

Lasting Power of Attorney (LPA)

LPA allows people to set out what they wish to happen if, in the future, they become unable to make decisions or lack the mental capacity to do so. These decisions could be about finances, legal or health and welfare issues. LPA ensures that the person's views will be respected. This makes it easier for people caring for them. LPA is very relevant to people who are at risk of becoming dependent, for example from dementia. An LPA can only be made whilst a person still has mental capacity. Without an LPA, managing the affairs of a person lacking mental capacity can be difficult.

There are two kinds of LPA and people can make one or other, or both. Each has a separate form:

- **Property and financial affairs:** decisions about moving house/selling your home/managing bank accounts/dealing with finances
- **Health and welfare:** decisions about appropriate medical treatments/day to day care/where to live

The person who is making the LPA is known as the donor. They can appoint one or more attorneys. An attorney is someone who will act in the best interest of the donor and take into consideration the donor's past and present wishes. They can be family members, friends, or a professional such as a solicitor. They can be appointed to act together, or independently.

LPA forms can now be completed online (www.gov.uk/government/collections/lasting-power-of-attorney-forms), or many people prefer to get a solicitor to help them. The fees charged by solicitors may be several hundred pounds.

An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. This involves paying a fee, currently of £110. Other people the donor would like to be notified must be contacted before the LPA is registered. The OPG also deals with any objections or complaints concerning LPAs.

What if a person lacks mental capacity and has not made a power of attorney?

The Court of Protection (part of the OPG) can appoint a deputy to make necessary decisions on their behalf. The scope of the decisions that can be made is specified by the Court.

The deputy must be someone with appropriate skills and knowledge to carry out their duties and they can only act in the best interests of the person. The fees charged by the Court vary, but can be expensive.

Appointeeship (separate from LPA)

The Department of Work and Pensions (DWP) can, on request, allow someone else to collect any state benefit (e.g. pension, attendance allowance) on behalf of a person who is unable to collect it themselves. This could be a friend or family member.

To do this they will need to telephone 0345 6056055 to arrange someone to visit you both to fill out the application form.

Mental Capacity Act (2005)

This Act aims to empower and protect people with limited mental capacity, such as those with dementia, to make decisions.

Key principles are:

- a person has capacity unless proved otherwise
- a person should not be treated as incapable of making a decision unless all practicable steps have been tried to help them
- a person must not be assumed to be incapable of making a decision because their decisions seem - to others – unwise
- doing things, and taking decisions for people without capacity should always be in their best interests and be the least restrictive option

A person is deemed unable to make a particular decision for him/herself if they are unable

- To **understand** the information relevant to the decision (nature, purpose and consequences)
- To **retain** that information
- To **use or weigh** that information as part of the process of making the decision and
- To **communicate** their decision (whether by talking, using sign language or any other means)

Where to get more information?

The Office of the Public Guardian carries out the legal functions of the Mental Capacity Act 2005. There is a lot of information on their website:

www.gov.uk/government/organisations/office-of-the-public-guardian.

Their telephone number (if you have concerns about an attorney or deputy) is 0115 934 2777 or 0300 456 0300

Citizens Advice Bureau (CAB) - gives free, confidential and independent advice on legal and financial matters. There are local CAB offices at 2nd floor, Central Library, The Hayes, Cardiff or at 119 Broad Street, Barry.

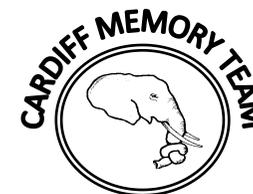


Academic Centre, University Hospital Llandough
Penarth, Cardiff, Vale of Glamorgan,
CF64 2XX, Tel No. 029 20716961
Fax No. 029 20704244



March 2017

No. 7



TŪM Y COF CAERDYDD