

Lasting Power of Attorney

Client Guide

This document provides general guidance about lasting powers of attorney (LPAs), explaining what they are, the benefits of making one and the process for creating and registering an LPA. Your lawyer will be able to provide specific advice based on your circumstances.



What is an LPA?

An LPA is a legal document that enables you to appoint one or more trusted people (known as attorneys or donees) to manage your affairs and make decisions on your behalf in the event that you lose mental capacity. There are two types of LPA:

LPA for property and financial affairs decisions

This type of LPA allows you to appoint one or more attorney(s) to make decisions about your property and financial affairs including operating bank and building society accounts, the buying and selling of your house and other assets, dealing with your tax affairs, claiming and receiving benefits and pension payments, and paying household, care and other bills.

LPA for health and welfare decisions

This type of LPA allows you to appoint one or more attorney(s) to make decisions relating to things such as where you should live and what care you should receive, consenting to or refusing medical treatment on your behalf, and day-to-day matters such as your diet, clothes and daily routine. It is also possible to grant power to your attorney(s) to make decisions about accepting or refusing life-sustaining medical treatment.



What happens if I lose mental capacity without an LPA in place?

If you were to lose capacity to manage your affairs without having put in place an LPA, your loved ones would need to make an application to the Court of Protection

for an individual known as a deputy to manage your affairs.

A deputy can be appointed to make property and financial affairs decisions or health and welfare decisions, in a similar way to an LPA attorney. However, there are several key differences, which mean many people choose to put in place one or both types of LPA instead of falling back on the deputyship system.



Advantages of putting an LPA in place

Lack of delay

Once an LPA has been registered with the Office of the Public Guardian (OPG), it is available for use immediately so, in the event of a sudden or unexpected loss of capacity, your attorney(s) would be able to step in immediately to take over the management of your affairs and take decisions on your behalf.

In contrast, it takes several months for a deputyship application to be processed by the Court of Protection, during which time there may well be nobody able to access your bank accounts or take decisions on your behalf.

Control over choice of attorney

When you make an LPA, you can choose whom you would like to deal with your affairs when you are no longer able to do so yourself. You can choose whether to appoint one or more attorney(s) and specify how joint attorneys are to take decisions (ie jointly or separately or jointly for certain key decisions and separately for other decisions). You can even appoint one or more replacement attorney(s) to act in the event that your first choice is not able to act for any reason. You are free to appoint a family member, friend, a professional such as a solicitor, or a combination of these.

In the case of a deputyship application, you would no longer have capacity to decide whom should be appointed as your deputy and the court would have the final say in this decision. If no family members or friends put themselves forwards to act as deputy or if there were to be a disagreement as to whom should be appointed, the court might decide to appoint a neutral professional deputy.

Control over extent of attorney's powers

When you make an LPA, you can include preferences or instructions within the LPA form to guide your attorneys as to how you would like them to exercise their powers. For example, in a property and financial affairs LPA, you could specify that your attorney is not to sell your home unless, in your doctor's opinion, you can no longer live independently. You could also include instructions about investments, for example, specifying that your attorney is not to make any investments without seeking professional advice, or that your attorney can only

invest in a limited class of safe investments or in ethical investments. In a health and welfare LPA, you could specify, for example, that you wish to live close to a particular relative or include instructions about dietary requirements or personal care requirements.

However, it is important to note that some instructions and preferences might prevent the document from operating as a valid LPA and could be struck out by the OPG when the LPA is registered. It is therefore recommended that you consult a lawyer on the details of any instructions or preferences you wish to include in your LPA form.

In contrast, the powers granted to the deputy would be determined by the Court of Protection. In most cases, deputies are granted broad powers to take decisions on the patient's behalf and in their best interests. In the case of a property and financial affairs deputyship, this would allow the deputy to take possession or control of the patient's property and affairs and to exercise the same powers of management and investment as they would have as beneficial owner.

Less expensive than deputyship

It currently costs £92 to register an LPA with the OPG compared with £421 for an application to the Court of Protection to appoint a deputy. In addition, a solicitor's fee for dealing with a deputyship application would typically be much more than to create and register an LPA.

