



A Guide to Lasting Powers of Attorney



A Lasting power of attorney (LPA) is a legal tool that gives another adult the legal authority to make certain decisions for you if you become unable to make them yourself. The person who is given this authority is known as an ‘attorney’. They can manage your finances, or make decisions on your behalf about your health and welfare.

You choose a person (or persons) you trust to act for you. These people are referred to as your ‘attorney(s)’, and you can direct which decisions they are allowed to make on your behalf.

There are two different types of LPA. One of them covers decisions about your property and finances, and the other covers decisions about your health and welfare. You can choose to make both types, or just one. You can appoint the same person to be your attorney for both, or you can have different attorneys. You can only make a Power of Attorney whilst you have capacity to do so.

An LPA can only be used after it has been registered at the Office of the Public Guardian (OPG). The OPG are the body responsible for the registration of LPAs (for more information see the section on the ‘Office of the Public Guardian’).



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 anymore, the person you appoint as your attorney will be able to do this for you. This can include paying your bills, collecting your income and benefits, or selling your house. However if you want to, you can limit the decisions they are allowed to make, or place conditions on what they can do. Once registered, a Property and Affairs LPA can be used even if you are still able to deal with these things yourself.

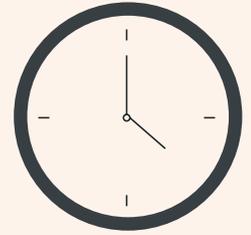
Health and Welfare LPA

A Health and Welfare LPA allows the attorney to make decisions on your behalf about your health and welfare if there comes a time when you are unable to make these decisions for yourself. A Health and Welfare attorney could make decisions about where you live, for example, or your day-to-day care, including your diet and what you wear.

You can also give your Health and Welfare attorney the power to accept or refuse life-sustaining treatment on your behalf. You will be asked whether you wish to do this or not on the form, and you will need to state your intentions clearly.

It's important to be aware that this decision can have an effect on any advance decision that you have previously made. If you allow your attorney to make decisions about life-sustaining treatment, this will overrule your advance decision. If you choose not to give your attorney this power to decide on life-sustaining treatment, your advance decision will still stand.

As with a Property and Affairs LPA, a Health and Welfare



A vertical window with a dark frame is the central focus. Inside the window, a green plant with several leaves is visible. Below the window, a small orange pot sits on a light-colored wooden stool. To the left of the stool, a brown cat with a black collar is sitting on the floor. To the far left, a green plant with a flame-like top is partially visible.

document can only be used once it has been registered at the OPG. However, in contrast to the Property and Affairs LPA, it cannot be used while you still have the mental capacity to make decisions about your own welfare or treatment.

Who can Make an LPA

Anyone who is over the age of 18 and has the mental capacity to do so can make an LPA.

Once a person has lost mental capacity, they will not be able to make an LPA. If that person's family or friends then require to be able to make certain decisions on their behalf, they will need to apply for deputyship through the Court of Protection.

Who can be an Attorney

You can choose anyone you want to be your attorney as long as they are over 18 and have mental capacity themselves. For a Property and Affairs LPA however, the person you choose cannot be bankrupt.

It's important to think carefully about who to appoint. Consider who knows you well and who you trust to make these decisions for you, and also whether the person is reliable and has the skills to carry out the role. You can choose to have more than one attorney.

Most people will choose a relative or close friend to be their attorney, especially for a Health and Welfare LPA. The appointed person must also be willing and able to carry out the role.



You can also appoint a replacement attorney, which is a person (or persons) who you would want to make decisions for you if your first choice attorney is no longer able or willing to carry out their role. You might want to think about this, especially if you are only appointing one person to act as your primary attorney.

How an Attorney Acts

If you choose to have more than one attorney (for example your children) you must decide how your attorneys are to act. They can make decisions together ('jointly') or act separately ('severally'), or a combination of both.

- **Jointly** — this means that the attorneys must always act together, and therefore must agree all decisions and both sign documents.
- **Jointly and severally** — attorneys can act together, but can also act on their own.
- **Jointly in respect of some matters and severally in respect of others** — for certain decisions all your attorneys must agree, but for other decisions they can act independently. For example, you might decide all of your attorneys must agree to selling property or decisions about medical treatment, but they can act on their own for day-to-day decisions such as diet or dress.

When making decisions, your attorney must follow the rules set out in 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 benefit themselves
- must keep all of your money separate from their own.

If your attorney fails to follow these rules, the LPA could be cancelled. If your attorney takes advantage of you the OPG will investigate and that person could be prosecuted. Having an LPA in place can therefore protect you from potential future abuse.

The Office of the Public Guardian is a government body that protects people who lack the mental capacity to make decisions for themselves. It is responsible for registering LPAs, maintaining a record of all LPAs, and dealing with any associated objections.

The **Office** of the **Public Guardian**

The OPG also deals with any issues or complaints about the way in which an attorney is acting. If they find any serious problems, they may pass the case on to the Court of Protection, who can:

- decide whether a person has capacity to make particular decisions for themselves
- make declarations, decisions or orders on matters
- decide whether an LPA is valid
- remove attorneys who fail to carry out their duties
- listen to cases where someone objects to the registering of an LPA



The **Cost** of **LPA**

The costs are:

- £370 including VAT for each separate power.
- £82 Registration fee at the OPG payable directly to them (subject to change at their discretion).

The above total is therefore £452 per Power

- In addition, there will be a £75 Certificate Provider fee charged at the time that the Power is signed and witnessed by ELM.

We are **Here** to **Help**

If you have any questions, would like additional guidance or require some support, we are here when you need us.

For more information or to arrange a home visit please call

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For more information on the local services ELM Legal Services can provide please visit

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