

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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For financial intermediary use only, not to be used with customers

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But how many do this?





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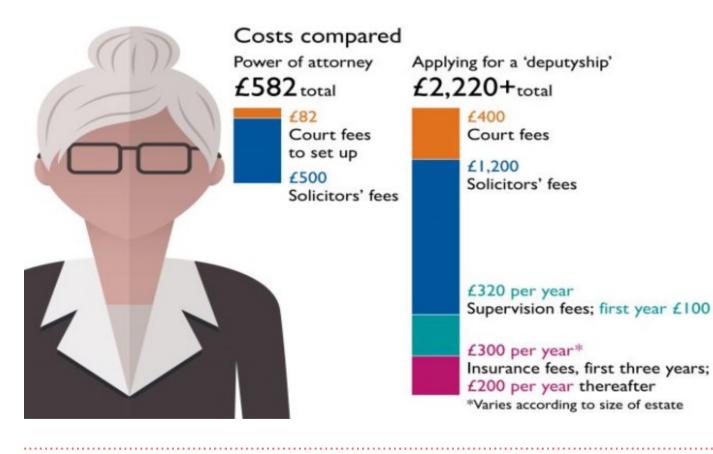
Points to consider on POAs

- 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





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!



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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

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Enduring power of attorney (EPA)

• Can use before loss of capacity but:

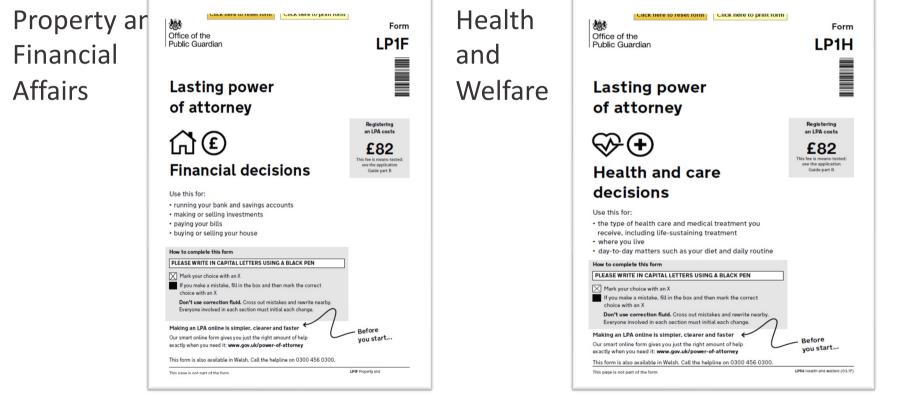
Note: Can be restricted so that power does not come into effect until registered

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

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Lasting powers of attorney – two types





Lasting powers of attorney

Property and financial affairs

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Lasting power of attorney	
ကြဲ ፪ 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	Before you start
Our smart online form gives you just the right amount of help exactly when you need it: www.gov.uk/power-of-attorney	

Decisions such as:

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



Lasting powers of attorney

and

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





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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.



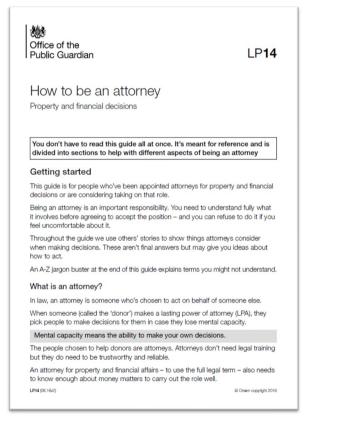
Other responsibilities of attorneys

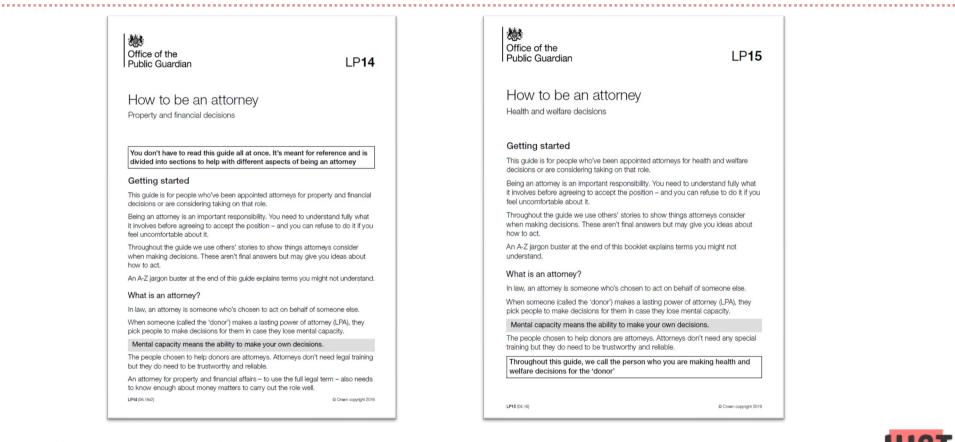
- A duty of care when making decisions
- Carry out instructions donor has made in their POA
- Not to benefit themselves but to benefit the donor
 - Attorney's should avoid any potential conflicts of interest
 - Not profit or benefit personally from the position other than as specified in the POA

ENSURE CLIENTS UNDERSTAND THESE DUTIES



Guidance for power of attorney

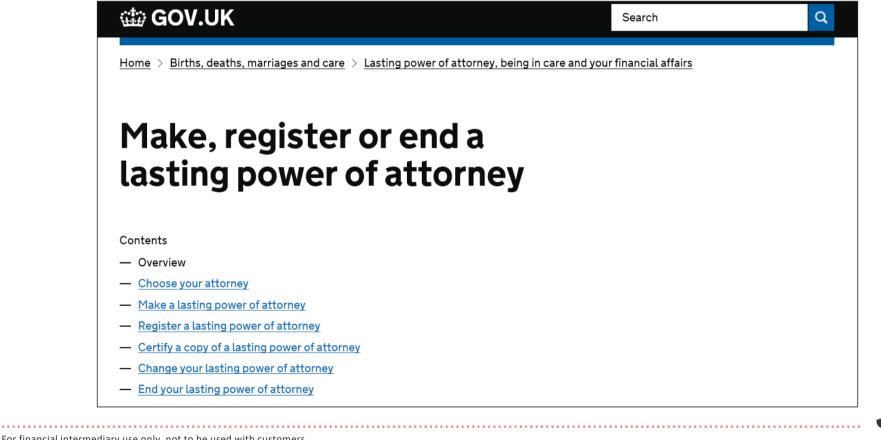




https://www.gov.uk/government/publications/how-to-be-an-attorney



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



JUS

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.**

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



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



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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.

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