

Everything You Need to Know About Power of Attorney

If your loved one has a dementia diagnosis, they'll eventually become unable to make decisions for themselves. Although this can be a challenging topic to navigate – especially when the diagnosis is first received – it's sensible to explore your options early on.

One way to protect your loved one and ensure you can fulfil their wishes, is to establish a power of attorney.

Throughout this guide, we'll explain what power of attorney is, how it works, which options are available and how to undertake the process.

Power of Attorney

As a caregiver, you'll naturally make small decisions every day for the person that you're caring for. However, for the more significant decisions, such as those relating to health and finances, it's best to have a power of attorney in place.

A power of attorney is a legal document that specifies who can make decisions on behalf of the named person, who is known as the donor.

Once you're legally able to make decisions for the donor, they can rest assured that you'll be able to act in their best interests when the time comes.

Power of attorney is typically permanent, but can also be granted temporarily for specific situations, such as if your loved one is in hospital for an extended period of time.

There are three different types of power of attorney:

- Lasting power of attorney
- Enduring power of attorney
- Ordinary power of attorney

Lasting Power of Attorney

A lasting power of attorney (LPA) is a legal document giving you the power to make decisions on behalf of the donor.

There are two different types of LPA and you can register both at the same time. One is used for decisions relating to health and care, whereas the other is used for financial matters.

It's important to be aware that the LPA must be in place before the donor begins to lose mental capacity. It's also essential that no pressure was ever placed on the person to create one.

An LPA can be cancelled at any time by the donor, as long as they haven't started to lose capacity.

Lasting Power of Attorney for Health and Care Decisions

This type of LPA can only be used when the person you care for has lost mental capacity. Before this point, you'll not be able to use an LPA to make decisions for them.

As an attorney for your loved one's health and care, you can decide where they live, who is involved in their care, what medical treatment they access and other associated decisions. Every decision must be made in the best interests of the donor.

If you're not named in an LPA for the person you care for, then any decisions about their health and care will be made by the relevant professionals. These people will typically involve you in decision-making, but the final call will ultimately be down to them.

Lasting Power of Attorney for Property and Financial Decisions

This type of LPA can be used while the person you care for still has mental capacity, but they'll need to specify this preference when registering the document.

If you're a designated attorney for this kind of LPA, you can make decisions about the sale and maintenance of the person's home and other properties and any other issue relating to their finances.

When it comes to finances, it's required that you keep your own money separate from the person you're an attorney for, and that you maintain all the necessary accounts and records to show this.

At the donor's request, you should always answer any questions about their finances and explain any actions you've taken.

How Does Lasting Power of Attorney Work?

To start the process, you first need to obtain the LPA forms from the Office of the Public Guardian.

You can call **0300 456 0300** to request the forms in the post, or you can visit the website below to download them.

Visit: www.gov.uk/government/publications/make-a-lasting-power-of-attorney

It's also possible to register an LPA online yourself.

Visit: <https://www.lastingpowerofattorney.service.gov.uk/home>

Once the forms have been completed and signed, they must be returned to the Office of the Public Guardian.

Be aware that these documents need to be signed by someone known as a 'certificate provider'. This person must confirm that the donor wasn't pressured into creating the LPA and are acting of their own free will.

The certificate provider must have known the person in question for at least two years, or know them in a professional capacity, such as a doctor or social worker. Family members and partners aren't eligible to be certificate providers.

An LPA becomes legally binding as soon as it's registered with the Office of the Public Guardian, which can take eight to ten weeks from the date it's received. This means that from this time, the named attorney will be able to make decisions for the donor in line with the terms specified in the document.

How Much Does Lasting Power of Attorney Cost?

It costs £82 to register an LPA, but you'll also need to consider the cost of having a solicitor prepare the documents for you.

Although it is possible to register an LPA yourself, it's a complicated process and it's easy to get something wrong. Should there be an error in the documents, this could cause significant issues in the future, so hiring a solicitor is often the best course of action.

It's possible to get a discount on the cost of registering an LPA if you're on a low income, and being in receipt of certain benefits will mean you can do so for free.

Enduring Power of Attorney

Before 2007, this was the name used for power of attorney relating to financial decisions.

If the person you care for created an enduring power of attorney (EPA) before 2007, then it's still valid and works in the same way as the financial LPA mentioned above. Post-2007, LPAs are simply used instead of EPAs.

Ordinary Power of Attorney

If the person you care for has mental capacity and wants you to manage their finances temporarily, then an ordinary power of attorney (OPA) can be granted. You might also explore this option if the person needs you to manage their financial affairs due mobility issues, such as not being able to physically go to the bank.

It's worth noting that an OPA is only valid for as long as the donor has mental capacity. For this reason, it's more suitable to set up an LPA. An LPA enables you to maintain your legal rights if the person's ability to make decisions suddenly changes.

Why Is Power of Attorney Important?

When it becomes necessary to make decisions about the care of a loved one, having power of attorney can make a huge difference. Without this legal right, it will be complicated, or even perhaps impossible, to make decisions about your loved one's health and finances when they need you most.

As a person begins to lose the ability to make the best choices for themselves, it's imperative that someone they trust is able to do this for them. Lasting power of attorney is a legally-binding way to ensure the person in question has this peace of mind.

Frequently Asked Questions

Can lasting power of attorney change a will?

No. Powers granted through an LPA do not extend to making changes to a will. The attorney named in the LPA must always respect the existing wishes of the donor regarding their will.

Additionally, if a will is made after a person has already started to lose mental capacity, then the will may be deemed invalid.

Does enduring power of attorney cover health and welfare?

No. EPAs only relate to financial decisions, so the named attorney doesn't have any power to make health and welfare decisions.

For decisions relating to care, an LPA is the correct route.

How much do solicitors charge for lasting power of attorney?

There's no set fee for a solicitor to set up lasting power of attorney, so the cost will vary. For this reason, it's a good idea to investigate different options before deciding which solicitor to proceed with.

How long does power of attorney last after death?

As soon as the donor dies, lasting power of attorney expires. This means that the named attorney can't make decisions on behalf of the person after their death.

This information was accurate and up-to-date as of 09/01/2024.