that are not obvious from simply reading the form and although they do not always prevent the document from being registered, they can render the document invalid in the future.

5. "But I'm not ill!"

Younger people often assume that Lasting Powers of Attorney are for the ill or elderly, but this is a common mistake. It's crucial to understand that **you can't set up a Lasting Power of Attorney once you lose mental capacity**. So, for example, if you were in an accident tomorrow and lost mental capacity, nobody would be able to manage your affairs without a Deputyship Order – not even your partner or grown-up children.

Once completed, Lasting Powers of Attorney can take a substantial amount of time to register – 10 to 12 weeks is typical. Until they are registered, they cannot be used. If there are any mistakes or queries regarding your application and you lose mental capacity before these have been resolved, in many cases the document will then be of no use. So it's wise to start the process as soon as possible.

6. “I’ve been diagnosed with dementia – can I still make an LPA?”

You can make an LPA provided that you have **mental capacity**. A diagnosis of dementia does not automatically mean you have lost mental capacity.

To make an LPA, you don’t need to be able to understand every decision that is presented to you. You might be, for example, struggling to manage your finances or to remember to pay bills. That’s fine – as long as you understand what you are signing when it comes to making the LPA, and the implications.

Unfortunately, with dementia, you won’t know how quickly or slowly you will lose mental capacity. It’s therefore vital to make the LPA as soon as possible after having the diagnosis. You should also ensure your Will is completely up to date at the same time.

7. “What happens if I don’t have a Lasting Power of Attorney?”



Applying for a Deputyship Order is a long, complex and expensive process.

If you do lose mental capacity and you don’t have a Lasting Power of Attorney, someone will have to apply to the [Court of Protection](#) for a “Deputyship Order”. **The person who applies may not be the person you would have chosen yourself.**

Once an order is granted, that person (who is called a ‘Deputy’) can make decisions for you, which might include:

- Paying bills and expenses on your behalf.
- Deciding how your day is organised.



- Deciding how and where you receive care.
- Deciding if your home will be sold.

Applying for a Deputyship Order is a long, complex and often intrusive process. It is also expensive. There are application fees, assessment fees, legal fees and potentially hearing fees – plus an on-going annual supervision fee.

The best advice is, don't let it get to this stage. Making a Lasting Power of Attorney is a much **simpler, cheaper** and **quicker** way to elect somebody you trust to manage your affairs should you be unable to do so yourself.

8. "Can my executors make decisions for me if I lose mental capacity?"

People often assume that because they have made a Will, their executors will be able to make decisions for them if they lose mental capacity. Unfortunately **this is not the case**. A Will is concerned only with what happens *after* you die. A Lasting Power of Attorney is concerned only with what happens *while you are alive*. The two documents are not connected at all.

You can of course appoint the same people you have chosen to be your executors as your attorneys but you do need to make a Lasting Power of Attorney to do this.

9. "My bank says I should just set up a third party mandate..."

If you have early symptoms that could be dementia, sometimes banks or organisations will recommend you simply make a third party mandate. This is a formal instruction from you to your bank which tells them that you'd like another party to carry out everyday banking transactions on your behalf. They won't be able to open and close the account. The problem with this mandate is that **it can only be used while you have mental capacity**. Once you lose mental capacity, it is no longer valid – *and you won't be able to make a*



Lasting Power of Attorney at that stage either. It therefore makes more sense to make a Lasting Power of Attorney for financial decisions while you have mental capacity – this can be used both while you have mental capacity (with your permission) and after you lose mental capacity.

10. “I have an Enduring Power of Attorney (EPA) – do I need a Lasting Power of Attorney?”

Lasting Powers of Attorney are a replacement for the Enduring Power of Attorney. If you made an Enduring Power of Attorney before these were replaced on 1st October 2007, it will still be valid, even if it has not been registered. Should you lose capacity, the Enduring Power of Attorney would then need to be registered by one of your nominated attorneys to be valid, at a cost of £82 unless you are entitled to help with the fees. They won't have to pay the fee if you receive certain means-tested benefits; or if your income is less than £12,000 before tax, the fee will be 50%.

An Enduring Power of Attorney only covers property and financial affairs, so you may want to consider making a Health and Care Lasting Power of Attorney in addition. If you only have an Enduring Power of Attorney and lose capacity, it may be necessary to obtain a Deputyship Order to make decisions relating to your health and care.

Some people decide to replace their Enduring Power of Attorney with two new Lasting Powers of Attorney. The main benefits of getting both types of Lasting Power of Attorney if you already have an Enduring Power of Attorney are:

- Enduring Powers of Attorney are registered once you lose capacity – Lasting Powers of Attorney are registered once they are made. There can be a delay of 8 to 10 weeks in registering the Enduring Power of Attorney during which time it cannot be used (if you have lost mental capacity), and this period can be extended if a family member objects. In the meantime, nobody will be able to manage your affairs.
- Lasting Powers of Attorney allow you to better manage who makes decisions for you if you are incapacitated – you do not have to choose the same people to make finance decisions as you do to make health decisions.

