

## Lasting power of attorney (LPA)



Many people with dementia will reach a point where they are unable to make informed decisions about their finances or care. This is called ‘loss of mental capacity’.

A person is judged to lack mental capacity when they cannot:

- understand the information needed to make the decision
- weigh the information up
- retain the information for long enough to make the decision
- communicate their decision to others

Lasting power of attorney (LPA) is a legal process appointing one or more trusted people to make decisions on someone’s behalf if they lose mental capacity. These people are called ‘attorneys’.

There are two types of LPA:

**Health and welfare:** this covers decisions regarding medical care, social care needs such as moving into a care home, and life-sustaining medical treatment.

**Property and financial affairs:** this covers decisions regarding paying rent/a mortgage,

managing bank or building society accounts, paying bills, collecting benefits or a pension, and buying and selling property.

It is possible to draw up one type of LPA or both. You can appoint the same person/s for both LPAs, or appoint someone different for each.

LPAs are only valid in England and Wales.

In Northern Ireland, the equivalent is called enduring power of attorney. For information, please visit [nidirect.gov.uk/articles/managing-your-affairs-and-enduring-power-attorney](https://nidirect.gov.uk/articles/managing-your-affairs-and-enduring-power-attorney)

In Scotland, the equivalent is called power of attorney (PoA). For more information, please visit [publicguardian-scotland.gov.uk/power-of-attorney](https://publicguardian-scotland.gov.uk/power-of-attorney)

## Why might someone need a lasting power of attorney?

If someone is diagnosed with dementia, they may think that they have plenty of time to make an LPA, especially if they have young onset dementia (where symptoms



develop before the age of 65), but it is important to draw up an LPA as soon as possible to avoid problems in the future.

This will:

- enable the person with dementia to decide who they would like to make important decisions on their behalf, in their best interests
- allow opportunities for the person to share their wishes and preferences with their attorneys so they can respect them as far as possible
- help to prevent disagreements between family members about managing the person's care and finances
- allow decisions – such as whether the person should receive medical treatment – to be made quickly, avoiding extra stress in crisis situations

People who are married or in a civil partnership might assume their partner will automatically be able to make decisions on their behalf if they lose capacity, but this is not necessarily the case, so it is still important to make an LPA.

If someone who loses capacity has not drawn up an LPA, the person who wants to make decisions on their behalf may have to apply to the Court of Protection to be appointed as their 'deputy'. This can be a complex and expensive process, and can be avoided

## What's the difference between lasting power of attorney and enduring power of attorney?

In England and Wales, some people have enduring power of attorney, or EPA, rather than lasting power of attorney (this is different from EPAs in Northern Ireland).

This enables the person's attorney to make decisions about property and money on their behalf. It does not cover decisions about health or welfare.

EPAs are only valid if they were made and signed before 1<sup>st</sup> October 2007. After that date, they were replaced by LPAs.

To be able to use an existing EPA, the attorney must register it with the Office of the Public Guardian when the person starts to lose, or has lost, capacity. For more information, please visit [gov.uk/enduring-power-attorney-duties](https://gov.uk/enduring-power-attorney-duties)



if an LPA is in place. For more information, please visit [gov.uk/become-deputy](https://gov.uk/become-deputy)

As well as making an LPA, a person may wish to make an Advance decision (to refuse treatment), also known as a ‘living Will’ – this is a legally binding document stating any medical treatments that they do not want if they lose capacity or cannot communicate their wishes at the time. Please see Sources of support on p11 for more information.

## How to set up a lasting power of attorney

An LPA can only be set up by a person who has mental capacity. The steps are as follows.

### 1. Choose an attorney

An attorney must be 18 or over. They could be the person’s spouse/partner, another family member, a friend or a professional eg a solicitor. They do not need to live in the UK or be a British citizen.

When choosing an attorney, the person should think about:

- how well the attorney looks after

their own affairs, for example their finances

- how well they know them
- if the person trusts them to make decisions in their best interests
- whether they will be happy to make decisions on the person’s behalf

It is possible to appoint the same person as attorney for both types of LPA, or to choose different ones for each.

It is also possible to have more than one attorney for each LPA. In this case, the person must decide if their attorneys will make decisions:

- **jointly:** this means that all attorneys must agree to every decision that has to be made
- **jointly and severally:** this means that while the attorneys may make decisions together, any one of them can make the decision on their own

The person can choose to let their attorneys make some decisions jointly, and others jointly and severally.





