

JUST.

Power of attorney

Learning objective

- Understand the relevant aspects regarding power of attorney duties.

Incapacity can occur at anytime



Not many clients do this



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But how many do this?



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Points to consider on POAs

- Encourage clients to execute powers of attorney
- Dealing with Court of Protection takes time - and costs client money
- You cannot accept instructions without one or the other
- Families cannot make decisions without power of attorney or deputyship
- Equally as important as a will?

POA vs Court of Protection



Costs compared

Power of attorney

£582 total



Applying for a 'deputyship'

£2,220+ total



Dealing with Powers of attorney



Power of attorney

- Ordinary power of attorney
- Enduring power of attorney
- Lasting power of attorney
 - **Health and Welfare**
 - **Property and Financial Affairs**

Advisory process – vulnerable client

Acting on behalf of the client - working with the family

Even with power of attorney - person who requires care is the client!

Advisory process – vulnerable client

Involving family?

- Power of attorney required
- If no power of attorney – Court of Protection

Conflicts of interest?

- Maximise income for elderly person and ensure good care for life Or
- Maximise the value of estate for inheritance

Enduring Powers of Attorney (EPA)

- Power to continue to act in the event of loss of capacity
- Must be registered when donor starts to lose capacity
- If donor capacity lost, cannot use until registered
- Can't write new EPAs, but those signed before October 2007 are still valid



Enduring power of attorney (EPA)

- Can use before loss of capacity but:

Note: Can be restricted so that power does not come into effect until registered

- Powers can be general or restricted and attorneys can be single or joint
- Does not include personal welfare

Enduring Power of Attorney

Part A: About using this form

1. You must choose one attorney or more than one. If you choose one attorney then you must define everything between the square brackets on the first page of the form. If you choose more than one, you must decide whether they are able to act:
 - jointly (that is, they must all act together and cannot act separately); or
 - jointly and severally (that is, they can all act together but they can also act separately if they wish).On the first page of the form, show what you have decided by crossing out one of the alternatives.
2. If you give your attorney powers to act on behalf of all your property, you must ensure that they will be able to manage your money or property if you are unable to do so.
3. If you don't want your attorney to have such wide powers, you can include any restrictions you like. For example, you can include a restriction that your attorney must not act on your behalf until they have done so before that you are becoming mentally incapable, or a restriction as to what your attorney may do. Any restrictions you choose must be written or typed where indicated on the second page of the form.
4. If you are a trustee (and please remember that responsibility of a trustee involves responsibility), you should seek legal advice if you want your attorney to act as a trustee on your behalf.
5. Unless you put in a restriction preventing it your attorney will be able to use any of your money or property to make any provision which your counsel might be expected to make for their own needs or the needs of other people. Your attorney will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.
6. Your attorney can receive the net-of-paid expenses of acting as your attorney. If your attorney is professional people, for example solicitors or accountants, they may be able to charge for their professional services as well. They may wish to provide expressly for reimbursement of your attorney although if they are trustees they may not be allowed to accept it.
7. If your attorney has no reason to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney will have to apply to the Court of Protection for registration of the power.
8. This is a simplified explanation of what the Enduring Powers of Attorney Act 1985 and the Rules and Regulations say. If you need more guidance, you or your attorney will need to look at the Act itself and the Rules and Regulations. The Rules are the Court of Protection (Enduring Powers of Attorney) Rules 1986 (Statutory Instrument 1986 No. 127). The Regulations are the Enduring Powers of Attorney (Simplified Power Regulations) 1985 (Statutory Instrument 1985 No. 1276).
9. Note to Attorneys: Some of these regulatory rules may not apply to the form you are using if it has already been adapted to suit your particular requirements.
10. Note to Donors: Some of these regulatory rules may not apply to the form you are using if it has already been adapted to suit your particular requirements.

YOU CAN CANCEL THIS POWER AT ANY TIME BEFORE IT HAS TO BE REGISTERED

Oyez

Lasting powers of attorney – two types

Property and
Financial
Affairs

Office of the Public Guardian

Form **LP1F**

Lasting power of attorney

Financial decisions

Registering an LPA costs **£82**
This fee is means-tested: see the application Guide part B

Use this for:

- running your bank and savings accounts
- making or selling investments
- paying your bills
- buying or selling your house

How to complete this form

PLEASE WRITE IN CAPITAL LETTERS USING A BLACK PEN

Mark your choice with an X

If you make a mistake, fill in the box and then mark the correct choice with an X

Don't use correction fluid. Cross out mistakes and rewrite nearby. Everyone involved in each section must initial each change.

Making an LPA online is simpler, clearer and faster
Our smart online form gives you just the right amount of help exactly when you need it: www.gov.uk/power-of-attorney

This form is also available in Welsh. Call the helpline on 0300 456 0300.

This page is not part of the form

LP1F Property and

Health
and
Welfare

Office of the Public Guardian

Form **LP1H**

Lasting power of attorney

Health and care decisions

Registering an LPA costs **£82**
This fee is means-tested: see the application Guide part B

Use this for:

- the type of health care and medical treatment you receive, including life-sustaining treatment
- where you live
- day-to-day matters such as your diet and daily routine

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LP1H Health and welfare (02.17)

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Lasting powers of attorney

Property
and
financial
affairs

Office of the Public Guardian

Form LPIF

Lasting power of attorney

Financial decisions

Use this for:

- running your bank and savings accounts
- making or selling investments
- paying your bills
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Registering an LPA costs **£82**

This fee is means-tested: see the application Guide part II

How to complete this form

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LPIF Property and

Decisions such as:

- Buying and selling property
- Paying the mortgage
- Investing money
- Paying bills
- Arranging repairs to property

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Lasting powers of attorney

Decisions such as:

- Where you should live
- Your medical care
- What you should eat
- Who you should have contact with
- What kind of social activities you should take part in

Health and welfare

Office of the Public Guardian

Form LP1H

Lasting power of attorney

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LP1H Health and welfare (02.17)

Registering an LPA costs **£82**

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Before you start...

