



Managing financial  
affairs under a  
lasting power of  
attorney



Making a lasting power of attorney for your finances is an important part of lifetime legal planning, especially if you have built up a portfolio of assets and investments which require regular management. While this legal authority needs to be set up well in advance of when it might be required, it can also be difficult to predict exactly what situations might arise in the future.

Fortunately, our private client solicitors have supported many people through the drafting and implementation of powers of attorney, and they know all the potential pitfalls.

'Generally, best practice is to allow your attorneys flexible and wide ranging powers so that they can act in your best interests despite changing circumstances', says Laura Caropley, a solicitor in the wills and probate team. 'In addition to managing bank accounts and selling property, you can clarify your wishes for a wide range of financial decisions especially if you have a complex or international estate.'

She highlights some of the key issues to discuss with your solicitor before they can draft your financial lasting powers of attorney.

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## Funds

You may have investments in certain funds which require your express consent before your attorneys can be authorised to deal with them.

One common problem we see with a lasting power of attorney which was not professionally drafted, is that they do not allow for money to be held in any discretionary management funds. If you hold assets in such funds, your attorney will be unable to access those assets on your behalf without a further expensive and time-consuming application to the Court of Protection.

Even if you do not hold such funds, it may be in your best interests to have your assets held in this way in the future. Your lasting power of attorney can include a provision allowing your attorneys to invest funds in this way. If it does not contain such a provision, your attorneys will be restricted as to the types of funds they can invest in on your behalf.

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## Trusts

Where assets are held in trust, thought should be given to how your attorney will interact with the trustees. If you are a trustee or a beneficiary of assets held in trust, you might need to provide specific authority for your attorneys to access trust records and to liaise with the trustees in your place.

# Overseas assets

If you hold any assets overseas, it is important to note that a financial lasting power of attorney made in England and Wales may not be recognised by the jurisdiction in which those assets are held. In such a case, your attorneys would be unable to deal with those assets for you without further authority.

To save your attorneys the expense and difficulty of having to deal with this when you no longer have capacity, you should obtain legal advice in each separate jurisdiction in which you hold assets to ensure that your attorneys can act on your behalf throughout the world.

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## Gifts

The law provides for attorneys to make small gifts in limited circumstances on your behalf, but you may authorise your attorneys to make larger or more regular gifts.

For example, you may wish your attorneys to make such gifts for tax planning purposes because you already make regular generous gifts to certain persons, or because you would like to provide for family members who may need a little extra financial assistance.

Whatever the reason, you will need to include a specific authority to allow such gifts to be made. Depending upon the nature of the gifts you wish your attorneys to make, such authority might include detailing to whom gifts can be made, on what occasions, and the financial limits of those gifts.

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## Dependants

You may be concerned about a family member or another dependant who relies upon you financially, especially if they are unable to manage their own finances.

Your power of attorney will only come into force when you lack capacity, and your attorneys must act in your best interests at all times. There may be times where your interests could conflict with those of your dependant. In these circumstances, your attorneys must ensure that your financial needs are taken care of, but this could be to the detriment of your dependant.

This will require careful thought and discussion with your solicitor who can advise you how to

include specific instructions within the lasting power of attorney in order to extend your attorneys' powers.

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## Business assets

If you run or have any interest in a business, you should ensure that the attorneys appointed in respect of your business decisions have the necessary insight and business acumen to continue to run things smoothly.

If you wish to appoint separate attorneys for your business decisions, you will need to make two separate financial lasting powers of attorney, one for your personal financial decisions and one for your business decisions. You should obtain professional legal advice before doing so, to ensure that the two do not contradict one another.

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## Legal drafting

With each of these potential issues, as well as any other specific financial concerns you may have, it is key to ensure that additional powers given to your attorneys are appropriately drafted. Preferences and instructions need to provide the authority that is intended whilst also adhering to the law.

If your instructions conflict with any pre-existing laws, the law will always prevail and your attorneys will not be authorised as you wish. It is important to obtain professional advice to ensure that wishes can be met in a way which is consistent with all necessary legalities.

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## Avoiding common mistakes

Many people choose to appoint the friends or family closest to them without considering whether that person is right for the role. If your closest friend, or your child, is not good with their own money then think carefully about trusting them with yours.

No matter which type (or types) of lasting power of attorney you choose to make, it is advisable to appoint more than one attorney, or replacement attorneys who would step in if your first-choice attorney can no longer act for you. By only appointing one attorney and no replacements, you run the risk of that person being unable or unwilling to act and having no one to deal with your affairs on your behalf.

# How we can help

Before making your lasting power of attorney, we can guide you through the types of decisions which you need to consider and will advise you on the appropriateness of the powers you intend to grant.

Our solicitors will prepare your lasting power of attorney, as well as drafting the documents for you to ensure that all your requirements are clear and legally binding.

For further information, please contact us on the details below.

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