An attorney for property and financial affairs cannot be subject to a Debt Relief Order or currently bankrupt.

Anyone planning to act as an attorney must read the Mental Capacity Code of Practice, which explains their responsibilities. You can read this at [gov.uk/government/publications/mental-capacity-act-code-of-practice](https://gov.uk/government/publications/mental-capacity-act-code-of-practice)

## 2. Fill in the LPA forms

LPA forms can be filled in online by following the link at [gov.uk/power-of-attorney/make-lasting-power](https://gov.uk/power-of-attorney/make-lasting-power). If you prefer, you can download and print the forms at [gov.uk/government/publications/make-](https://gov.uk/government/publications/make-)

[a-lasting-power-of-attorney](https://gov.uk/power-of-attorney/make-lasting-power) or request paper copies by post by calling the Office of the Public Guardian on **0300 456 0300** or emailing [customerservices@publicguardian.gov.uk](mailto:customerservices@publicguardian.gov.uk)

A friend or solicitor can help the applicant or fill in the forms for them.

The completed forms need to be signed by:

- the person making the LPA
- the person/people nominated as attorney
- a witness (this could be a family member, friend or professional)
- a ‘certificate provider’, who

confirms the applicant is making the LPA by choice and understands what they are doing. This must be someone they have known for two years or more, or a professional such as a doctor, social worker or solicitor. The same person can witness the applicant and attorney's signatures

Witnesses and certificate providers must be 18 or over. The person applying for the LPA cannot witness the attorney's signature, and the attorney cannot witness the applicant's signature.

### 3. Notify other people (optional)

If they wish, the person applying for the LPA can name up to five people to notify, who then have three weeks to register any concerns or objections with the Office of the Public Guardian. This helps to check that the applicant is not being put under pressure to make the LPA.

If the applicant wants to do this, they need to fill in the 'Form to notify people (LP3)' which can be found at [gov.uk/government/publications/make-a-lasting-](https://gov.uk/government/publications/make-a-lasting-)

[power-of-attorney](#). They should give paper copies of the form to the people they wish to notify by post or by hand.

Naming people to be notified is optional and the applicant does not need to fill in this form if they do not want to.

### 4. Register the LPA

The completed LPA forms must be signed and posted to the address on the form. If the person has filled in the forms online, they must still be printed and returned by post.

It costs £82 to register each LPA unless the applicant qualifies for a reduction or exemption (if they receive certain benefits or earn under £12,000 – for more details, visit [gov.uk/government/publications/power-of-attorney-fees](https://gov.uk/government/publications/power-of-attorney-fees)). This means it costs £164 to register both a property and financial affairs LPA and a health and welfare LPA (fees correct as of September 2022).

The applicant can either enclose a cheque payable to the Office of the Public Guardian with their application (with their name on the back) or indicate on the form that



they would like to pay by credit or debit card – the Office of the Public Guardian will contact them to process the payment.

It usually takes between eight and 10 weeks to register an LPA, as long as there are no mistakes in the application. This includes a four-week ‘cooling off’ period when anyone named in the form can change their minds about their involvement. Once it is registered, the Office of the Public Guardian will send a Registration Notice to both the applicant and the attorney to let them know that the LPA is active.

It is advisable to register the LPA as soon as the forms are filled in, as a person with dementia can only register an LPA if they have mental capacity. If they lose mental capacity after the forms are signed but before sending them to be registered, the attorney can register the LPA.

This also means any errors can be picked up, as if they are discovered after the person is judged to have lost capacity, the LPA cannot be registered.



## Using a lasting power of attorney

The attorney can use the property and financial affairs LPA as soon as it is registered and while the person with dementia still has mental capacity, as long as:

- the LPA says they can
- the person gives them permission

However, the health and welfare LPA can only be used if the person with dementia has lost the mental capacity to make a decision.

Capacity is usually assessed by a health or social care professional. A Mental Capacity Assessment only covers the decision that needs to be made at the particular time – for instance, if the person with dementia needs medical treatment. This is because mental capacity can be temporarily lost – for example, if the person is experiencing delirium related to an infection – and they may regain the capacity to make decisions once they are better.

