

A guide to Deputyship and Lasting Power of Attorney



SECTION 1: Helping friends or relatives who lack mental capacity

To protect the data and privacy of our customers we can't give information on policies to anyone but the policyholder or their appointed legal representative.

However we do understand that sometimes people need to get in touch with us about the policy of a friend or relative who **lacks mental capacity** (full definition on page 5), and we will, of course, do everything we can to help.

If you need to talk to us about a policy that belongs to a friend or relative who is unable to contact us due to lack of mental capacity, one of two legal processes must have been followed:

- They must have given you **Lasting Power of Attorney** (full definition on page 4), or
- You will need to be appointed as their '**Deputy**' by a Court.

Setting up a Lasting Power of Attorney is a fairly complex legal process, so you will already know if you have this authority. If this isn't the case then you will need to be appointed as a 'Deputy'.

There are certain circumstances, especially in emergency situations, where people can share information with companies on behalf of someone not capable to do so, even when they don't have the legal power. For more information on this please refer to www.gov.uk/become-deputy

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SECTION 1: Helping friends or relatives who lack mental capacity *(continued)*

A Deputy is a person appointed by the Court of Protection to manage the affairs of someone who has lost capacity and who does not have a Lasting Power of Attorney. The decision as to who to appoint as Deputy is a judicial decision and the Court will appoint someone who has the person's best interests in mind. The Court will look at a range of factors when deciding who to appoint (including age, as deputies must be over 18) and will appoint a professional to act as a Deputy where there is nobody willing or able to act on behalf of the person lacking capacity. This doesn't have to be a professional – it could also be a friend or relative.

Deputies must:

- only make decisions in the other person's best interests
- only make the decisions the court says they can make
- apply a high standard of care when making decisions.

There are two types of Deputy – a Deputy of Property and Affairs, and a Deputy of Health and Welfare. To deal with someone's finances you will need to be appointed as a Deputy of Property and Affairs.

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What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal agreement that anyone can set up to give someone else the authority to make decisions on their behalf if they are unable to do so themselves in the future. You can [find out more about the process for setting up a Lasting Power of Attorney](#) elsewhere in this guide.

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How is 'mental capacity' defined?

The Mental Capacity Act (2005) protects people who may not be able to make some decisions for themselves because of, for example:

- dementia
- learning disabilities
- mental health problems
- stroke or head injuries.

Under the Mental Capacity Act a person is presumed to make their own decisions *"unless all practical steps to help him (or her) to make a decision have been taken without success"*.

To determine if someone lacks mental capacity you will need to consider whether the person you are helping is able to understand the particular issue that they're making a decision about. You'll need to consider if they have:

- an impairment or disturbance in the functioning of the mind or brain, and/or
- an inability to make decisions.

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How is 'mental capacity' defined?

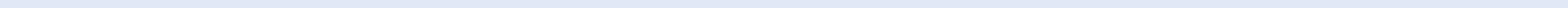
A person is unable to make a decision if they cannot do at least one of the following:

- 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 the decision, and the reason for not being able to do this is due to an impairment of, or disturbance in the functioning of the mind or brain.

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SECTION 2: Making arrangements to take care of your financial decisions if you're unable to in the future

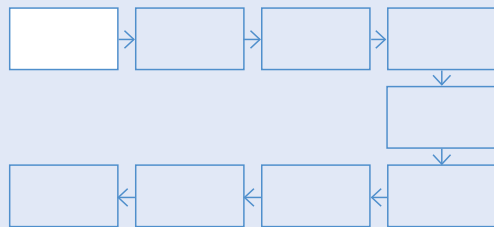
Lasting Power of Attorney contents



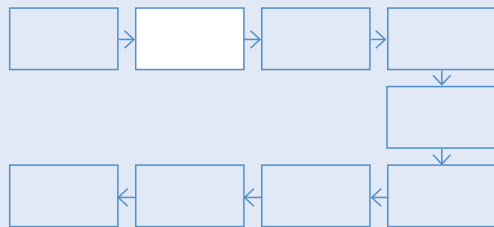
If you're unsure about your rights and responsibilities you may wish to seek legal advice (but it's not required)

Delegating authority to someone to make decisions for you if you're no longer able to is a big decision. Making sure you understand the options available to you can help you with the process and make you feel more at ease.

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Setting up a Lasting Power of Attorney



An attorney is someone who you can appoint to make decisions on your behalf if you lack the mental capacity to make the decision yourself. A Lasting Power of Attorney is the legal document that details this appointment, and you'll need to register the document for the Lasting Power of Attorney to be in effect (you cannot simply say you have Power of Attorney).

