



Factsheet

Managing my affairs if I become ill

Independent Age provides advice to help people claim benefits, access social care and stay independent at home. Our local volunteers provide friendship visits and calls for lonely older people. To find out how Independent Age can help you, call us FREE on **0800 319 6789** or visit . Our free wise guides and factsheets can be download from the website and ordered by phone or via our online order form.



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1 What is mental capacity?

Mental capacity means having the ability to understand, retain and use information in order to make and express decisions about your life. If you are assessed as lacking mental capacity it means you are no longer to make and/or communicate a decision when needed.

This might be a decision about an everyday thing, like choosing what to wear or when to pay a bill, or a more important decision like making a will or deciding whether to move into a care home. You may have the ability to make some decisions but not others

Mental capacity has nothing to do with your age, behaviour or health conditions. However, there could be lots of reasons for not having mental capacity, including:

- being unconscious as a result of an accident or illness
- suffering a stroke
- having a degenerative disease
- having later-stage dementia

Loss of mental capacity isn't always permanent. It could be temporary or it may change over time. If you lack mental capacity, someone else will need to make these decisions for you.

A decision about whether or not someone has mental capacity can be made by a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker.

A mental capacity assessment will use two stages. The first stage looks at whether your mind is impaired or disturbed in a way that means you can't make a decision.

The second step looks at the following four questions:

- Do you understand what decision you need to make and why you need to make it?
- Do you understand the likely consequences of making, or not making, the decision?
- Are you able to understand, retain, use and weigh up the information you need to make the decision?
- Can you communicate your decision? This could be by talking, using sign language or any other way.

If the answer to any of these questions is no, you can no longer be presumed to have mental capacity.

Every effort should be made to help you to have capacity and communicate your decision.

The Mental Capacity Act 2005 sets out how people who lack mental capacity should be protected and treated. There are five main principles in the Mental Capacity Act that should be used by someone who could make a decision on your behalf. They should:

- assume you have capacity, until it's shown that it's more likely than not that you lack it
- take all practical steps to help you make your own decision before anyone decides you're unable to do so
- respect your right to make eccentric or unwise decisions. You shouldn't be treated as unable to make a decision simply because you make an odd decision, or a decision they disagree with
- ensure any decision or action taken on your behalf is made in your best interests
- take the least restrictive intervention. They should consider all alternatives and choose the one which is the least restrictive of your basic rights.

3 Arranging for someone to manage your financial affairs on your behalf

If you have mental capacity and can make your own decisions, there are ways you can organise your financial affairs so you can manage them more easily. This may suit you if you're physically unable to manage your money, but still mentally able to check how another person manages it for you.

Setting up direct debits or standing orders on your bank account makes sure that your bills, loans and subscriptions are paid on a regular basis without you needing to arrange this each time. This is a simple way of managing your finances without anyone else needing to get involved.

To set up a direct debit, contact the company that the payments are due to, and ask for a direct debit instruction form. The company should tell you in advance how much they'll take and when.

A standing order is an instruction given by you to your bank to regularly pay out a fixed sum of money to another account. This may be helpful if you give someone a regular amount of money to do your shopping, for example.

A third-party mandate is when you instruct your bank or building society to give someone you trust access to your bank account. You can decide what you want them to be able to do – such as withdraw a maximum amount or check your balance. Speak to your bank about how to set up a third-party mandate. It will become invalid if you lose mental capacity at any time after setting it up.

You can set up a joint bank account with another person to give them direct access to your money. Both of you will be given a debit card to withdraw money from the account. You must completely trust this person to follow your wishes, as they can legally withdraw all of the money from the account without your permission. You may also be held liable for any debts the other person builds up on your joint account. Contact your bank if you would like to set up a joint account.

Your bank or building society may accept a ‘letter of authority’ from you to allow someone you trust to have access to your account if you’re unable to get to the bank – perhaps because you’re in hospital. Ask your bank or building society if they offer this and, if

so, how to organise it. However, because of the risk of fraud, some financial institutions may not accept a letter of authority.

