

# Can you ever be too young to create a Lasting Power of Attorney?

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**While most Lasting Powers of Attorney (LPAs) are currently created by the elderly, mental capacity issues can strike at any age. Anyone can fall foul of an illness or accident which leaves them incapacitated or even in a coma.**

If you are 18 or over and have mental capacity, you can create an LPA which can be used to deal with such situations.

An LPA will ensure that the people you appoint as your attorneys can take care of both your health and welfare needs and your financial obligations. In the event of a recovery, you can assume control of your affairs again without terminating the LPA.

You can even use a property and financial affairs LPA while you have mental capacity. For example, you could authorise your attorney to make some payments from your account while you are out of the country or to sign certain documents on your behalf.

## What is an LPA?

LPAs were introduced by the Mental Capacity Act 2005 (the [Act](#)). An LPA is a legal document which allows an individual to appoint one or more persons to act as their agent (i.e. attorney) to help them make decisions or make decisions on their behalf and in their best interests if they're incapacitated.

There are two types of LPA:

- 1. a health and welfare LPA; and**
- 2. a property and financial affairs LPA.**

You can appoint the same or different attorneys in each LPA.

Your attorneys can only act under your health and welfare LPA if you lose mental capacity. This type of LPA allows your attorneys to make decisions – yes, you guessed it – about your health and welfare, like whether you should stay in your own home or move into a care home, what medical treatment you should or shouldn't have and even down to what you eat, drink and wear.

Conversely, you can choose when your attorneys can act under a property and financial affairs LPA: either with your permission or only if you lose mental capacity. This type of LPA is recognised by various financial institutions and gives your attorneys the power to manage your bank accounts and investments and even the power to sell your home. You do not need to have a lot of money to make this kind of LPA and having it would allow your attorney to apply for any benefits you may be entitled to.

LPAs are not valid unless they have been registered with the Office of the Public Guardian (the [OPG](#)).

## Won't my family just take care of everything if something happens to me?

Your bank may not give your family access to your accounts if they have not been appointed as an attorney under a property and financial affairs LPA. This could mean that they are unable to meet your mortgage payments or any other financial obligations you might have. This could have a devastating impact on your family. In that situation your next of kin would have to apply to the [Court of Protection](#) for a [Deputyship](#) order, a time-consuming and expensive process.

Regarding your health and welfare, while it is likely that doctors would discuss any treatment with your family, your family will not have a right to object to treatment. They can only do this if they have been appointed as an

attorney. If you no longer have mental capacity, you cannot make an LPA. Again, your family would have to apply to the Court of Protection for a Deputyship Order.

### **Can I just create the one LPA?**

Yes. The two LPAs are independent of one another. If you have appointed someone as an attorney for your health and welfare decisions, they will not automatically be entitled to manage your finances. It can be useful to have both LPAs as the attorneys can work together and utilise your finances to provide you with the best care.

### **How can I change my attorneys?**

Once an LPA is created you can only make a few changes to it. One of the permitted changes includes removing an attorney. However, if you wish to replace an attorney, you must revoke your LPA and create a new one. You will have to pay the [registration fee\(s\)](#) again.

### **Can I make my LPA without a solicitor?**

While it is cheaper to create an LPA without a solicitor, you will benefit from taking legal advice before creating such a powerful document giving people the right to make decisions on your behalf.

By obtaining legal advice you can better understand the decisions an attorney can make on your behalf and you can ensure that your attorneys understand that they must follow the [principles](#) set out in the Act. This can ensure that your attorneys are not misusing their powers.

Further, your solicitor can ensure that any instructions and preferences included in your LPA are ones that are acceptable to the OPG. One of the main reasons why the OPG refuse to register an LPA is because someone has inserted a badly written restriction or instruction, which makes the LPA unworkable. If you do not insert anything in these sections, your attorney will be free to make any decision which follows the Act.

Your solicitor can suggest some instructions and preferences to insert which will safeguard you and your assets e.g., producing annual accounts or restricting the sale of your property or limiting the value of gifts your attorneys can make from your funds.

If you would like to discuss LPAs and how we can help to safeguard your future contact Lalita Kauldhar or [James McMullan](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

