

If you lack mental capacity to make a particular decision it may be necessary for someone else to make that decision on your behalf - this is called power of attorney.

Powers of Attorney – You might want someone to look after your financial affairs even if you are still mentally able to do so yourself. This could be because you are going abroad for a while, or going into hospital, or even because you just want some help keeping things in order. If this is the case you can choose to set up either an Ordinary Power of Attorney or a Lasting Power of Attorney.

Ordinary Power of Attorney

An Ordinary Power of Attorney gives someone else the power to handle your financial affairs on your behalf.

The important thing to remember about Ordinary Power of Attorney is that it comes to an end if you lose the mental capacity to make decisions about your finances.



Lasting Power of Attorney

If you want someone to be able to continue looking after your finances even if you lose mental capacity to make your own financial decisions and you are no longer able to supervise their actions, you should consider setting up a property and affairs Lasting Power of Attorney (LPA). This is a new power, that replaces the previous system of Enduring Powers of Attorney (EPAs), and that can also allow them to make decisions about your healthcare if you wish.

Mental capacity means being able to make and communicate your own decisions. Someone might lose their mental capacity to make certain decisions if, for example, they have a stroke, are suffering from mental illness or develop dementia. The decisions could be about day-to-day things like what to wear or when to pay a bill, or they could be more important decisions such as where you should live or whether you should have a certain type of medical treatment.

The Mental Capacity Act provides a legal framework to help empower people to make their own decisions and to make clear what actions carers and family can take. A code of practice explains how people should use it in everyday situations.

The Act sets out five principles to follow when assessing whether someone lacks capacity and when making decisions on their behalf:

- **A presumption of capacity:** A person must be assumed to have capacity to make their own decisions unless it can be established that this is not the case.
- **The right to be supported to make a decision:** All practicable steps must be taken to help a person to make their own decision before anyone concludes that they do not have the capacity to do so.
- **The right to make unwise decisions:** A person should not be treated as unable to make a decision just because they make an unwise decision.
- **Best interests:** Any act done, or decision made, for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
- **Least restrictive intervention:** Before making a decision on behalf of someone without capacity, all alternatives must be considered and the option chosen should be the least restrictive of the person's rights and freedom of action.

If you would like a booklet giving more information about this subject please **call us on 01375 389872**.