Peace of mind

Putting in place one or both types of LPA whilst you have capacity can give you peace of mind that your affairs will be taken over by trusted individuals in the event that you are no longer able to take the relevant decisions yourself. You can also have peace of mind that your loved ones will be spared a lengthy court application in order to take over your affairs at an already difficult time.



What is involved in making an LPA?

Choose your attorney(s)

The first step is to think about whom you would like to appoint as your attorney(s). Your attorney(s) must be over the age of 18 and, in the case of a property and financial affairs LPA, must not be bankrupt or a person in relation to whom a debt relief order applies. You should also choose individuals who are trustworthy and who possess the necessary skills to take decisions on your behalf. You may choose to appoint family members such as your spouse and/or children but you could also appoint a close friend or, in the case of a financial LPA, your solicitor. It is also possible to appoint one or more replacement attorneys to act in the event that your first choice is not able to act for any reason.

If you choose to appoint your spouse or civil partner as attorney, you should bear in mind that their power to act as your attorney will cease if your relationship is dissolved or annulled unless you have included an instruction in the LPA that the spouse or civil partner can continue to act as your attorney in such circumstances.

If you choose to appoint more than one attorney, you should bear in mind that the attorneys will need to get on well enough to work together to manage your affairs. You will also need to decide how you would like them to act, ie jointly or separately or jointly for certain key decisions (eg selling your house) and separately for other decisions.

If you are making both property and financial affairs and health and welfare LPAs, you may appoint different persons to act as attorneys under each type of LPA.

Once you have decided whom you would like to appoint as your attorney(s), it is important that you talk to these individuals to ensure they are comfortable taking on the role of attorney.

Choose your certificate provider

You will also need to choose somebody to act as your 'certificate provider'. The certificate provider is an independent individual who signs the LPA form to confirm that they have discussed the LPA with you and that, in their opinion, at the date of creation of the LPA you understand the purpose of the LPA and the scope of the authority conferred under it, that no fraud or undue pressure is being used to induce you to create the LPA and that there is nothing else that would prevent the LPA from being created. The certificate provider must be over 18 years of age and either someone you have known personally for at least two years or someone who, because of their professional skills and expertise, reasonably considers themselves competent to make the judgments necessary to give the certificate, such as a solicitor or doctor. None of the following classes of persons can act as your certificate provider:

- a member of your family
- any attorney appointed by you under the LPA or any other LPA or enduring power of attorney made by you, whether or not revoked
- a family member of an attorney appointed under the LPA
- an unmarried partner, boyfriend or girlfriend of you or any attorney, whether or not they live at the same address
- a director or employee of a trust company acting as an attorney
- a business partner or employee of yours or of an attorney, or
- the owner, manager or employee of a care home in which you are living, or a family member or partner of any of such person

Complete the LPA forms

You will then need to complete the LPA forms. If you wish to complete both property and financial affairs and health and welfare LPAs, you will need to complete a separate form for each. As indicated above, it is possible to include instructions or preferences within your LPA form to guide your attorney(s) as to how you would wish them to carry out their role. It is important that you discuss these with your solicitor to ensure they are drafted in such a way as to be acceptable to the OPG on registration of the LPA.

In order for your LPA to be valid, the various parties involved must sign the form in a specific order and their signatures must be witnessed by independent witnesses. Your lawyer will be able to advise you about the exact execution formalities to ensure that your LPA is validly created.

Register your LPA

Once the LPA form has been completed and signed by all the relevant parties, it will need to be registered with the OPG before it can be used. Once it has been registered with the OPG, a property and financial affairs LPA can be used at your direction whilst you are still mentally capable, unless you include an instruction stating that the LPA is not to be used unless you have lost capacity. This could be useful if you are out of the country for an extended period of time or find yourself physically incapacitated but mentally capable of taking decisions. Unlike a property and financial affairs LPA, a health and welfare LPA can only be used if you are incapable of taking the relevant decision yourself.

**Please do not hesitate to
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