Lasting power of attorney


- The LPA must be signed by a “certificate provider “
- They confirm:
that you understand it, and
haven't been put under pressure to sign it.
- They must be someone:
you know well (for at least two years) or
a professional person, such as a doctor, social worker or solicitor.
- The LPA must be registered with the Office of the Public Guardian (OPG)
before it can be used.

Other responsibilities of attorneys

- A duty of care when making decisions
- Carry out instructions donor has made in their POA
- Not to benefit themselves but to benefit the donor
 - Attorney's should avoid any potential conflicts of interest
 - Not profit or benefit personally from the position other than as specified in the POA

ENSURE CLIENTS UNDERSTAND THESE DUTIES

Guidance for power of attorney

 Office of the Public Guardian LP14

How to be an attorney

Property and financial decisions

You don't have to read this guide all at once. It's meant for reference and is divided into sections to help with different aspects of being an attorney

Getting started

This guide is for people who've been appointed attorneys for property and financial decisions or are considering taking on that role.

Being an attorney is an important responsibility. You need to understand fully what it involves before agreeing to accept the position – and you can refuse to do it if you feel uncomfortable about it.

Throughout the guide we use others' stories to show things attorneys consider when making decisions. These aren't final answers but may give you ideas about how to act.

An A-Z jargon buster at the end of this guide explains terms you might not understand.

What is an attorney?

In law, an attorney is someone who's chosen to act on behalf of someone else.


When someone (called the 'donor') makes a lasting power of attorney (LPA), they pick people to make decisions for them in case they lose mental capacity.

Mental capacity means the ability to make your own decisions.

The people chosen to help donors are attorneys. Attorneys don't need legal training but they do need to be trustworthy and reliable.

An attorney for property and financial affairs – to use the full legal term – also needs to know enough about money matters to carry out the role well.

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 Office of the Public Guardian LP15

How to be an attorney

Health and welfare decisions

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Mental capacity means the ability to make your own decisions.

The people chosen to help donors are attorneys. Attorneys don't need any special training but they do need to be trustworthy and reliable.

Throughout this guide, we call the person who you are making health and welfare decisions for the 'donor'

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<https://www.gov.uk/government/publications/how-to-be-an-attorney>

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

The screenshot shows the GOV.UK website interface. At the top left is the GOV.UK logo with a crown icon. To the right is a search bar with the text 'Search' and a magnifying glass icon. Below the header is a breadcrumb trail: 'Home > Births, deaths, marriages and care > Lasting power of attorney, being in care and your financial affairs'. The main heading is 'Make, register or end a lasting power of attorney' in a large, bold, black font. Below the heading is a 'Contents' section with a list of links: 'Overview', 'Choose your attorney', 'Make a lasting power of attorney', 'Register a lasting power of attorney', 'Certify a copy of a lasting power of attorney', 'Change your lasting power of attorney', and 'End your lasting power of attorney'.

GOV.UK Search

Home > Births, deaths, marriages and care > Lasting power of attorney, being in care and your financial affairs

Make, register or end a lasting power of attorney

Contents

- Overview
- [Choose your attorney](#)
- [Make a lasting power of attorney](#)
- [Register a lasting power of attorney](#)
- [Certify a copy of a lasting power of attorney](#)
- [Change your lasting power of attorney](#)
- [End your lasting power of attorney](#)

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Duties of attorneys



Buckley v Court of protection
Senior Judge Lush

The Mental Capacity Act 2005... states that, “an act done, or decision made...for or on behalf of a person who lacks capacity must be done, or made, **in his best interests.**”

An attorneys’ position imposes duties on them. Like trustees, they must exercise such care and skill as is reasonable...when investing the donor’s assets and this duty is greater where attorneys hold themselves out as having specialist knowledge...

Although it does not expressly apply to attorneys, the Trustee Act 2000 requires trustees to have regard to “standard investment criteria” when exercising any power of investment. One of the standard criteria is the **suitability of the investments.**

Public Guardian and Buckley – Senior Judge Lush

Two of the most important factors when considering the suitability of investments are **the donor's age** and **life expectancy**. Most donors are older people. Average age is 80 years and 11 months.

Short-term investment codes are generally more appropriate where an individual has an anticipated life expectancy of five years or less.



[http://www.mentalhealthlaw.co.uk/media/Re_Buckley_\(2013\)_MHLO_13_\(LPA\).pdf](http://www.mentalhealthlaw.co.uk/media/Re_Buckley_(2013)_MHLO_13_(LPA).pdf)

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Investing under power of attorney

- Attorneys hold a fiduciary position
- Must exercise such care and skill as is reasonable when investing donors assets
- Age and life expectancy to be taken into account

Learning objective

- Understand the relevant aspects regarding power of attorney duties.

Important Information

It is our intention that the information contained within this presentation is accurate. We have taken all reasonable steps to ensure that it is up-to-date and, where relevant, reflects the current views of our experts. However, we do not accept any liability for errors or omissions in the information supplied and if you require clarification on anything, our recommendation is that you contact us at the address below for verification, or call 0345 302 2287.

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Exp 30/04/2023

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