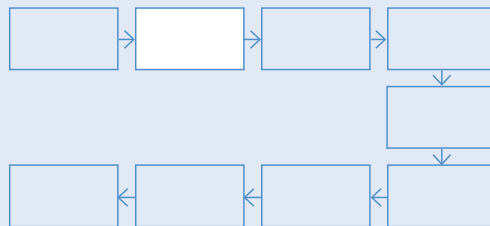
A Lasting Power of Attorney allows you to plan in advance:

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

Your attorney(s) cannot do whatever they like. They must follow the principles of the Mental Capacity Act (2005).

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Setting up a Lasting Power of Attorney

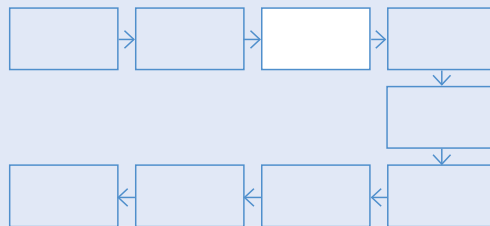


The principles of the Mental Capacity Act 2005

- A person must be assumed to have capacity unless it is established that he lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

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Select the Powers
that are relevant to
your situation



There are two types of Lasting Power of Attorney – Property and Financial Affairs, and Health and Welfare. These dictate the different decisions that can be made by your attorney(s):

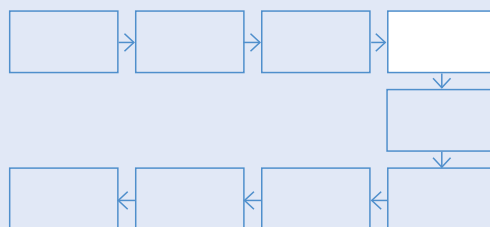
- A Property and Financial Affairs Lasting Power of Attorney allows an attorney to make decisions about paying bills, dealing with the bank, collecting benefits, selling your house, etc.
- A Health and Welfare Lasting Power of Attorney allows decisions on treatment, care, medication, where you live, etc.

Many people register two Lasting Powers of Attorney (one of each). Please be aware that you will have to pay for each registration you make, although there are exemptions and remissions to the fees. Currently the fees for registering a Lasting Power of Attorney are:

- **Application to Register £110**
- **Repeat Application to Register £55**
- **Office copy £35**

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Choose your attorney(s)
and all other people
you wish to be involved
in your Lasting Power
of Attorney



It's important to think carefully about who you want your attorney(s) to be – after all, they may be making important decisions for you in the future.

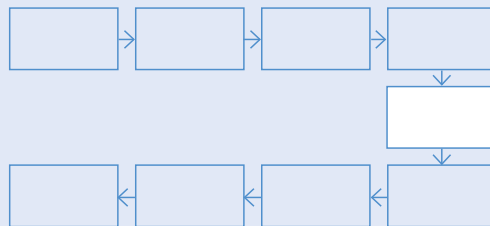
Under the Mental Capacity Act (2005), your attorney(s) must act in your best interest but trust is obviously an important part of choosing the person or people to delegate your decision-making to.

It's also important to think about replacement attorney(s), in case the people you've originally chosen cannot act for you any more. If you do not appoint any replacement attorney(s), the Lasting Power of Attorney will end when your attorney(s) can no longer act.

You also need to think about the people who will be told that you are applying for a Lasting Power of Attorney. Before your Lasting Power of Attorney is registered, the '**people to be told**' are given an opportunity to raise any concerns or objections. You do not have to tell any one, but you can **choose up to five** to be informed.

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Think about how you want your attorney(s) to make decisions on your behalf



If you have more than one attorney, you need to think about the ways in which your attorney(s) can exercise their power:

To act jointly – they must make all decisions together.

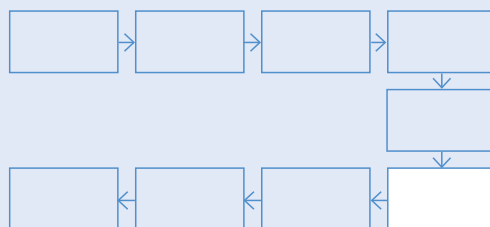
To act jointly and severally – they can make decisions together and separately, and if one attorney cannot act, the remaining attorney is able to continue to make decisions.

You can also decide to allow your attorneys to act jointly for some decisions, and jointly and severally for other decisions, meaning that your attorneys must make certain decisions together and may make certain decisions separately.

