



## ***The Facts about...***

### **Power of Attorney**

**Power of Attorney (POA)** gives someone you trust the legal power to act or make decisions about you on your behalf

A POA is a very useful document; like a Will, **it only comes into force if it is needed**. Most people are happy to make a Will but feel that they don't want someone else having the power to make decisions for them. However, ensuring you have a POA in place before it is needed makes a lot of sense.

By making a **Lasting Power of Attorney (LPA)**, you do not suddenly give up control. In fact, you retain more control over your own affairs and care. If you do not have a LPA in place and need some help (perhaps following an accident or illness), someone may need to apply to the Court of Protection to be able to manage your affairs. **Without an LPA, you will not have control over who applies to the court and this could mean that someone who you might not have chosen will be able to make decisions on your behalf**. The process can be costly and lengthy and can be very stressful for those involved.

Adults of all ages should consider making a LPA as anyone can lose mental capacity, for example, through illness, as a result of an accident or because of the onset of dementia.

***There are two main types of Powers of Attorney:***

#### **Lasting Powers of Attorney**

A Lasting Power of Attorney (LPA) is a legal document that appoints a trusted relative, friend or professional (known as an Attorney) to help manage your financial affairs and/or make decisions about your health and welfare.

There are two types of LPA: one for your property and financial affairs and another for your health and welfare and you can make one or both types.

#### **Property and financial affairs LPA**

This allows you to choose one or more people to make decisions about your money and property. This type of LPA can be used as soon as it is registered **with your consent**; or you can make the LPA and only use it when you no longer have the capacity to make decisions.

### **Reasons you would need a Property and Financial LPA:**

- managing a bank or building society account
- making investment decisions
- paying bills
- collecting benefits or a pension
- selling your home

### **Health and Welfare LPA**

This allows you to choose one or more people to make decisions such as where you live, who cares for you and your medical care. There is also an option to give your Attorney authority to make decisions about life sustaining treatment. **A health and welfare LPA can only be used if you lose mental capacity.**

### **Reasons you would need a Health and Welfare LPA:**

- your daily routine, for example washing, dressing, eating
- medical care
- moving into a care home
- life-sustaining treatment

**Both types of LPA need to be registered with the Office of the Public Guardian before they can be used. Your Attorneys cannot do whatever they like; they must act in your best interests and follow the principles of the Mental Capacity Act 2005.**

### **Other types of Power of Attorneys:**

#### **Ordinary Powers of Attorney**

If you want to give someone the authority to make decisions and take action concerning your finances, you can set up an Ordinary Power of Attorney. Unlike Lasting Powers of Attorney, these can only be used while you have mental capacity, so that you can keep an eye on what the person making decisions for you (your Attorney) is doing.

You can limit the power you give to your Attorney so that they can only deal with certain assets and it can also be limited for a defined period of time. An Ordinary Power of Attorney can be revoked at any time and will be automatically revoked if you lose mental capacity.

#### **Enduring Powers of Attorney**

Lasting Powers of Attorney replaced the previous Enduring Power of Attorney (EPA) system. An EPA set up before 1 October 2007 is still valid in relation to your finances, but it does not cover decisions relating to your health and welfare.

## **What happens if someone loses capacity?**

### **Court of Protection**

If someone does not have sufficient mental capacity to make a Lasting Power of Attorney it is necessary to make an application to the Court of Protection to appoint a “Deputy”.

A Deputy will have power to manage the financial affairs of the person who lacks capacity, although this can be limited by the Court and there are strict rules on how the Deputy can act and the types of decisions that they can make. A Solicitor can act as a Deputy if there is no one willing or able to act.

### **Annual Reporting to the Office of the Public Guardian**

A Deputy will have to keep accounts and receipts as they need to submit yearly reports to the Office of the Public Guardian, the body who supervise the steps carried out by Deputies. It is possible to make an application to the Court of Protection to be appointed Deputy to make decisions regarding health and welfare although very few of these applications are approved by the Court of Protection.

### **Definition of Mental Capacity and who can measure it**

Mental capacity means the ability to make or communicate specific decisions at the time they need to be made. To have mental capacity you must understand the decision you need to make, why you need to make it, and the likely outcome of your decision.

Some people will be able to make decisions about some things but not others. For example, they may be able to decide what to buy for dinner, but be unable to understand and arrange their home insurance. Alternatively, their ability to make decisions may change from day to day.

Needing more time to understand or communicate doesn't mean you lack mental capacity. For example, having dementia does not necessarily mean that someone is unable to make any decisions for themselves. Where someone is having difficulty communicating a decision, an attempt should always be made to overcome those difficulties and help the person decide for themselves.

However, if there does come a time when you're unable to make your own decisions, you will have lost mental capacity and someone else may need to make decisions for you.

An independent person over the age of 18, who has known the person for two years or more and is not related, can confirm if the person has capacity.

A GP can also measure someone's capacity and would be the best person to do so, especially if there is a diagnosis of onset dementia. GPs usually charge to provide a capacity certificate.

When compiling this fact sheet we spoke to MW Solicitors; we found them to be friendly, approachable and reasonably priced.

<https://www.mwsolicitors.co.uk/>

<https://www.gov.uk/power-of-attorney>

<https://www.moneyadvice.service.org.uk/en/articles/setting-up-a-power-of-attorney>

<https://www.gov.uk/power-of-attorney/make-lasting-power>

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**This fact sheet should only be used as a guideline and we recommend you seek professional advice.**