



Lasting power of attorney

brainstrust information sheet

Know Hows are published by *brainstrust* to help people living with a brain tumour to understand current topics. They are produced with input from relevant scientific and clinical experts and are written in a way that should help you to understand often complicated topics.

If you have an idea for a Know How, then please let us know.

If you have any queries, don't forget you can talk to one of our support specialists on **01983 292 405**, or email **hello@brainstrust.org.uk**.

Why do we need this Know How?

We are often told by our community that there is a lack of information and signposting to support patients and their families in managing their personal, financial, legal and health affairs. This Know How explains all about lasting power of attorney (LPA) to help you to consider whether this is something that you need to implement.

What does this mean?

For patients who are about to go through treatment, or who have had treatment, it is important that there is someone legally appointed to look after their affairs. It is not enough that patients may be married, or in a relationship, or being looked after by another person.

A lasting power of attorney is a document that allows the patient (the 'donor') to give power to people that they trust (the 'attorneys') to manage their affairs for them if they are not able to.

The power given can be used on a temporary basis (until the patient is able to manage things themselves again) or on a permanent basis.

There are two types of lasting power of attorney. Patients can choose to have one or the other, or both:

1. Property and financial affairs

Attorneys can use it for:

- accessing bank or building society accounts so the attorney can make sure bills are paid
- speaking to the Department for Work and Pensions to arrange benefits for the patient
- arranging pensions, life insurance, investments, shares and any other type of financial agreement or need that the donor (patient) might have
- arranging child maintenance
- speaking to a mortgage lender to explain what is going on and arranging a 'holiday' from paying the interest on a mortgage
- arranging housing benefits and housing needs

- buying and selling property on behalf of the donor
- arranging legal support on behalf of the donor.

Your attorney can make decisions about property and financial affairs when you still have mental capacity and when you don't have mental capacity.

2. Health and welfare affairs

Attorneys can use it to make decisions on your behalf about:

- giving or refusing consent to healthcare
- staying in your own home and getting help and support from social services
- moving into residential care and finding a good care home
- day-to-day matters, such as your diet, dress or daily routine.

Your attorney can only make decisions about health and welfare affairs when you don't have mental capacity.

You can choose whether your attorney or your doctors should make decisions about accepting or refusing medical treatment to keep you alive, if you can't make or understand that decision yourself.

Assessing mental capacity

To work out whether someone lacks the mental capacity to make a decision, they need to answer yes to these two questions:

1. Do they have a mental or brain problem that stops their brain or mind from working properly?
2. Is that problem causing them such difficulty that they are unable to make this particular decision at the time it needs to be made?

Being 'unable to make this particular decision' means that the person can't:

- understand relevant information about the decision that needs making

- keep that information in their mind long enough to make the decision
- weigh up the information in order to make the decision
- communicate their decision – this could be by talking, using sign language, pictures or even just squeezing a hand or blinking.

Mental Capacity Act 2005 and code of practice

The Mental Capacity Act 2005 covers LPAs. The Mental Capacity Act code of practice explains more and has examples, including how attorneys must act. The code of practice also has more information about mental capacity.

Who can be an attorney?

Attorneys don't need to be solicitors. Most people choose family members, friends and other people they trust, with no legal background. If an attorney is not a professional, the important thing is that you know each other well and they respect your views and will act in your best interests.

What attorneys must do

Attorneys can make some decisions on your behalf, but they can't do as they please. They always have to act in your best interests.

The Mental Capacity Act 2005 code of practice sets out five basic principles an attorney has to follow when working out whether and how to act on your behalf:

1. Your attorney must assume that you can make your own decisions unless it is established that you cannot do so.
2. Your attorney must help you to make as many of your own decisions as you can. They must take all practical steps to help you to make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision through those steps.

3. Your attorney must not treat you as unable to make a decision simply because you make an unwise decision.
4. Your attorney must act and make decisions in your best interests when you are unable to make a decision.
5. Before your attorney makes a decision or acts for you, they must think about whether they can make the decision or act in a way that is less restrictive of your rights and freedoms but still achieves the purpose.

This means that your attorney must:

- do everything they can to help you make all or part of a decision
- identify what you would take into account if you were making a decision
- be guided by your personal, political, cultural, moral or religious beliefs and values when making any decisions for you.

To do this, they should:

- find out your preferences and views from you or from how you've behaved and what you've said or written in your LPA and elsewhere
- assess whether the decision can be left for another time, when you might find it easier to make
- avoid restricting your rights
- consult family and friends and anyone else who knows or understands your wishes, feelings and views
- not make assumptions about your quality of life or about what you need just because of your age, appearance, condition or behaviour.

An attorney has to stop acting for you if they:

- lose mental capacity themselves
- decide they no longer want to act as your attorney (known as 'disclaiming their appointment')

- become bankrupt or subject to a debt relief order and were an attorney for a financial LPA
- were your wife, husband or civil partner but your relationship has legally ended.

Whichever way you appoint your attorney to act, the law says that they must always act in your best interests and make every effort to find out whether you can make a decision before they do.

Cancelling your LPA

You (the donor) can cancel your LPA at any time, as long as you have mental capacity. It doesn't matter if the LPA is registered.

The Office of the Public Guardian protects people who don't have the mental capacity to make decisions for themselves.

If anyone believes that attorneys are not acting in a donor's best interests, they can raise concerns with the OPG, the police or social services.

Ask yourself

- Is my brain tumour likely to cause some cognitive-functioning difficulties for me either now or in the future?
- Am I likely to need someone to act for me, either permanently or temporarily, on issues such as claiming welfare benefits, liaising with agencies such as the DVLA, or organising medical appointments?
- How are my family assets held? Do I need to consider protecting family members?

Contact

Talk to *brainstrust*. We can help. You can call, write, type, text. Email for help and support:

hello@brainstrust.org.uk.

Telephone: **01983 292 405.**

Other helpful links

This Know How is based on expert information provided to *brainstrust* by Vicky Mansell, a partner at SNS Solicitors in Maidstone, Kent, whose partner, Jon, has an anaplastic oligodendroglioma. Vicky specialises in protecting the rights of and promoting independence for vulnerable people, including children, the elderly and those with mental and physical disabilities. She is experienced, both professionally and personally, in the care and provision of practical and legal services for vulnerable people.

www.snslaw.co.uk

Gov.uk guidance on LPAs:

www.gov.uk/life-circumstances/lasting-power-attorney

The Mental Capacity Act 2005 code of practice:

www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf

Office of the Public Guardian:

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

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Production of *brainstrust*'s information is supported by the Anna Horrell fund. Anna, wife and mum, tragically passed away in August 2017 after a valiant fight against a glioblastoma. Throughout her life and her illness, she was an inspiration to us all, fighting bravely and cheerfully in the face of adversity. She was the beating heart of our family, and her loss left a hole in our lives that can never be replaced. In her incredible memory, we are passionate about helping others diagnosed with a brain tumour to navigate this most difficult of journeys.

Mike, Tom, Rebecca, Charlie & Sophie