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# Living Wills, Enduring Powers of Attorney and Lasting Powers of Attorney

## Enduring Power of Attorney

An Enduring Power of Attorney was an instrument used by a person to nominate someone to look after their affairs. Any Enduring Power of Attorney executed prior to 1st October 2007 will still be valid. No new Enduring Power of Attorneys can be created. They have been replaced by the Lasting Power of Attorney.

## General Power of Attorney

A General Power of Attorney (GPA) is a relatively straightforward authorisation for wide-ranging use or for specific periods or events. The need to create a GPA might arise, for example, if someone goes abroad and needs to entrust the management of business interests to their spouse. A General Power of Attorney can only be used to manage or deal with financial affairs.

## Lasting Power of Attorney

The Mental Capacity Act 2005 ('the Act') introduced the Lasting Power of Attorney, a legal document which allows someone to make decisions about health care or finances at a time when a person lacks the mental capacity to make those decisions for themselves. ([Mental Capacity](#))

There are two very different forms of Lasting Power of Attorneys (LPAs) that can be made.

- 1 One deals with financial affairs - LPA (Property and Affairs) abbreviated to LPA (PA) which replaces the existing Enduring Power of Attorney (EPA)
- 1 The other form of Lasting Power of Attorney deals with personal welfare issues - LPA (Personal Welfare), abbreviated to LPA (PW).

This is a new legal concept although similar to a Living Will or Advance Directive.

A person can make one form of Lasting Power of Attorney without making the other. The person making the LPA is referred to as the "donor".

An LPA(PW) enables the Donor to appoint an Attorney to make decisions about social care issues and medical treatment, including life-sustaining treatment.

There may be different Attorneys for a person's LPA(PW) and their LPA(PA).

Many of the elements of the LPA(PW) are similar to the LPA(PA). A valid LPA must include a certificate completed by an independent third party (the certificate provider), which confirms that, in their opinion, the donor understands the scope and purpose of the LPA; the donor was not put under undue pressure to make the LPA; and that the certificate provider is not aware of anything else that would prevent the LPA being made. As a doctor, you may be asked to act as the certificate provider.

The Donor must name the people who they wish to be given notice when an application to

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register the LPA is made. LPAs are only valid if they are registered with the Office of the Public Guardian (OPG). If you believe they may have an LPA, you should contact the OPG.

More than one person may be appointed as an Attorney and they may be appointed to act alone or it can be stipulated that they must act together - this can be altered according to the situation eg when consenting for surgery. It is a legal document and decisions that the attorney makes are as valid as any made by the donor.

An attorney is bound by the principles set out in the Act; for example, any decisions they make must be made in the best interests of the person lacking capacity.

Whilst an LPA(PW) must also be registered before it is used, a crucial difference between an LPA(PA) and an LPA(PW) is that an LPA(PW) can only be used when the Donor lacks mental capacity to make their own decisions about personal welfare. The Act requires that an individual is given every reasonable opportunity to make a decision themselves before they are considered to lack capacity.

Once the Donor's lacks capacity, an LPA(PW) gives an Attorney authority to make decisions in relation to a variety of issues, including:

- | where the Donor should live and who they should live with
- | who the Donor should have contact with
- | arrangements needed for the Donor to receive medical or dental treatment
- | the Donor's day-to-day care
- | consenting to or refusing medical treatment and examination

An LPA does not give attorneys the power to demand specific treatments, if you do not believe that they are necessary or appropriate. Attorneys also have no authority to make decisions that result in the deprivation of a donor's liberty.

If you are the doctor caring for the donor, you should not be the patient's LPA.

If potential family disputes are known then restrictions can be put in place by the Donor limiting the authority of the Attorney.

The Attorney will have no power to consent to or refuse life-sustaining treatment unless the LPA(PW) gives them express authority.

If an Advance Directive includes a refusal of treatment, it may become invalid if a later LPA(PW) gives authority to an Attorney to make decisions on your behalf.

Donors may wish to prepare a letter of guidance for their Attorney so that they are aware of the Donor's views when making decisions. Whilst such a letter is not legally binding, the Attorney must take the Donor's views and beliefs into account when considering how to act in their best interests.

An Attorney under an LPA(PA) has no authority to make decisions about the Donor's personal care and an Attorney under an LPA(PW) has no authority to make decisions about the Donor's property and affairs. The same person may be appointed under separate LPAs to carry out both roles.

If you are unclear about the meaning of an LPA, the Court of Protection will be able to clarify it. The Court can also extend the powers of the attorney when the donor has lost capacity.

If you suspect that an attorney is abusing their position, you should contact the OPG immediately. In suspected cases of physical or sexual abuse, theft or serious fraud, you should contact the police. The OPG, in serious cases, will refer the matter to the Court of Protection, who may then revoke the LPA.

## **Living Wills or Advance Medical Directives**

A Living Will is an advance declaration of wishes about medical treatments which could be given for any future illness, where mental capacity has been lost.

Living Wills are valid in England & Wales and Scotland, but in England & Wales they are also known as 'Advance (Medical) Decisions'.

With a Living Will, only refusals of medical treatments or procedures will be binding on medical staff. Requests for special treatments (other than pain management and basic nursing) may

have persuasive force, but doctors do not have to follow instructions.

With a Living Will, someone can be appointed whom doctors may consult on health care matters; this person is referred to as a Health Care Proxy.

## The difference between Living Wills and Lasting Power of Attorney (Personal and Welfare)

In terms of being able to state what wishes are in relation to medical treatment should mental capacity be lost, both documents are similarly effective. However, a Living Will is lodged with a GP. An LPA(PW) actually gives someone the authority to advocate someone's wishes on their behalf.

### Points to note

- | If a Living Will is made after an LPA (PW) and the Living Will covers the same treatment as the LPA HW, the Attorney of the LPA (PW) cannot consent on someone's behalf to treatment specified in the Living Will
- | An LPA (PW) created after a Living Will that covers the same treatment as the Living Will will cause the Living Will to be invalid

### References:

[The Mental Capacity Act and assessing mental capacity](#)

[www.lawpack.co.uk](http://www.lawpack.co.uk)

[www.pannone.com](http://www.pannone.com)

[www.medicalprotection.org](http://www.medicalprotection.org)

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