If your social security or welfare benefits are paid into a building society or bank account but you're temporarily unable to collect your money, you can write to them to ask for someone else to be allowed to operate your account and withdraw funds. The bank can decide whether or not they will agree to this request. If your benefit is paid by cheque, your nominated person can cash the cheque on your behalf. You will need to sign the back of the cheque to prove that you have asked someone else to cash it for you. The appointed person will sign a declaration too, and will need to provide some proof of identity for both of you to the bank or building society. If you need someone to permanently collect or manage your benefits on your behalf you could consider setting up an appointee (see below).

An appointee can manage your benefits on your behalf if:

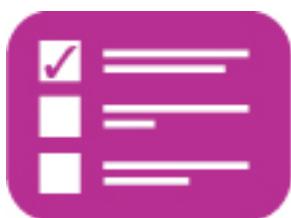
- you have lost capacity and haven't set up a Lasting Power of Attorney for Property and Financial Affairs (see chapter 5)
- your income only consists of benefits (State Pension or social security benefits).

The Department for Work and Pensions (DWP) will appoint someone, usually a close relative, to receive your benefits on your behalf. They will visit them to check they are suitable.

Your appointee's responsibilities include:

- telling the benefits office about any changes which may affect how much you receive
- spending the benefits in your best interests
- paying back any overpaid benefits.

To do...



If you want to become an appointee for a friend or relative, contact your local DWP office to explain the circumstances and ask for the relevant form. For the contact details of your local office, contact the

Pension Service (0845 60 60 265, gov.uk/contact-pension-service). For more information on becoming an appointee, visit gov.uk/become-appointee-for-someone-claiming-benefits.

Good to know



If you have already been approved by the DWP as an appointee for a benefit, you can also be an appointee for Housing Benefit and Council Tax Reduction, as long as you apply in writing to your council.

4 What is a Power of Attorney?

A Power of Attorney is a legal document which lets you give someone you trust (the attorney) the authority to make decisions on your behalf. There are two types of attorney:

- Ordinary Power of Attorney (see chapter 4)
- Lasting Power of Attorney (see chapter 5).

Think carefully before you ask someone to be your attorney as the role involves a great deal of responsibility. Your attorney could be a partner, family member or friend, or a professional such as a solicitor. An attorney must be over 18 and shouldn't be a paid care worker, except in exceptional circumstances. Your attorney won't get any money for their role, but they can claim back expenses such as postage, travel costs or photocopying costs.

An attorney must make decisions in your best interests. The Mental Capacity Act Code of Practice says this means your attorney should:

- do everything they can to involve you in making a decision
- try to identify the things you would have taken into account when making a decision

- consider any past and present views, beliefs and values that might influence a decision
- consult others – such as your friends and relatives
- not restrict your rights

5 Ordinary Power of Attorney

You can set up an Ordinary Power of Attorney if you need someone to act for you for a temporary period — for example, while you're in hospital or unable to take care of things because of ill health. It's valid only for as long as you still have mental capacity.

An Ordinary Power of Attorney allows one or more people you trust, such as a relative, friend, or neighbour, to deal with your money, finances and property. You are known as the 'donor' and the person you appoint to manage your financial affairs is the 'attorney'.

You can either let your attorney manage your finances with no restrictions, or give them specific powers. For example, you could state if you will allow your attorney to:

- sell your property on your behalf
- have access to your bank account
- make payments for you
- withdraw money from your account
- set up or cancel direct debits from your account
- sign cheques on your behalf.

You must have full mental capacity to set up an Ordinary Power of Attorney, as you will need to decide how your attorney deals with your affairs and be able to supervise their actions. You can remove the attorney's powers if you think they're not managing your money in your best interests, or you no longer need their help.

It's important to get the wording right when setting up an Ordinary Power of Attorney, so ask a solicitor or another legal adviser – for example at your local Citizens Advice – to write the document for you.

You don't need to register an Ordinary Power of Attorney with the Office of the Public Guardian or Court of Protection. To end one, you need to issue a deed of revocation – ask a legal adviser for help.

To do...



To find a solicitor in your local area, contact:

Civil Legal Aid, (0345 345 4345,
gov.uk/civil-legal-advice)

The Law Society (020 7320 5650,
solicitors.lawsociety.org.uk)

Solicitors for the Elderly (0844 567 6173,
solicitorsfortheelderly.com).

To find a legal representative at your local Citizens Advice (if they have one) contact 03444 111 444 (citizensadvice.org.uk) to find your local office.

An Ordinary Power of Attorney becomes invalid if you lose mental capacity.

