

Lasting Powers of Attorney (LPA)



What are Powers of Attorney?

Powers of Attorney (POA) have been serving the public for centuries. They are powerful legal documents which allow an individual ('donor') to appoint a person of their own choice (an 'attorney'), to look after their affairs should they at a later stage no longer wish to make these decisions, or lack the capacity to manage their affairs themselves.



From October 2007 two new Powers came into effect

Lasting Power of Attorney for Property & Financial Affairs

This allows the persons appointed (the attorneys) to make decisions about paying bills, dealing with banks and investments, arranging and collecting benefits and even selling property on behalf of the donor.

Lasting Power of Attorney for Health and Welfare

This allows the attorney(s) to make decisions for the donor such as care issues, where the donor lives, and, where the donor wishes, giving or refusing consent to life sustaining treatment.

As the name of the power suggests ('lasting') both of these powers continue to be valid even after the donor loses capacity. Once registered, a Lasting Power of Attorney for Property and

Financial Affairs can be used by the attorneys at any time, **HOWEVER**, a Lasting Power of Attorney for Health and Welfare can **ONLY** be used when the donor has lost mental capacity.

Lasting Powers of Attorney have replaced Enduring Powers of Attorney in England, Scotland & Wales, but not Northern Ireland. EPAs made prior to 01/10/2007 continue to be valid.

What is POA?

No doubt you have taken care to ensure that your assets go to the right people when you die by making a Will. If you care enough about what happens to your assets after you die, then you ought to care even more about managing your affairs during your lifetime.

If you were to become mentally incapacitated as a result of an illness or an accident, then without an LPA in place, the **ONLY** way your financial affairs can be managed is by an application being made to the Court of Protection for a Deputyship order.

The applicant must provide personal information about themselves, their family, their own finances and the relationship with the person they wish to help care for. Medical evidence as to capacity will also need to be obtained.

This process costs a considerable amount of money and can take anything between 12 weeks and 10 months, by which time your finances could be seriously damaged.

Even worse, a Judge will make the final decision as to who is appointed as the deputy, and this may not be who you would have wished to manage your affairs.

The appointment **does not even have to be a family member**. The Court could decide to appoint a Panel Deputy (a retired solicitor or barrister who works for the Office of the Public Guardian) or a Local Authority.

While the Court of Protection is important to safeguard the interests of people who don't have close friends or family, if you want your loved ones to be able to care for you and make decisions on your behalf, you should ensure that you make an LPA while you are still able to do so.

Below are some of the reasons why you should make a Lasting Power of Attorney (LPA) in preference to a judge appointing a deputy to manage your affairs.

Property & Finance Deputyship Vs LPA Property & Finance



Deputyship

You have no control over who is appointed as your deputy; this may not be who you would have wished.

There are also Court fees involved and the deputy has to take out a Security Bond to cover their actions. This is paid annually and the amount is set by the Court. The more assets a person has, the higher the Bond. Depending on your Supervision Order the Court can also take a retainer. This amount is not disclosed until your application is agreed and is, again, dependent on the amount of assets the person has. Supervision Fees are also applied annually and vary.

A Deputyship order will set out the extent of the powers granted to the deputy, for example, they may not be allowed to write cheques over £500 without the permission of the Court.

Any major decisions, such as selling a property, may require the Court's permission.

The OPG assesses each case and places it in a band where it will receive either a low, medium or high level of ongoing supervision. The deputy must report to the Court/OPG at all times and may have to submit annual accounts for Court approval and receive periodical visits by a Court Visitor.

A deputy must account for every penny spent and any requests for money must be made to the Court in writing.

The application for Deputyship is complex and the deputy must provide personal information about themselves, their family, their own finances and the relationship with the person they wish to care for.



Setting up an LPA allows you to plan in advance

- The people you want to make those decisions for you (your Attorneys).
- The decisions you want to be made on your behalf e.g. life sustaining treatments.
- How you want your Attorneys to make those decisions e.g. jointly.

Once the LPA is registered with the OPG your Attorneys are able to make financial decisions on your behalf and they must follow the principles as set out in the Mental Capacity Act when making these decisions.

Your Attorneys are free to act on your behalf without involvement from the OPG, unless a concern is raised as to how the Attorney is acting.

Minimal personal details are required for both the Donor and the Attorney to set up the LPA, and it is a much less intrusive process.

Setting up an LPA is also a much quicker process than applying to the Court for a Duptyship order.

There are thousands of people that are registered with the Court of Protection who are deemed mentally incapable to act on their own behalf. Their affairs are placed under the jurisdiction of the Court.

This would mean that those seeking to care for you, such as your family, would have the added stress of having to deal with officials every time a decision needed to be made.

Who can act as my attorney? Who can make an LPA?

Anyone aged 18 and over who has mental capacity and who is not bankrupt when they sign the form. You should appoint someone you trust such as a relative, or a professional. (Most professional Attorneys will only act for LPA Property & Financial Affairs).