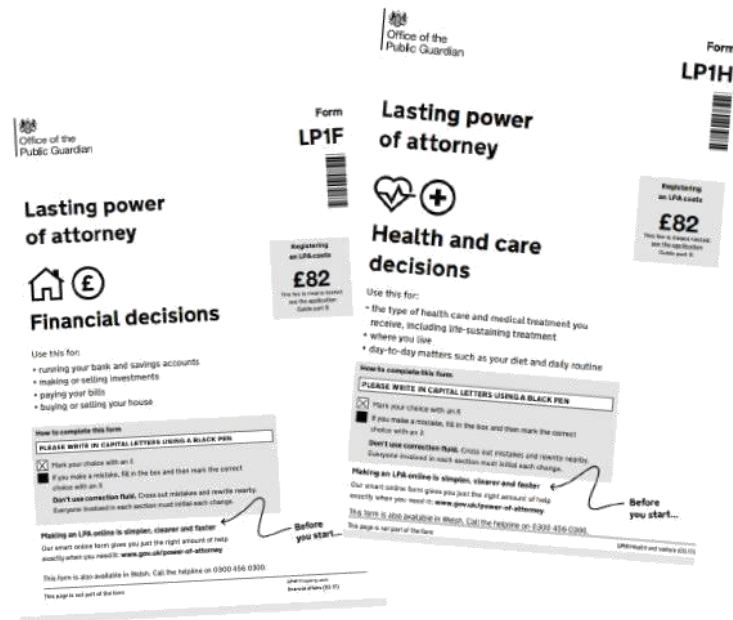
Enduring Powers of Attorney can be used with your permission even if they are not registered, provided that you still have capacity. Financial Decisions Lasting Powers of Attorney can also be used with your permission (once registered) provided that you have capacity. For example, you could choose to use either document if you are in hospital or abroad for a period of time and want someone to handle your affairs temporarily. However, few banks ensure that their staff are fully trained on Powers of Attorney and it is likely that they will be more familiar with the newer form of Lasting Power of Attorney, which can help prevent unnecessary delays.

11. “What’s an Ordinary Power of Attorney?”

An Ordinary Power of Attorney is a document that gives permission for someone to manage certain aspects of your financial affairs for you – such as selling your house, dealing with your tax records, or managing your bank account. The document is made for a specific reason and usually for short term use – for example, if you are travelling or have to stay in hospital for a period of time. You must have mental capacity to make an Ordinary Power of Attorney and if you lose mental capacity, **the document will no longer be valid**. At this stage, you won’t be able to make a Lasting Power of Attorney either – and your relatives/friends will have to apply to the Court for a Deputyship order which, as noted, is an expensive and lengthy process.

Some institutions recommend making an Ordinary Power of Attorney if you are experiencing early symptoms of dementia so that someone can help with your finances. We recommend that instead you make a Lasting Power of Attorney for Financial Decisions. Really, this document is always preferable – provided that you tick the box in Section 5 of the application form which says that your attorneys may act for you “*As soon as my LPA has been registered (and also when I don’t have mental capacity)*”. Once registered, a Lasting Power of Attorney for Financial Decisions can be used with your permission – and if you lose mental capacity, your chosen attorneys can continue to act for you.

12. “How do I make a Lasting Power of Attorney?”



Lasting Power of Attorney forms.

A Financial Decisions Lasting Power of Attorney is made on form LP1F while a Health and Care Lasting Power of Attorney is made on form LP1H.

The process involves three steps:

- Call us for an appointment.
- Go over the documents with you.
- We will then register the document with the Office of the Public Guardian.

The completed Lasting Power(s) of Attorney will usually be returned directly to your advisor who will make a copy and send it on to you for storage. Some lawyers will store the document for you for a small fee.



Questions? Call us on 01792 420844
or email info@swansealegalsolutions.co.uk

13. “How much does it cost to make a Lasting Power of Attorney?”



Our fees are highly competitive in comparison with other firms

The [Office of the Public Guardian](#) charges £82 to register each Lasting Power of Attorney. This fee applies to both types of Lasting Power of Attorney, so if you have both a Financial Decisions and a Health and Care Lasting Power of Attorney, the total application fees will be £164.

If you receive certain means tested benefits, you may be exempt from paying the fee – or if your income is less than £12,000 before tax, you may get a reduction. You will need to provide proof of income and/or benefits to be entitled to the concession.

In addition to the application fees, you will need to pay for the cost of any legal advice you receive. Fees can vary a great deal between lawyers, with some charging up to £1,000+ vat.

Our fees are £495 per LPA [+ court fee] with NO vat.

Call us today: 01792 420844

Or email us your enquiry at info@swansealegalsolutions.co.uk

We have free customer parking or can attend your place of work/home for free.

Visit our website for more details at www.swansealegalsolutions.co.uk