If you want someone to be able to act as your attorney both now and in the future if you lose mental capacity, you could set up a Lasting Power of Attorney rather than an Ordinary Power of Attorney.

A Lasting Power of Attorney must be arranged while you still have capacity to make the decision, but you can set it up so the powers only become valid if you then lose capacity.

6 Lasting Power of Attorney

A Lasting Power of Attorney (LPA) gives someone you trust the legal power to deal with your affairs in the future if you lose mental capacity. Lasting Power of Attorney (LPA) replaced Enduring Power of Attorney (EPA) (see chapter 6).

There are two types of LPA:

- **Property and financial affairs** — which lets the attorney make decisions about your money and property. This could include managing your bank account, paying bills, collecting benefits or pensions or selling your house.
- **Health and welfare** — which lets the attorney make decisions about your personal welfare and healthcare. This could include decisions about your daily routine, medical care, moving into a care home or receiving life-sustaining treatment.



Good to know

You can have the same attorney for both types of Lasting Power of Attorney, but you have to apply on different forms to set up each one.

The LPA for finances and property can be used while you still have capacity, if you want to. The LPA for personal welfare can only be used once you have lost mental capacity to make such decisions yourself. Both types of LPA need to be registered with the Office of the Public Guardian (OPG) before the documents can legally be used.

Good to know



The OPG works to protect people who lack capacity from abuse. Contact them for more information about their work (0300 456 0300, gov.uk/government/organisations/office-of-the-public-guardian).

Your attorney can be given complete authority over your financial affairs and your personal welfare, so it's important that you choose someone you feel you can trust completely to make decisions in your best interests.

Your attorney could be a family member, friend, spouse, partner, or a professional such as a solicitor.

You may wish to appoint more than one person as an attorney. In this instance, you will have to say if your attorneys can make decisions on their own or if they must all agree on a decision.

You need to complete an official form from the Office of the Public Guardian (OPG) and then register it with them. It costs £110 to register a LPA but you may pay less, or even nothing at all, if you're on a low income or receiving certain benefits.

You can specify exactly what decisions your attorney can or can't take on your behalf in your LPA form. This may be important if there is the potential for disagreements between family members or friends as to what decision might be in your best interest.

Good to know



You can download all the relevant forms – and guides on completing a Lasting Power of Attorney – from the Office of the Public Guardian website (gov.uk/power-of-attorney/make-lasting-power)

7 What happens to existing Enduring Power of Attorneys?

In October 2007, the Lasting Power of Attorney (LPA) replaced Enduring Power of Attorney (EPA). An EPA allows an attorney to make financial decisions on behalf of someone who couldn't make such decisions.

You can no longer set up a new Enduring Power of Attorney, but if you already have one set up, it remains valid. Alternatively, you can also choose to cancel your EPA and set up an LPA for property and financial affairs.

Good to know



If you have an EPA set up, you may wish to also set up an LPA to give someone the authority to make decisions about your health and wellbeing.

8 What happens if someone has lost capacity but has not set up a Power of Attorney?

If someone has already lost capacity but hasn't set up a Lasting Power of Attorney, the Court of Protection can appoint a deputy to make decisions on their behalf.

The Court of Protection can make decisions about the property, financial affairs, healthcare and personal welfare of adults who lack capacity. It can:

- decide whether someone has the capacity to make a particular decision
- make decisions about financial and/or welfare matters affecting people who lack capacity
- appoint a deputy to make decisions for someone lacking capacity
- monitor how a deputy or attorney carries out their duties, and remove them if they fail to fulfil their duties
- hear cases concerning objections to register a LPA or EPA and decide whether or not an LPA or EPA is valid
- protect people from abuse

The court must follow the principles set out in the Mental Capacity Act and make decisions in the person's best interests (see chapter 3).

You can apply to the Court of Protection to be a deputy for someone who has lost mental capacity. A deputy is usually a relative or friend of the person, but professionals such as solicitors or council representatives can also apply.

A deputy has a similar role to an attorney. They might be responsible for property and financial decisions and/or health and welfare decisions. A deputy can only make decisions that they have been authorised to make, and they must make sure that they follow the five main principles of the Mental Capacity Act (see chapter 1).

A deputy's duty stops when the person has died or if the deputy stands down. A deputy won't have any involvement with the deceased person's estate.

