

Lasting Power of Attorney – A guide

A Lasting Power of Attorney (LPA) is a legal tool that allows you to appoint someone to make certain decisions on your behalf.

If you're married or in a civil partnership, you may have assumed that your spouse would automatically be able to deal with your bank accounts and pensions, and make decisions about your healthcare, if you lose the ability to do so. **This is not the case.**

The appointed person/people can manage your

- Finances; and/or
- Health and Welfare

in the future, if you reach a point where you are no longer able to make decisions for yourself.

This sheet explains what an LPA is and who should consider making one.

Advanced Care Planning

There are a number of ways that you can plan your care for the future.

The purpose is to allow you to make choices and decisions about your future care, now, in case there is a time when you are unable to make decisions for yourself (lacking mental capacity).

This can ensure that a person/people that you have nominated have the power to act on your behalf in situations where you have agreed, so that you are not given treatment that you don't wish to receive.

Lasting Power of Attorney

A Lasting Power of Attorney (LPA) allows you to choose a person/people you trust to act for you, this person/these people is/are referred to as your attorney/s.

There are two different types of LPA:

- property and affairs, and
- health and welfare.

Each type covers different decisions and there are separate application forms for each.

You can choose to make both types, or just one.

You can have the same attorney/s for both, or you can have different attorneys.

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Thinking and talking about what would happen if we lost the mental capacity to make decisions for ourselves is uncomfortable. Yet it's important to consider how much worse the situation would be if you had a stroke, serious accident or dementia (e.g. Alzheimer's) without addressing the practicalities first.

Property and Affairs LPA

- A property and affairs LPA covers decisions about your finances and property.
- If there comes a time when you can't manage your finances, your attorney/s will do this for you.
- This can include paying your bills, collecting your income and benefits, or even selling your house.
- If you wish, you can restrict their powers, or place conditions on what they can do.
- It can only be used once it has been registered with the Office of the Public Guardian (OPG).
- Once registered, it can then be used, even while you have mental capacity, with your consent.

Health and Welfare LPA

- A Health and Welfare LPA allows the attorney/s to make decisions on your behalf about your health and welfare.
- Your attorney/s could make decisions about where you live, or day to day care including your diet and what you wear.
- You can also give your attorney/s the power to accept or refuse life-saving treatment on your behalf. You would be asked whether you wish to do this or not on the form, and you will need to clearly state your intentions.
- A health and welfare LPA can only be used once the form is registered with the OPG and you are in a position where you no longer have the mental capacity to make decisions about your own welfare.

Benefits of making an LPA

- It can be reassuring to know that, if you are unable to make a decision for yourself in the future, your chosen person/s can make these decisions for you in accordance with your wishes.
- Registering an LPA ensures that the person/s that you want to make decisions on your behalf is/are able to do so. This also prevents a stranger, or someone you do not trust, from obtaining this power.
- An LPA can reduce problems that may occur in the future. It can be more expensive and time consuming for family and friends to try to gain a similar power in the future if you do not already have an LPA.
- Registering an LPA can help prompt discussions with your family or friends about your future wishes.

Who can make an LPA?

- To make an LPA you must be over 18.
- You must also have the mental capacity to make this decision, this means that you are deciding for yourself that you wish to make the LPA, and that you understand what this means.

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Who can be an attorney?

- You can choose anyone to be your attorney, provided they are over 18.
- For a property and affairs LPA they cannot have been declared bankrupt.
- It is important to think carefully about who you wish to appoint, it should be someone that you trust, and is reliable and has the skills necessary to carry out this role.
- You can choose to have more than one attorney.

Most people will choose a relative or close friend, but you can also ask a professional who you trust, for example your accountant.

You should also consider appointing a replacement attorney, if your first choice attorney is no longer willing or able to be your attorney.

How an attorney acts

- If you choose to have more than one attorney, you must decide how your attorneys will act.
- They can make decisions together ('jointly'), they can act together and separately ('jointly and severally'), or a combination of the two:
 - **Jointly** – means that the attorneys must always act together, and therefore must agree all decisions and both sign all documents.
 - **Jointly and severally** – attorneys can act together, but can also act on their own.
 - **Jointly in some matters and severally in other matters** – for certain decisions all your attorneys must agree, but for other decisions they can act independently. For example:
 - decisions regarding selling a property or medical treatment could be for all attorneys to agree, but
 - for decisions concerning diet or dress they could act on their own.

When making decisions your attorney must follow the Mental Capacity Act, this means that they:

- Must act in your best interests.
- Must consider your past and present wishes.
- Cannot take advantage of you to the benefit of themselves.
- Must keep all of your money completely separate from their own.

If the attorney fails to comply, the LPA could be cancelled.

If an attorney has taken advantage of you, this will be investigated by the OPG and the person could face prosecution.

Having an LPA in place can therefore offer you protection from potential future abuse.

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Making a valid LPA

- You will need to decide on someone to witness your signature on the LPA, and to state that you have the mental capacity to make the LPA. The signed form is a certificate of capacity and the person is called the certificate provider. They can be:
 - A professional, like your Doctor.
 - Someone who has known you for at least two years, but isn't a family member or an attorney, and they will not benefit from the LPA, i.e. a family friend or neighbour.
- Each attorney must sign the form to say that they agree to act as your attorney if needed in the future.
- They will also sign to show they understand the duties that this involves.

You are also asked to list one or more 'named persons', someone who you want to be notified when your LPA is registered. This could be anyone, i.e. a friend or relative could be your 'named person'. The purpose is to provide you with an additional safeguard. If none are listed, an additional certificate of capacity must be provided.

Next steps

- The forms will be sent to the Office of the Public Guardian.
- The form must be registered with the OPG before it can be used.
- There is a fee for registering each LPA (this is currently £82.00 each), so if you are registering a property and affairs LPA as well as a health and welfare LPA, the fee will be £164.00.
- You may be exempt from having to pay the fee if you cannot afford it and are in receipt of certain benefits.
- Also if you earn less than £12,000 per year then you can apply for a 50% reduction of your fees.

Office of the Public Guardian

The OPG is responsible for the registration of all LPA's, including dealing with objections and maintaining the register of LPA's.

The OPG will also deal with any issues (or complaints) about the way that an attorney is exercising their powers. If there are any problems, the OPG may pass the case on to the Court of Protection, who can:

- Decide whether a person has capacity to make decisions for themselves.
- Make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make these decisions themselves.
- Decide whether an LPA is valid.
- Remove attorneys who fail to carry out their duties.
- Hear cases concerning objections to the registering of an LPA, i.e. someone may object to an LPA being registered if they feel that; the person making the LPA was forced into making it; or, that the proposed attorney was not suitable.

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