

Lasting Power of Attorney

Frequently Asked Questions



Q. What is a lasting power of attorney?

A. A lasting power of attorney is a legal means of giving another person(s) the authority to make certain decisions on your behalf. There are two types: one for property and financial affairs, and one for health and welfare. All lasting power of attorneys are made and registered through the Office of the Public Guardian.

Q. Is it possible to have a property and finance lasting power of attorney come into effect only if you lose capacity?

A. Yes, you can use a section called 'restrictions' to stipulate that the lasting power of attorney is only to be used if you lose the capacity to make decisions for yourself.

A health and welfare lasting power of attorney only comes into effect when capacity is lost in any event. It cannot be used whilst the individual retains capacity.

Q. Who decides if you have lost 'capacity'?

A. The attorney is responsible for acting in the best interests of the donor. They are not responsible for making the decision about capacity. In relation to health and welfare, decisions about whether an individual has capacity are usually made by the treating clinician.

If the attorney doesn't act in the donors best interests, or if people suspect fraud or abuse they can contact The Office of the Public Guardian who will investigate.

Q. Who can be an attorney?

A. Anyone aged 18 or over can be appointed as a health and welfare attorney. In relation to property and affairs, the attorney can be a trust corporation or a person in which case they must be 18 or over and not declared bankrupt.

Q. What happens if I lose capacity suddenly and I don't have a lasting power of attorney?

A. Family and friends cannot nominate themselves as your attorney or make decisions on your behalf without a lasting power of attorney.

The Court of Protection may be approached to appoint a deputy to make decisions in your best interests if you lose capacity suddenly. This can take a long time to do.

Q. If you have more than one attorney do the decisions have to be unanimous?

A. There are two ways to appoint more than one attorney. It can be done 'jointly' or 'severally'. Attorneys appointed jointly need to agree on the decision to be made. Attorneys appointed severally make different decisions to each other.

Q. What if you have an enduring power of attorney?

A. You can no longer make an enduring power of attorney because they predate the current legislation. However, existing enduring powers of attorney are still valid and legally binding but they are only for financial affairs.

Q. How long does it take to register a lasting power of attorney?

A. It takes 8 – 10 weeks to register a lasting power of attorney once the application is made. At the start of the process, there is a ‘cooling off period’ of four weeks, during which time objections can be made to the Office of the Public Guardian if someone believes that you are making the lasting power of attorney under duress or you do not have capacity.

Q. What is a ‘certificate provider’?

A. A certificate provider gives assurance that you have the mental capacity to make the lasting power of attorney and understand the significance of it. The law states that mental capacity should be assumed unless there is evidence to the contrary.

A certificate provider must be either someone that has known you well for 2 years or more, or has relevant professional skills such as your doctor or lawyer.

Q. Can you change a lasting power of attorney once it has been registered if you still have capacity?

A. No, you cannot change your lasting power of attorney but it can be revoked and a new lasting power of attorney made.

Q. Can an attorney also be a beneficiary of your will?

A. Yes.

Q. Do you have to register the lasting power of attorney with The Office of the Public Guardian?

A. A lasting power of attorney cannot be used if it has not been registered. It can be registered at any time before or after you lose capacity, but if your attorney registers your lasting power of attorney after you have lost capacity no changes can be made.

Q. How much does it cost to make a lasting power of attorney?

A. It costs £110 to make a lasting power of attorney for either health and welfare or property and finance. To register both costs £220. There are exemptions and reductions for people on low income.