

“ Plain speaking legal advice ”

**Power of Attorney
Frequently Asked Questions**

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Although Powers of Attorney have been around for many years in one guise or another there are still many people who are unaware of the tremendous benefits they offer.

So, what is a Power of Attorney? - A legal document that allows someone (let's say Daisy) to choose another to be their attorney (let's call that person Ann) to make decisions and take actions on her behalf.

How many types of Powers of Attorney are there? - In general there are three:

General Power – This is the simplest document and can be used to give power over Daisy's property and financial affairs. It must be confirmed as valid on a regular basis, usually annually, and will cease automatically if Daisy should become mentally incapable of managing her affairs herself. This type of document is used for short-term needs, for example Daisy is going away for a few months and wishes Ann to manage her affairs whilst she is away.

Enduring Power of Attorney (EPA) – The Mental Capacity Act 2005 brought the creation of these powers to an end. However, those that were made before October 2007 are perfectly valid and will remain so until they are cancelled or the person giving the Power dies. EPAs cover Daisy's property and financial affairs, and allow Ann to act and make decisions on Daisy's behalf. Should Daisy become mentally incapable of managing her affairs herself the power given to Ann “endures” through Daisy's illness so that Ann can carry on dealing with Daisy's finances on her behalf. The power itself became active the moment the document was signed; allowing Ann to assist Daisy straight away if required. If Daisy does become mentally incapable of managing her affairs then the EPA must be registered at the Office of the Public Guardian, but Ann will still have the power to carry on acting and making decisions for Daisy.

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Lasting Power of Attorney (LPA) – This is the document that replaced the EPA. There are two types of LPAs : ‘Property and Financial Affairs’ and a ‘Personal Welfare’ power.

Can I make an LPA? – If you are: over 18, able to understand the power that you are giving to your Attorney, able to understand the possible consequences of giving power to deal with your affairs to Ann, aware of your assets and responsibilities, and are making the document because you want to not because someone is telling you that you must, then yes you can make a valid LPA.

Can I make an LPA for someone else? – For example, Daisy is becoming forgetful and confused, can Ann make a Power of Attorney to enable her to take over Daisy’s affairs?

No, but provided that Daisy is not too badly forgetful and confused she may still be able to make an LPA and it would be wise to try and persuade Daisy to get professional advice and see if she can make one before her condition deteriorates further.

If I move will my LPA still be valid? – A simple change of address will not affect the document as the Act allows LPAs to cover people with assets in England and Wales. However, if you are moving to Scotland or Northern Ireland, or to anywhere outside the UK, the document may not be recognised in that country.

When can my attorney make decisions? - As the Attorney appointed under an LPA Property and Financial Affairs, if for any reason Daisy is unable to make a decision about a specific matter affecting her property and financial affairs at the relevant time herself, Ann can make a decision on Daisy’s behalf. However, this can only be done once the LPA has been registered at the Office of the Public Guardian. As an attorney under an LPA

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Personal Welfare, only when the LPA has been registered at the Office of the Public Guardian and Daisy is not mentally capable of making a decision about a specific matter affecting her personal welfare herself, can Ann make that decision on Daisy's behalf.

What can my attorney do? – The decisions that Ann could make on behalf of Daisy where there is an LPA for Property and Affairs include:

Buying and selling her house;

Opening, closing and operating her bank and building society accounts;

Buying, selling and dealing with her investments;

Claiming, on Daisy's behalf, any benefits that she is entitled to, such as her pension or Attendance Allowance, and receiving and/ or using any such benefits

Ann must support and help Daisy as much as possible to reach decisions for herself and she must have regard to any notes of guidance or instruction Daisy has included in the LPA for her.

Ann cannot make a Will or vote on Daisy's behalf. Unless Daisy specifically gives Ann the power to do so, she cannot even have access to Daisy's Will.

LPA for Personal Welfare will include:

Giving or refusing consent to particular types of healthcare. If Daisy gives Ann the power to do so, this can also include life sustaining treatment;

Liaising with Social Services about care packages to enable Daisy to stay in her own home or, if necessary, finding a suitable residential or care home;

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Every day issues such as Daisy's dress, what activities Daisy undertakes or what meals she has.

Ann must support and help Daisy as much as possible to reach decisions for herself and she must have regard to any notes of guidance or instruction Daisy has included in the LPA for her.

Ann cannot make a decision about Daisy marrying or entering into a civil partnership, a divorce or Daisy's sexual relations.

What safeguards are there? – If the LPA document has not been registered at the Office of the Public Guardian then Ann can do nothing. Registration of the LPA does not have any reflection on Daisy's mental capacity; it simply means that the power has been activated. Daisy can register it at any time. If Ann tries to register it Daisy can object to that registration. There is a formal process that must be followed at the Office of the Public Guardian before registration can be completed.

When making the LPA, Daisy must choose someone to act as her Certificate Provider. That is someone who discusses the document with her to include Daisy's choice of attorney or attorneys and the powers being given to those attorneys. The Certificate Provider then signs the document to confirm that he or she is satisfied Daisy understood the significance and purpose of the LPA.

Daisy must also include details of people to be notified about the LPA on registration of it. The purpose of this is so that someone Daisy trusts can raise any concerns that they may have at the time of registration.

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When Daisy and Ann sign the forms their signatures must be witnessed by an independent adult, who is over 18 and is not related to Daisy or Ann or married (or indeed a civil partner) to them.

As attorney Ann must act in Daisy's best interest and she must follow the Code of Practice of the Mental Capacity Act 2005.

As attorney Ann is someone that Daisy has chosen to help her. It is someone that Daisy trusts to help her and not to take advantage of her.

What happens if I want more than one attorney? - You can have up to five attorneys if you wish but do bear in mind they must get along together. Providing the appointment is clear you can have one or all of your attorneys dealing with specific matters such as:

Joint	All of your chosen attorneys must act and sign together regardless of the distance between everyone.
Joint and Individual	Any one of your attorneys can act or sign for you without reference to any of the others.
A mixture	If you are appointing say two attorneys it is possible to say that they must act jointly on any decisions concerning the sale of your house but individually on any other matter. If you want to appoint say five attorneys you could say the same, what you cannot say is that any two or more can make a decision or sign something. It must be absolutely clear on who can do what and when.

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None of us like to admit that our family is at war but it does happen. If your family is one of these then you must be very careful in choosing your attorney or attorneys. A family meeting would be recommended where you can tell the whole family of your decisions. There is no point in appointing two or more attorneys who do not get on, the appointment will not bring them together. What it will do is make the management of your affairs impossible at a time when you need support and assistance.

Why do I need an attorney? – Whilst you are perfectly capable of managing your affairs yourself then you probably do not need an attorney but illnesses and accidents can happen. The preparation of this document forms part of your forward planning. By making an LPA now you are choosing who is to help you should a time come when you are not able to act for yourself. For example:

Diagnosed with a degenerative illness such as Alzheimer's;

Suffering from Learning Difficulties;

Physically or mentally damaged following an accident.

There are many reasons why you may need an attorney, these are just three.

For advice and assistance with Powers of Attorney please contact the Private Client Team and our local office.

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