



Lasting Powers of Attorney (LPAs)

Who can make an LPA?

Anybody who is over 18 and understands what they are signing.

What are LPAs?

LPAs are documents giving another person or persons (your attorneys) authority to make decisions for you if you are unable to do so yourself for any reason. This authority continues even if you lose mental capacity to make decisions for yourself and in most cases the LPA is intended to cover such a situation. If you lose mental capacity and do not have an LPA someone will need to apply to the Court of Protection for an Order to act on your behalf. This can be a lengthy and expensive process.

There are two different types of LPA:

- Property and Financial Affairs.
- Health and Welfare.

You may make either or both types of LPA. In both cases the appropriate, standard LPA form must be completed.

What are the two types of LPA?

Property and Financial Affairs

This type of LPA allows your attorney to deal with your financial affairs. This includes paying your bills, selling your property or investments and operating your bank accounts.

Unless you specify otherwise in your LPA, your attorney may use your LPA while you still have capacity to make financial decisions yourself. If you give your attorney this authority it does not mean that they automatically take all financial decisions for you. It just means that they may make these if it more convenient for any reason. This can be helpful if you are unwell or on holiday for an extended period of time.

You can always override your attorney's decisions while you still have mental capacity.

Health and Welfare

This type of LPA allows your attorney to make decisions about matters such as your medical treatment, diet, where you live and how you spend your time. Unlike the LPA for property and financial affairs, your attorney may only use the health and welfare LPA when you have lost the mental capacity to make decisions yourself.

Your attorney may only make decisions about life-sustaining treatment if you specifically give them authority in the LPA. Life-sustaining treatment includes ventilation to help with breathing, feeding through a tube and resuscitation.

Who can act as my attorneys?

Attorneys must be 18 or over and must be mentally capable themselves. Attorneys must not be bankrupt or subject to a debt relief order.

You should only appoint people who you can trust to act as your attorneys. You should consider the following categories of people when deciding who to appoint:

- Family members.
- Friends.
- Professional advisors such as your solicitor or accountant. This category is generally only appropriate for LPAs for property and financial affairs.

Can I have more than one attorney?

Yes, it is possible to appoint more than one person to act as your attorney and it is often a good idea. You may also appoint replacement attorneys. This is useful in case one or more of your original attorneys becomes unable or unwilling to act as your attorney.

If you appoint more than one attorney you need to decide how they should work together. The options are:

Jointly

If you appoint your attorneys jointly, then they must all agree on all decisions. This provides maximum security but can prove inconvenient, particularly for day-to-day decisions. Also, your LPA will be terminated if any one of the attorneys can no longer act unless you have appointed a replacement for joint attorneys.

Jointly and severally

If you appoint attorneys to make decisions jointly and severally, they do not all have to agree on all decisions. Any one attorney may make decisions independently of the others. This provides more flexibility than appointing attorneys jointly. It also means that the remaining attorneys can continue to act even if one or more of them becomes unable or unwilling to do so.

The disadvantage of this flexibility is that one attorney may act in a way which the other attorneys would not endorse. Arguably, however, you should not appoint an attorney to act at all if you don't trust that person to act alone.

Jointly when making some decisions and jointly and severally when making others

This option can provide a compromise between flexibility for attorneys in relation to day-to-day matters and control in relation to more important decisions. You would need to decide which decisions the attorneys may make independently and which they must make jointly.

The disadvantage of this option is that your attorneys will need to prove that they are acting properly whenever they make decisions. This can add a significant administrative burden and is not usually recommended.

Who is a “Certificate provider” and why do I need one?

A certificate provider is an impartial person who certifies in the LPA form that you understand what you are doing when you make your LPA and that you are doing so of your own free will. A certificate provider can be either:

- a professional (for example, a GP or your solicitor); or
- a person who has known you for at least two years.

You need one certificate provider to sign your LPA.

Do I have to notify anyone that I have made an LPA?

When you make your LPA you may nominate up to five people to be told when you or your attorneys apply to register your LPA with the Office of the Public Guardian (OPG). The people you specify should be involved in your life and know you well. The notification acts as a safeguard because it allows the people you have chosen to raise any concerns that they may have at the point of registration.

You do not have to notify anyone and many people prefer not to.

How can I control what my attorneys can and cannot do?

Restrictions imposed by law

The law controls what your attorneys can do and how they must act. The most important rule is that an attorney must act in your best interests at all times. Attorneys for property and financial affairs must keep accounts and submit them to the Office of the Public Guardian if required.

Your attorneys can do most things which you could do yourself. One important exception relates to your Will. Your attorneys cannot make a Will for you nor may they amend an existing Will.

Generally your attorneys are not even entitled to see your Will. If we hold your Will you will need to provide us with a separate authority if you would like us to release it to your attorneys at any time.

Your instructions and preferences

You may include in the LPA guidance for your attorneys about how you would like them to make decisions and restrict their powers if you wish.

Most people do not include any restrictions, preferring to give their attorneys flexibility. If you wish to provide your attorneys with guidance we can prepare a separate letter of wishes for you.

It is also sensible to talk to your attorneys in advance to make sure that they understand how you would like them to make decisions for you.

Does an LPA have to be registered?

Each LPA must be registered with the OPG before your attorneys can use it.

You do not have to register your LPA as soon as you make it but it is usually a good idea to do so. Registration can take 2 - 3 months and this would be a significant delay if you lost capacity and your attorneys needed to make urgent decisions for you. If you do not register your LPA as soon as you have made it you also run the risk that any procedural errors will only come to light at the point where it is too late to rectify them.

Currently a registration fee of £82 is payable to the OPG for each LPA although this may change in the future. Depending on your financial circumstances the OPG may waive all or part of this fee.

How is the LPA used after registration?

Your attorneys may use a registered LPA for property and financial decisions both before you lose capacity and afterwards. Your attorneys may only use a registered LPA for health and welfare matters after you have lost capacity. When your attorneys start using the LPA, they may need to provide evidence of their authority to act for you to banks, utility companies, the local authority, your doctor, care homes and other third parties. The requirements of each individual or organisation will vary. For example, some may need to see the original registered LPA while others may only want a photocopy. Most third parties will require identification details for the attorneys.

The Process

When you instruct us to prepare an LPA we will take the following steps on your behalf:

- Meet you to take your instructions.
- Prepare the LPA(s) and all supplementary documents required to register them for your approval.
- Meet you so you can sign the LPA(s).
- Act as your certificate provider.
- Send the LPAs to your attorneys for them to sign.
- Send notices to any people listed in your LPA.
- Apply to register the LPA(s) with the Office of the Public Guardian.
- Once your LPA(s) are registered we will store the originals for you. We will provide you with certified copies on request.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.