Your attorney(s) must also follow any restrictions that are put in place, but it may not be possible to register or use a Lasting Power of Attorney if the restriction is not workable.

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Obtain and complete Lasting Power of Attorney forms



The Lasting Power of Attorney forms for Property and Financial Affairs can be found [here](#). These are both the larger text versions for ease of reading, and all of these documents (including ones with smaller fonts) can be found on [the Gov.uk website](#).

When filling in the forms, you will need the following people to hand to sign certain parts:

Your witness (this confirms that they witnessed you signing and dating it)

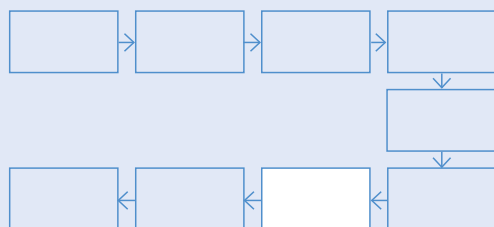
A certificate provider (someone who you choose who can confirm that you understand the Lasting Power of Attorney and have not been put under pressure to make it).

The two different Lasting Powers of Attorney have two different sets of forms, and each has three parts – A, B and C:

- You fill in, sign, and date part A.
- Your certificate provider fills in, signs, and dates part B.
- Your attorney(s) and replacement attorney(s) sign part C.

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Seek legal help, or contact the Office of the Public Guardian, if you're confused



Setting up a Lasting Power of Attorney isn't the simplest of processes, so if you're confused by any of the forms, ask the Office of the Public Guardian for help. The Office of the Public Guardian can reject an application for a Lasting Power of Attorney if the details are not correct, so it's best to get them right the first time.

The contact details for the Office of the Public Guardian are:

Email:

customerservices@publicguardian.gsi.gov.uk

Telephone:

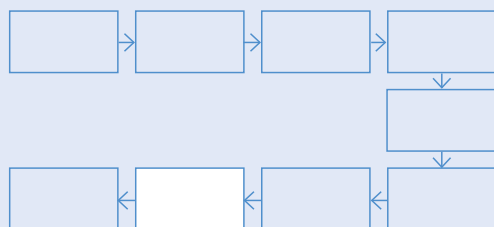
0300 456 0300

Address:

**Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH**

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Register your Lasting Power of Attorney



The fees for registering Lasting Powers of Attorney are as follows:

- Application to Register **£110**
- Repeat Application to Register **£55**
- Office copy **£35**

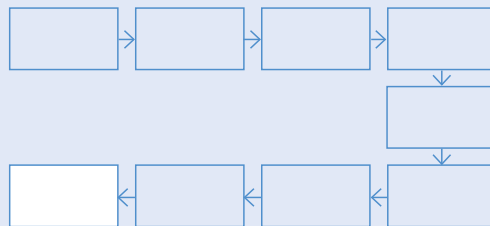
You or your attorney(s) can register your Lasting Power of Attorney at any time after you have filled it in. However, it cannot be used until it has been registered. Registering the Lasting Power of Attorney as soon as you can, means that it will be ready when needed. If you keep your Lasting Power of Attorney for a long time without registering it, it is more likely that your details will change and you will need to fill in a new form.

'Notice of intention to apply for registration of a Lasting Power of Attorney' (Form LPA001). To register your Lasting Power of Attorney, you must first inform each of the people to be told of your intention to register by sending each of them a completed LPA001 form. They then have three weeks to raise any concerns they have with the Office of the Public Guardian.

'Application to register a Lasting Power of Attorney' (Form LPA002). The Office of the Public Guardian will check your Lasting Power of Attorney and application to register form, and contact you if there are any issues. If there are no issues, and nobody raises any concerns, the Office of the Public Guardian will register your Lasting Power of Attorney four weeks after sending notices to you and your attorney(s).

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Send a copy of your registered Lasting Power of Attorney to your financial services provider so that they can verify it



It is unlikely that a financial services company will accept your delegation for making decisions until you have verified your Lasting Power of Attorney with them. To do this you will need to send them a certified copy of the registered Lasting Power of Attorney. You can do this by copying your registered Lasting Power of Attorney and writing at the bottom of each page:

'I certify this is a true and complete copy of the corresponding page of the original Lasting Power of Attorney'

and then signing and dating each page after this declaration.

If you haven't verified your Lasting Power of Attorney with your financial services provider and have lost mental capacity, your attorney should be able to get a certified copy made by a solicitor.

In exceptional cases, the Office of the Public Guardian may be able to provide an office copy of the registered Lasting Power of Attorney for a fee (currently £35).

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