

# Information sheet - for Care UK residents who may wish to put their affairs in the hands of family or others

## Lasting Powers of Attorney for health & care decisions and financial decisions

### Introduction

This information sheet is for Care UK residents or prospective residents.

A Lasting Power of Attorney ('LPA') is a legal document by which a person over 18 (in the legal documentation normally referred to as the 'donor', but who is called in the first pages of this sheet the 'resident') appoints certain trusted people to make financial decisions or decisions regarding their health and welfare on their behalf when they are no longer able to make those decisions for themselves. These people are called attorneys. The resident can also appoint replacement attorneys who will step in as the attorneys if the original attorneys are unable or unwilling to act at any point after the LPA has been registered.

LPAs are legally recognised in England and Wales, but may not be recognised in other jurisdictions.

There are two types of LPA:

1. Financial decisions
2. Health & care decisions

Each type of LPA requires a separate form to be completed and signed. Each LPA must be registered and a fee is payable for each. There are standard forms produced by the Office of the Public Guardian. These can be found on their website: [www.gov.uk/government/publications/make-a-lasting-power-of-attorney](http://www.gov.uk/government/publications/make-a-lasting-power-of-attorney)

If a resident would like to include unusual or specific requirements in their LPA, they should take independent legal advice to ensure that their requirements are adequately captured.

### Mental capacity

The resident must have mental capacity in order to make the LPA. Mental capacity is the ability to make and understand the consequences of a specific decision at the time that the decision needs to be made.

A person with mental capacity has at least a general understanding of:

- The decision they need to make
- Why they need to make it
- Any information relevant to the decision
- What is likely to happen when they make it

They should be able to communicate their decision through speech, signs, gestures or other ways. It is possible for a person to have mental capacity to make some decisions but not others.

It is likely that a person lacks mental capacity if they have a problem with their brain or mind that stops their brain or mind from working properly and, as a result, which causes them to be unable to make a particular decision, at the time it needs to be made.

A person is unable to make a particular decision if they are unable to:

- Understand relevant information about the decision that needs making
- Keep that information in their mind long enough to make the decision
- Weigh up the information in order to make the decision
- Communicate their decision by talking or by using sign language, pictures, blinking or squeezing a hand

LPAs are governed by the Mental Capacity Act 2005. The Mental Capacity Act Code of Practice sets out how attorneys must act and contains more information about mental capacity. The Mental Capacity Act Code of Practice can be found online at [www.gov.uk/government/publications/mental-capacity-act-code-of-practice](http://www.gov.uk/government/publications/mental-capacity-act-code-of-practice)

The attorneys can make decisions on the resident's behalf but they must always act in the resident's best interests.

The Mental Capacity Act Code of Practice states that attorneys must:

- Always assume that the resident can make their own decisions unless it is established that they cannot do so
- Help the resident to make as many of their own decisions as they can
- Take all practical steps to help the resident make a decision
- Not treat the resident as unable to make a decision simply because they make an unwise decision
- Act and make decisions in the resident's best interests when they are unable to make a decision
- Consider whether the resident can make a decision or act in a way that is less restrictive of the resident's rights and freedoms but still achieves the purpose

If it is unclear whether a person lacks mental capacity, advice must be taken from a professional such as a GP or a lawyer, before making an LPA.

### **What if a person lacks capacity?**

If a person has lost mental capacity they cannot make an LPA and instead an application must be made to the Court of Protection, who will appoint someone else to act on their behalf. Care UK has prepared a separate information sheet which explains this process, called 'Deputyship and the Court of Protection'.

### **Financial decisions LPA**

A resident may wish to create a financial decisions LPA if they would like to appoint an attorney to assist with making decisions about:

- Managing money, including opening, closing and using bank and building society accounts
- Claiming, receiving and using benefits, pensions and allowances
- Paying bills, including utility bills and care bills
- Making or selling investments
- Buying, selling or otherwise managing a home

Once the LPA has been registered, if the resident wishes, finance and property attorneys can act on their behalf before they have lost mental capacity, but only with the resident's permission. Alternatively, the attorneys can act only once the resident has lost capacity to make decisions for themselves.

### **Health and care decisions LPA**

A resident may wish to create a health and care decisions LPA if they would like to appoint an attorney to assist with making decisions about:

- Giving or refusing consent to health care and, in particular, life sustaining treatment
- Staying in their own home and getting help and support from social services
- Moving into residential care and finding a good care home
- Day-to-day matters such as their diet, dress or daily routine

A health and care decisions attorney can only make decisions on the resident's behalf once the LPA has been registered and the resident has lost mental capacity.

The resident should discuss their plans to appoint particular people as their attorneys with those people prior to signing the forms, so that the resident knows they are happy to be appointed.

### **LPA forms**

The forms are available on the Office of the Public Guardian website:

<https://www.gov.uk/government/collections/lasting-power-of-attorney-forms>

The forms can be printed off and filed by post or the website offers an online service.

### **Registration of LPAs**

Before the LPAs can be used, they must be registered with the Office of the Public Guardian ('OPG'). It costs £110 to register each LPA with the OPG, and once registered, the LPAs are ready to be used as soon as they are needed.

**This information sheet contains general information for current and prospective residents at a Care UK home only and does not constitute legal advice. If anyone involved in the making of an LPA has any questions about the LPA forms they will need to contact the Office of the Public Guardian. They may also need to consider seeking independent legal advice.**

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