Anyone aged 18 years or over who has mental capacity at the time of making it (England and Wales).

You should also consider how you would like your Attorneys to act
- You have three options.

Jointly

This option means that your Attorneys must make **ALL** decisions together. If one of your Attorneys disagrees, that decision cannot be made on your behalf.

You might choose this option if you want to be sure that your Attorneys are in agreement about every decision, but you should bear in mind that getting the agreement of all the Attorneys could take extra time and delay what otherwise would have been straightforward decisions.

It should be noted that, if one of the Attorneys is unable to act due to predeceasing the Donor, losing mental capacity, etc. the LPA will be rendered invalid. Any Replacement Attorney will take over from the remaining Attorneys and act as **SOLE** Attorney.

Jointly for some decisions and Jointly & Severally for others

This option means that your Attorneys can make some decisions independently, but for others they must all be in agreement.

You might choose this option if you want your Attorneys to be able to make day to day decisions such as paying care home fees independently but, be in agreement when making more significant decisions such as, selling your home.

Please note that if you choose this option and the OPG deem it to be unworkable, it could render the LPA invalid and be rejected at the OPG Registration process.

Jointly & Severally

This option means that your Attorneys can make all decisions either together or independently.

You might choose this option if, for example, one of your Attorneys is closely involved in your financial affairs and you trust them to make your decisions on their own, or one of your Attorneys is frequently unavailable (working abroad) or you simply want to ensure that your LPA continues to be workable if one of your Attorneys dies.

Guidance & Restrictions

You may also wish to give guidance to your Attorneys on how you want them to act, but this is **not legally binding**. Completing the

guidance box gives the Donor the opportunity to provide broader information for their Attorneys to consider when making decisions on their behalf.

Completing the Restriction box is **binding** and allows the Donor to stipulate what practices and procedures they wish the Attorneys to follow, such as seeking professional financial advice before making any investments.

Who else needs to be involved in making an LPA?

People who need to be told – these are relatives or adults who know you well and who are given the opportunity to raise any concerns or objections about the LPA before registration.

Those that are not relatives and are independent of the Donor can also act as a Certificate Provider. You do not need to name any 'people who need to be told' but can have up to 5.

Your Attorney(s) or Replacement Attorney(s) – these **cannot** also act in the category of people who need to be told and also **cannot** act as a Certificate Provider.

Certificate Provider – You must have 1 Certificate Provider. They must have known you, the Donor, for at least 2 years or have the relevant professional skills to enable them to confirm that you understand the significance of your LPA, e.g. your GP. They will also need to certify that no undue pressure or fraud is involved in the making of the LPA.

The Next Step

Having to face the prospect of being unable to deal with your own affairs can be daunting for us all. So many people avoid this, but failing to act NOW and plan for this eventuality can only add to the burden facing your loved ones.

Once you have made the decision to make your Lasting Power of Attorneys, we recommend that your LPAs are registered immediately with the Office of the Public Guardian (OPG). An LPA **can only be used** after it is registered with the OPG.

Registering your Powers

Failure to register your LPA documents straight away may mean that the information it contains could be out of date. This may **invalidate the LPA** and the OPG could then later refuse to register the document. The charge for Registering an LPA is set by the OPG but can be reduced, or even waived entirely, depending on the Donor's annual gross income.

An estimated 700,000 people have dementia – including 1 in 5 over the age of 80. Brain injuries or mental health problems also render others incapable of making their own decisions, so it is important to put arrangements in place early, so if that day comes, someone we trust and who loves us can make those important decisions on our behalf.

(Source – Saga).

Keeping Your Documents Safe

Powers of Attorney are powerful documents. We strongly advise that once the Powers have been signed and registered, you do not keep these legal documents in the home environment, for the following reasons:



Storing your documents will ensure that, these Powers are NEVER used without your express knowledge and consent, while you have capacity.



Prevent your documents being accidentally damaged, or destroyed.



Ensure that your documents are never lost or stolen.

Why take such a risk? when for a small annual fee, you can elect to take advantage of our Secure Storage Facility, benefitting from the knowledge that your documents are lodged in a safe environment.

You can access the documents held in our Storage Facility free of charge at any time, upon written request and surrender of your Storage Certificate. When storing your documents with us, you will receive a Storage Certificate – The Certificate details all the documents we store on your behalf, along with our contact details. You should ensure that a copy of this Certificate is passed to your Attorneys. Also you will receive an office copy/certified copy of an LPA – When the Powers of Attorney need to be utilised, you will often find that your Attorneys are required to present the original documents to a variety of different institutions at the same time to enable them to deal with your affairs. This could mean lengthy delays for your Attorneys when required to send off these documents and then having to await their return. ALL institutions, including Banks and Building Societies will however, act on copies of Powers if correctly 'Certified' by a Solicitor. When storing with us, you are eligible for one complete set of LPAs certified by one of our Solicitors, free of charge, when the need arises.

This page contains only general planning and is not to be construed as advice for any personal planning. Each strategy recommended is based on individual circumstances.

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