

Planning ahead for your treatment and care: Lasting Power of Attorney



What is this toolkit for?

Most people have an opinion about the treatment and care they want to receive. This guide will support you to record your preferences to help ensure they are respected if you cannot make a decision for yourself or tell people what you want. It provides an introduction to the ways you can plan for your treatment and care. It is best to make plans for your future while you are well and able to do so. Any adult can plan for their treatment and care - you do not need to be unwell or over a certain age. This toolkit will help you understand Lasting Power of Attorney and know where to go to create one.

This toolkit is one in a series of toolkits about planning for the future and end of life. Other toolkits are available, covering how to talk about your wishes with your family and friends, Advance Directives, Advance Decisions and DNAR, planning and paying for funerals and writing wills.

This booklet explains your rights under the Mental Capacity Act 2005, which is a law in England and Wales. If you live in Scotland or Northern Ireland, please contact Compassion in Dying or Leukaemia Care for information on how to make your wishes known.

Why should I plan for my treatment and care?

There may come a time when you are unwell and cannot tell the people around you what you do and do not want. By making plans now, you can record your preferences for treatment and care so that if you are ever in this situation, your wishes are known and can be followed. Recording your wishes allows you to express who you are and what is important to you. This gives you control over your treatment and care, and reassurance that the right decisions will be made. It can also be a good way to start conversations with your friends and family about what you want in the future.

Everyone has different reasons for wanting to plan future treatment and care. These could include:

Avoiding your family having to make difficult decisions for you or disputing decisions

- Preventing pain or not prolonging your life when you have a poor quality of life
- Preserving your dignity
- Being able to continue treatment for as long as possible
- Allowing you to be cared for in a way you want

Who can make decisions about my treatment and care?

While you have capacity, you have the right to make decisions about your treatment and care. You can decide if you want to consent to or refuse treatment, even if doing so may shorten your life. If you lack capacity to make a decision for yourself, and you have not recorded your wishes, the healthcare professional in charge of your care will decide how to treat you. They must make decisions based on what they think would be in your best interests, but there is no guarantee that this would be what you would choose for yourself. Many people think that their family or next of kin can make decisions about their treatment or care if they are unwell, but this is not always the case. Even though these people should be consulted when a decision is made, they will not have the final say. By making plans now you can ensure the important people in your life, and your healthcare team, know your wishes.

If you choose to plan ahead a Lasting Power of Attorney, it will only be used if you can no longer make decisions for yourself. You can cancel or make changes to them at any time.

What is capacity?

Capacity is the ability to make a decision for yourself. Your capacity to make a decision depends on when the decision needs to be made, and what the decision is. You might lack capacity to make a decision on one day but be able to make that decision at a later date. For instance, this might be because you have dementia and your ability to remember information differs from one day to the next. You might also have capacity to make some decisions but not others. For example, you might have capacity to decide what you want to eat each day, but not to make a decision about life-sustaining treatment.

You lack capacity to make a decision if you have an impairment or disturbance of the mind or brain. For example, because you are unconscious, have dementia, a mental health condition, a brain injury or a stroke and because of that impairment, you cannot do one or more of these things:

- Understand information relating to the decision
- Remember that information for long enough to make the decision
- Take that information into account when making the

decision

- Communicate the decision

The law says that people must be assumed to have capacity

- unless it is proven otherwise. However, if a decision needs to be made and a healthcare professional thinks that you might lack capacity, then they will assess whether or not you have capacity to make that decision.

How does someone decide what is in my best interests?

If you lack capacity to make a decision, someone may have to make that decision for you. If this happens, they have to act in your best interests. A best interest decision is based on your values, beliefs and preferences. It should be the decision you would make for yourself if you could.

The Mental Capacity Act 2005 says the decision-maker must consider:

- All the relevant information, including the potential benefits or risks of a particular treatment, or any long-term consequences of giving or withholding the treatment such as the impact on your quality of life.
- Your past and present wishes and feelings, any wishes you

have previously expressed, written down, or what you say you want now.

- Any values and beliefs you have that would be relevant to the decision.
- The views of your family members, carers and other relevant people.

Talking about your wishes to your friends, family and healthcare professionals

Talking about your health and your priorities for the future is important for you and the people around you. It can help you to make informed decisions and give you peace of mind knowing that others understand what is important to you. Having these conversations can also help to make the important people in your life feel involved, and ensure they are not left guessing if your healthcare team asks them for information about your wishes when making a decision in your best interests.

