

Powers of Attorney and Advance Directives

What is a Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that allows you (the Donor) to officially nominate someone (your Attorney) to speak and act on your behalf if you become physically or mentally unable to do so yourself. It has to be 'completed' while you still have capacity, and it cannot be used before it has been registered with the Office of the Public Guardian (OPG).

Why do you need a Power of Attorney?

If you were to become physically or mentally unable to manage your affairs, those close to you, your spouse and family members, not have an automatic right to speak or act for you even on a joint bank account.

If you own property as Tenants in Common, BOTH signatures are required to do anything with the property including remortgaging it.

Without either a simple business power of attorney limited to managing your business affairs, say, or a full lasting power of attorney that remains in effect even if you lose mental capacity, your family of business associates will have to apply to the Court of Protection (one of England's secret Courts) before they can do anything. The Court, via the **Office of the Public Guardian (OPG)**, will eventually appoint a Deputy (a civil servant or legal professional), who can be slow to act, charge for their services, be entirely risk averse, and have no intimate understanding of you or your affairs.

Types of Power of Attorney

There are generally two types of LPA:

1. Property & Financial affairs (allowing an Attorney to make decisions about paying bills, dealing with the bank, collecting benefits, selling your house, etc.), and **Health & Welfare** (allowing decisions on treatment, care, medication, where you live, etc.).

In simple terms, LPAs allow you to plan in advance the decisions you want to be made on your behalf if or when you lose capacity to make them yourself, the people you want to make these decisions, and how you want the people to make those decisions.

A registered Property & Financial affairs LPA lets the people you choose make decisions about, for example:-

- buying and selling your property
- opening, closing, and operating bank/building society accounts
- claiming, receiving and using your benefits, pensions, and allowances

A LPA allows you to plan in advance:-

- the decisions you want to be made on your behalf if or when you lose capacity to make them yourself
- the people you want to make these decisions
- how you want the people to make these decisions

Having a LPA is a safe way of maintaining control over decisions made for you because:-

- it has to be registered with the OPG before it can be used (if someone else tries to register it you and your Attorney(s) will be able to make an objection)
- you choose someone to provide a 'certificate' confirming that you understand the significance and purpose of it (something that we can do)

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- you can choose 'people to be told' about your LPA when it is registered (so that they have an opportunity to raise concerns, but is not necessary if you have a certificate provider)
- your signature, and the signatures of your chosen attorneys must be witnessed
- from a legal perspective, your Attorney(s) must follow the Code of Practice of the Mental Capacity Act 2005 – if they don't always act in your best interests the OPG can step in, and your Attorney(s) may be held accountable

2. LPAs Health & Welfare that allow the people you choose to make decisions about, for example:-

- giving or refusing consent to particular types of health care, including medical treatment decisions
- you staying in your own home, perhaps with help and support from social services
- you moving into residential housing and choosing the right care home for you
- day-to-day issues, like your diet, dress, or daily routine

A Health & Welfare LPA can also include end of life wishes, but can be also be done via a stand-alone **Advance Directives (Living Will)** as explained below.

An **Advance Directive** is a statement about what you would like to happen in the event that you lose the capacity to take informed decisions about your own medical care, and provides reassurance to a person worried losing control of their future healthcare.

When healthcare professionals are faced with difficult decisions about what end of life treatment or care to give, an Advance Directive will provide the best possible guide and help to ensure that your wishes are taken into account, and having an Advance Directive can open up a dialogue with doctors and nurses that might otherwise be delayed until it is too late. The process can stimulate conversation with family and close friends, relieving them of some of the burden of decision-making at what can be a distressing time. Because an Advance Directive concerns serious healthcare issues, we strongly recommend that you discuss it with your GP and family before having one.

Meanwhile, an Advance Directive enables an individual to think about what they would like to happen to them in the event that they lose the capacity to take informed decisions about their care, such as:

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- the use of intravenous fluids and parenteral nutrition
- the use of cardiopulmonary resuscitation
- the use of life-saving treatment in specific illnesses where capacity or consent may be impaired such as brain damage, perhaps from stroke, head injury or dementia
- specific procedures such as blood transfusion for a Jehovah's Witness

An Advance Directive cannot be used to: -

- refuse treatment if the person has capacity to give or refuse consent to it
- refuse basic nursing care for your comfort such as washing, bathing and mouth care
- refuse the offer of food or drink by mouth
- refuse the use of measures solely designed to maintain comfort such as pain relief
- demand treatment that a healthcare team considers inappropriate
- refuse treatment for mental disorder if the person is or is liable to be detained under the Mental Health Act 1983
- anything that is against the law such as euthanasia or assisted suicide

An Advance Directive is a statement of your wishes and cannot be overturned unless: -

- you have signed a Lasting Power of Attorney appointing a Health & Welfare Attorney after the Advance Directive has been signed, and have given authority to the Attorney to accept or refuse treatment to which the Advance Directive relates
- you revoke it yourself at any time when you have the required mental capacity
- you made your Advance Directive at a time when you did not have the required mental capacity
- you were unduly influenced by others to make an Advance Directive

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