You will need to complete a number of forms when making an application to become a deputy. This will include an Assessment of Capacity form, which requires a professional (such as a GP, psychiatrist, social worker) to conduct a formal capacity

assessment for the person you would like to become a deputy for.

You will also need to formally notify the person you're applying to be a deputy for and anyone you think might have an interest in making decision for that person (such as their relatives) about your application.

Finally, you will be asked to a £400 application fee when you submit your application to the Court of Protection.

If you are worried that an attorney or deputy isn't doing their job properly, contact the Office of the Public Guardian (0300 456 0300; gov.uk/report-concern-about-attorney-deputy).

If you feel serious financial, physical or other forms of abuse are taking place, you should immediately contact the police or the council's social services department and ask to speak to the safeguarding adults' team. Read our guide **Staying in control when you're older** for more information on safeguarding (0800 319 6789, independantage.org).

8 Independent advocates

Advocates can help older or vulnerable people to share their views, get information and access services, defend their rights and explore different options for health, care and housing.

There are different kinds of advocate depending on the level of help you need. Independent advocates can help you if you're unable to make or communicate a decision for yourself.

An Independent Mental Capacity Advocate (IMCA) can help you if you lack mental capacity and don't have any family or friends who can be consulted, or it would be inappropriate or impractical to consult them. They will be involved when there is a serious welfare decisions to make on your behalf, such as about your medical treatment or where you should live.

The IMCA will aim to find out what you would consider if you were making the decision yourself, help you to make the decision where possible and ensure decisions that are made on your behalf are in your best interests.

Good to know



Under the Mental Capacity Act (2005), council and NHS staff such as doctors and social workers must instruct an IMCA for you if you lack mental capacity, don't have family or friends to represent you and your wishes, and a serious decision has to be made.

The IMCA will meet you to gather as much information as possible about your wishes and what you would like to happen. If it's not possible to establish what you think about a decision, the IMCA should act in your best interests (see chapter 3). They should represent your rights and past wishes (if known) to the professionals involved in their care and treatment.

If you're detained under the Mental Health Act (2007) or are a supervised community treatment patient, you will qualify for support from an Independent Mental Health Advocate (IMHA). You can contact an IMHA directly or ask a health or care professional to get in touch on your behalf.

An IMHA can give you information about your rights under the Mental Health Act and other aspects of your care and treatment. They can help you get your views and wishes heard by the people treating you. They can also help with appealing against a section. Mental health professionals must allow advocates access to relevant parts of your records, if you give the IMHA permission to do so.

IMHAs are independent. They are not employed by the NHS or councils.

An independent advocate may be able to help if you:

- have mental capacity, but need help to communicate your needs and wishes; or
- have lost capacity, but don't qualify for IMCA services

Independent advocacy is important because:

- your past wishes should be taken into consideration when important decisions about your care are being made. For example, you may have regularly said you want to stay in your own home rather than move into a care home. An advocate will ensure your wishes are taken into account by those involved in your care

- if you have dementia or other mental health problems you may not be able to deal with complex or detailed information, but you may be able to make one-off important decisions, such as where you wish to live. An advocate can help you to understand all the facts so you can make that decision
- an independent advocate will ensure that your rights, needs and wishes are taken into account by those involved in your care if there's a conflict of interest, such as a dispute among family members or between you and the professionals. An advocate will make sure your best interests are given the correct consideration.

Good to know

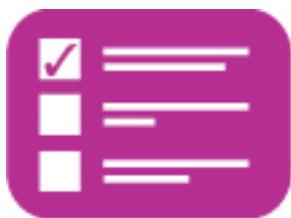


Under the Care Act 2014, your council must arrange an independent advocate for you if:

- they think you have care and support needs

- you find it very difficult to get involved in decisions about your care and support, or a safeguarding enquiry
- you don't have anyone to support you.

To do...



Find a local advocacy scheme for older people by searching on the Older People's Advocacy Alliance website (opaal.org.uk) or by contacting:

your local Age UK (0800 169 2081, ageuk.org.uk)
the mental health charities Mind (0300 123 3393, mind.org.uk) or Rethink (0300 5000 927, rethink.org), who may also provide an advocacy service.

For more information about advocacy, see our factsheet **Independent Advocacy** (0800 319 6789, independentage.org).