Talking about your wishes and feelings with your family, friends or a healthcare professional can be emotionally demanding, especially if they do not agree with you, or have values which challenge your own. But these conversations can also bring you closer together, and many people

find them rewarding. To prepare for these conversations, you may want to take some time to think about what is important to you and your quality of life. Some people find writing their thoughts down helpful.

If you need more help talking to others about your decisions, please see the toolkit "Talking about your wishes".

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) allows you to give someone you trust the legal power to make decisions for you if you lack capacity. If you don't have an LPA and you become unable to manage your affairs, a court will appoint a Receiver to deal with them for you, which can be a costly and time consuming process. Your family will not have an automatic right to make decisions for you.

There are two types of LPA:

- An LPA for Health and Welfare covers decisions about your health and care. This could include decisions about medical treatment, where you are cared for, and your daily routine.
- An LPA for Property and Financial Affairs covers

decisions about your money and property. This could include paying your bills, selling your house, or managing your benefits.

You can complete one or both types of LPA. If you make both, you must complete and register a separate form for each. The person making the LPA is called the 'donor' and the person given the power to make decisions is called the 'attorney'. You can choose the same attorney for both types of LPA, or you can choose different people.

There are 3 steps to making each type of LPA:

1. Choose attorneys. You will also need a witness to counter-sign the form and a certificate provider, who is a person who checks you are making the LPA of your own free will.

2. Complete the form: you can do this online (lastingpowerofattorney.service.gov.uk/home), download the form (www.gov.uk/government/publications/make-a-lasting-power-of-attorney) or order a paper version (0300 456 0300).

An LPA is not valid until it has been registered with the Office of the Public Guardian. The Office of the Public Guardian is a government body that manages

the LPA process and has a register of all LPAs.

You might have heard of an Enduring Power of Attorney (EPA). This only covers decisions about money and property and has been replaced by the LPA for Property and Financial Affairs. If you already have an EPA, it can still be used but it will not apply to decisions about your health.

1. Lasting Power of Attorney for Health and Welfare

An LPA for Health and Welfare allows you to give someone you trust the legal power to make decisions about your treatment and care. The person given the power to make decisions is called the 'attorney'. You can have as many attorneys as you like and you can choose how you want them to make decisions. For example, you might want them to have to agree on every decision they make, or you might want them to be able to make decisions individually. When making an LPA you can include instructions that your attorneys must follow and/or preferences that you would like them to take into account when making a decision on your behalf. For example, you can include that they must follow your Advance Statement and/or Advance Decision. You must also choose if you want your attorneys to be

able to make decisions about life-sustaining treatment.

You need to trust your attorneys to understand your wishes, respect your values and be able to make the best decisions for you. It is important that your attorneys understand their responsibilities. They must be available to support you, and be prepared to advocate for you - sometimes this may be difficult and they may need to push to ensure your wishes are followed by healthcare professionals, or other people involved in your care.

There is a fee to register an LPA, in 2018 it was £82. It is possible to get a reduced fee if you have an income under a certain amount or you are receiving certain benefits. For more information visit: www.gov.uk/government/publications/power-of-attorney-fees. You do not need a solicitor; Leukaemia Care, Compassion in Dying or the Office of the Public Guardian can support you to complete the forms.

Your attorneys will only be able to make decisions for you if you lack capacity to make decisions yourself.

2. Lasting Power of Attorney for Property and Financial Affairs

This LPA gives an attorney the power to make decisions about

money and property for you. For example:

- managing a bank or building society account
- paying bills
- collecting benefits or a pension
- selling your home

It can be used as soon as it's registered, with your permission. The process for setting it up is the same as for an LPA for Health and Welfare.

Whilst not directly related to your health, an LPA for property and finances may still be a useful tool if you become too ill to look after these aspects of your life.

Further information:

Compassion in Dying are a charity that can help you prepare for end of life, regardless of your stage of life or current health. They have a free information line: 0800 999 2434 or you can email them at info@compassionindying.org.uk.

For information regarding a property and finances LPA, contact the Office of the Public Guardian by email: customerservices@publicguardian.gov.uk or call 0300 456 0300.

You can also contact our Patient Advocacy team. They are available Monday to Friday from 9:00am –

5:00pm. If you would like to speak to them, you can:

- Call our helpline free of charge on 08088 010 444
- Send them an email at advocacy@leukaemiacare.org.uk

Please note that our Patient Advocacy team are unable to provide:

- Detailed medical advice or recommendations
- Legal advice
- Advocacy for a course of action which is contrary to the aims and objectives of Leukaemia Care.

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