

Lasting Power of Attorney and FASD

An easy-read guide for families and carers of individuals with FASD in England and Wales.



1. KEY POINTS

What you need to know

- ✓ Once an individual reaches the age of 18, they legally enter adulthood. At that point, parents and carers no longer have an automatic legal right to make decisions on the individual's behalf or access information from schools and services etc.
- ✓ This can leave individuals with FASD transitioning into adulthood particularly vulnerable, as they may appear capable of making decisions while continuing to experience significant difficulties with understanding information, assessing risks, managing finances, or planning for the future.
- ✓ A Lasting Power of Attorney (LPA) can be an important way of supporting a young person aged 18 and over, helping them to preserve their independence while allowing family or other carers to support them with important decisions.
- ✓ An LPA is a legal document that allows an individual aged 18 or over to appoint one or more persons to help manage their affairs and make specified decisions.
- ✓ An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used.



2. WHAT DOES THE LAW SAY?

Your rights and legal framework

- Under the Mental Capacity Act 2005, a person aged 18 or over who has mental capacity may make an LPA, choosing one or more persons to make decisions on their behalf in the circumstances set out in the LPA.
- There are two types of LPA:
 - **A Property and Financial Affairs LPA** can be used with the person's consent while they have capacity, and by the person(s) they appoint as attorney(s) if the person later lacks capacity.
 - **A Health and Welfare LPA** can only be used if the person lacks capacity to make the relevant decision at the time.



KEY LEGISLATION

- Mental Capacity Act 2005
- Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (as amended)
- Mental Capacity Act 2005 Code of Practice
- Office of the Public Guardian guidance



3. WHAT DOES THIS MEAN IN PRACTICE?

Real-life examples

- FASD can affect memory, understanding, communication and the ability to manage day-to-day tasks. A Property and Financial Affairs LPA can authorise those appointed as attorneys to help manage finances, banking, benefits, bills and housing arrangements.
- A Health and Welfare LPA covers decisions about health, care and where the person lives, and can only be used if the person lacks capacity to make the specific decision at the time.



4. WHAT CAN I SAY?

Suggested wording

“Managing money can be difficult. We could set up something called a Lasting Power of Attorney so I can support you with your money and making decisions. What do you think?”



5. REMEMBER

Important things to keep in mind

- The individual must be 18 or over and must agree to appoint you or another carer as their attorney. Start conversations early and well before they turn 18, explaining why it might help them.
- They can appoint one or more attorneys.
- You cannot make an LPA for someone who already lacks capacity.
- An LPA cannot be used until it is registered with the OPG. Registration can take up to 20 weeks so you may want to consider an ordinary (general) power of attorney while you wait.
- If they have mental capacity, the individual can cancel (revoke) an LPA by following the OPG's process.



6. WHO CAN HELP

Support and advice

- Find a solicitor: Law Society Directory — www.lawsociety.org.uk
- LawWorks - www.lawworks.org.uk/legal-advice-individuals/find-legal-advice-clinic-near-you
- Citizens Advice — www.citizensadvice.org.uk
- If you are concerned about how an attorney is acting, contact the Office of the Public Guardian — www.gov.uk/power-of-attorney
- Make, register or end an LPA — www.gov.uk/power-of-attorney



7. FURTHER INFORMATION

- Office of the Public Guardian (OPG) — www.gov.uk/opg
- For more on mental capacity, see the “Transitioning into adulthood” factsheet on the FASD Legal Rights Hub UK.