9 Advance decisions

An advance decision is a way to refuse treatment or care if there comes a time when you're unable to make and/or communicate your decision. You may have heard this referred to as a 'living will' or an Advanced Decision to Refuse Treatment (ADRT).

You can use an advance decision to refuse any treatment including life-sustaining ones such as artificial feeding, mechanical ventilation to help you breathe or Cardiopulmonary Resuscitation (CPR) to re-start your heart. You can't use an advance decision to refuse food or drink by mouth or request particular treatments.

You could write an advance decision to make sure your doctors, other professionals and family are clear about any treatment or care you wouldn't want to receive in certain circumstances, if there comes a time when you can't make these views known.

To do...



Discuss any advance decisions to refuse life-sustaining treatment with your GP or healthcare professional so you can think through all the possible implications and consequences of refusing such treatment in different circumstances.

You may also wish to discuss it with your family and friends to get their perspective on your choices. Remember that the final decision is up to you.

If an advance decision is valid it will be legally binding, which means a doctor or other health professional must follow it.

Your advance decision will be valid if:

- you have the mental capacity to make a decision about your future treatment when writing it
- you state which treatments you are refusing, and the circumstances in which you would refuse them
- you include the specific circumstances when you would like to refuse life-sustaining treatment,
- you have made the decision without pressure from anyone else

- you understand the impact of refusing the medical treatment
- your signature is witnessed by someone who isn't your spouse, partner, civil partner or relative.

Your GP can also sign the advance decision. This will help the medical team treating you in the future to know you understood the implications of refusing certain treatment.

To do...



For more information about advance decisions, contact Compassion in Dying (0800 999 2434, compassionindying.org.uk). They can also provide forms to help you to complete your advance decision.

There are some occasions when an advance decision will not be followed by doctors. This could be if the decision needs to be made about a treatment which isn't mentioned in your advance decision, or if your circumstances have changed and

the doctor believes this would have affected your decision.

Living wills made before the Mental Capacity Act came into force in October 2007 are still legally binding as long as they meet the conditions of the Mental Capacity Act. One of the key legal differences between a living will and an advance decision is that the refusal of life-sustaining treatment must be put in writing and must meet specific requirements to be legally valid. If you have an old living will, it's recommended you create a new advance decision to make sure your wishes are legally binding.

You can ask for your advance decision to be kept in your healthcare records. This means it will be confidential, unless you decide to tell other healthcare professionals, family members or friends. Otherwise you should keep it in a safe place and make sure certain people, such as close family members or your GP, know where it is kept.

It's a good idea to regularly review and update an advance decision to make sure it reflects your changing health needs.

If you wish to withdraw your advance decision, you can do so at any time, both verbally and in writing. You should then ensure the original written document is destroyed and that everyone who knew about its existence knows it has been cancelled.

If you make an advance decision after setting up a Lasting Power of Attorney (LPA) for health and welfare, your attorney can't give consent to treatment that you have refused in this advance decision.

However, if you set up a LPA for health and welfare after you make your advance decision and the LPA authorises your attorney to make decisions about the same treatment, the attorney can chose to overrule the advance statement.

10 Useful contacts

The Older People's Advocacy Alliance (opaal.org.uk).

The Pension Service (0845 60 60 265, gov.uk/contact-pension-service).

Compassion in Dying (0800 999 2434, compassionindying.org.uk).

Civil Legal Advice (0345 345 4 345, gov.uk/civil-legal-advice).

The Office of the Public Guardian (0300 456 0300, gov.uk/government/organisations/office-of-the-public-guardian).

This factsheet has been put together by Independent Age's expert advisers. It is not a full explanation of the law and is aimed at people aged over 60.

If you need this information in an alternative format (such as large-print or audio cd), call us on 0800 319 6789 or email advice@independentage.org.

Tell us what you think

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We will use your feedback to help us plan for changes to our publications in the future. Thank you.

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If you have found this information helpful and would like to support our work, there are lots of ways you can help:

- get fit - run, walk or cycle in aid of Independent Age
- take part in our annual raffle
- donate in memory of a loved one
- remember Independent Age in your will and benefit from our Free Wills offer to supporters



Independent Age
18 Avonmore Road
London
W14 8RR

T 020 7605 4200
E charity@independentage.org
www.independentage.org
Advice line 0800 319 6789

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