If the person is deemed to lack capacity, their attorney can make a decision on their behalf. They must follow the Mental Capacity Act Code of Practice, which means that they:

- must act in the person's best interests
- must consider the person's past and present wishes
- cannot take advantage of the person to benefit themselves
- must keep all of the person's money separate from their own (unless they are already connected, eg a mortgage in both people's names or a joint bank account)

A health professional can override the views of the attorney in the case of the health and welfare LPA if they believe the person's best interests are not being met. If a person with dementia is detained under the Mental Health Act ('sectioned'), this will override the LPA for as long as they are detained.

## When attorneys can no longer act

An attorney can no longer act on someone's behalf if they:

- lose mental capacity themselves
- decide they no longer want to act as attorney (known as 'disclaiming their appointment')
- become bankrupt or subject to a Debt Relief Order and are an attorney for property and financial affairs
- were the person's wife, husband or civil partner but their relationship has legally ended (unless the person specifies on the LPA form that they can continue to be their attorney if their relationship ends)

Sometimes, if an attorney dies or has to stop acting for one of the reasons above, it can cause problems:

- If the person appointed only one attorney, the LPA would stop working altogether
- If there is more than one attorney and they have to act jointly for some or all decisions



(see p5) then they won't be able to make those decisions

If either of these apply, it is a good idea to consider appointing additional or replacement attorneys to avoid difficulties in the future.

If the person cancels their LPA, the attorneys can no longer legally act on their behalf.

## Sources of support

To speak to a dementia specialist Admiral Nurse about LPA or any other aspect of dementia, please call our free Helpline on **0800 888 6678** (Monday-Friday 9am-9pm, Saturday and Sunday 9am-5pm) or email [helpline@dementiauk.org](mailto:helpline@dementiauk.org)

If you prefer, you can book a phone or video appointment with an Admiral Nurse at [dementiauk.org/closer-to-home](https://dementiauk.org/closer-to-home)

### Dementia UK resources

**Mental capacity and decision-making**  
[dementiauk.org/capacity-decision-making](https://dementiauk.org/capacity-decision-making)

**Advance Care Planning**  
[dementiauk.org/advance-care-planning](https://dementiauk.org/advance-care-planning)

**Financial and legal sources of support**  
[dementiauk.org/sources-of-support-and-advice](https://dementiauk.org/sources-of-support-and-advice)

**Changes in care**  
[dementiauk.org/changes-in-care](https://dementiauk.org/changes-in-care)

**Recognising the later stages of dementia and moving towards end of life care**  
[dementiauk.org/end-of-life-care](https://dementiauk.org/end-of-life-care)

### Other resources

**Make, register or end a lasting power of attorney (England and Wales)**  
[gov.uk/power-of-attorney](https://gov.uk/power-of-attorney)

**Managing your affairs and enduring power of attorney (Northern Ireland)**

[nidirect.gov.uk/articles/managing-your-affairs-and-enduring-power-attorney](https://nidirect.gov.uk/articles/managing-your-affairs-and-enduring-power-attorney)

**Power of attorney (Scotland)**  
[publicguardian-scotland.gov.uk/power-of-attorney](https://publicguardian-scotland.gov.uk/power-of-attorney)

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

**Making decisions: who decides when you can't?**  
[gov.uk/government/publications/making-decisions-who-decides-when-you-cant](https://gov.uk/government/publications/making-decisions-who-decides-when-you-cant)

**Advance decisions (living Will)**  
[nhs.uk/conditions/end-of-life-care/advance-decision-to-refuse-treatment/](https://nhs.uk/conditions/end-of-life-care/advance-decision-to-refuse-treatment/)

The information in this booklet is written and reviewed by dementia specialist Admiral Nurses.

We are always looking to improve our resources, to provide the most relevant support for families living with dementia. If you have feedback about any of our leaflets, please email [feedback@dementiauk.org](mailto:feedback@dementiauk.org)

We receive no government funding and rely on voluntary donations, including gifts in Wills.

For more information on how to support Dementia UK, please visit [dementiauk.org/donate](https://dementiauk.org/donate) or call **0300 365 5500**.  
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If you're caring for someone with dementia or if you have any other concerns or questions, call or email our Admiral Nurses for specialist support and advice.

Call **0800 888 6678** or email [helpline@dementiauk.org](mailto:helpline@dementiauk.org)

Open Monday-Friday, 9am-9pm  
Saturday and Sunday, 9am-5pm



[dementiauk.org](https://dementiauk.org) • [info@dementiauk.org](mailto:info@dementiauk.org)

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