

Safeguards

For an LPA to become valid it first needs to be sent to the Office of the Public Guardian (OPG) to become registered. There is a registration fee of £82 per document. A certificate provider is also required. This is an independent person who certifies that at the time of signing they are aware that the donor understands the purpose and scope of authority given by the LPA, that no fraud or undue pressure is used to influence the donor into making the LPA and that there is nothing else which could prevent it from being created.

An attorney must always act in the donor's best interests and cannot take advantage of their position and benefit themselves or another. If any person believes that an attorney is not acting in the donor's best interests, they should contact the OPG who will investigate and in a serious case they may even refer to the Court of Protection who have the power to remove an attorney or even revoke an LPA.

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Lasting Power of Attorney



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A Public Information Leaflet

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a document that gives a person or people (the attorneys) power to make decisions on behalf of another person (the donor). An LPA is made when the donor has mental capacity, in preparation for if they lose their capacity. There are two different types of LPAs; Property & Financial Affairs, and Health & Welfare.

Property & Affairs LPA

This covers decisions about the donor's financial affairs and their property. A Property & Financial Affairs LPA can be used by attorneys whilst the donor still has capacity (and after they have lost capacity) or only after they have lost capacity. An attorney for a Property & Financial Affairs LPA will be able to:

- Buy or sell property
- Operate the donor's bank account and invest any savings
- Claim welfare benefits or pensions and receive income for the donor
- Deal with the donor's tax affairs
- Pay the donor's mortgage, rent and household expenses
- Insure, maintain or repair the donor's property

Health & Welfare LPA

This covers decisions about the donor's personal welfare and health. A Health & Welfare LPA can only come into effect once the donor has lost capacity. An attorney for a Health & Welfare LPA will be able to:

- Make decisions on where the donor is living and on their day to day care
- Arrange any medical, dental or optical care for the donor

- Allow access to any of the donor's personal information
- Consent or refuse any medical treatment
- Decide on the donor's diet and clothing

It also includes a section where the donor may grant their attorneys the power to make decisions on accepting or refusing life sustaining treatment.

Why Make an LPA?

The possibility of losing mental capacity can be a distressing thought and is often seen as something that does not need to be considered until the future. However, it needs to be arranged whilst still having capacity and is best made sooner rather than later. Capacity could potentially be lost at any time, such as through an accident, a stroke or a degenerative condition such as Alzheimer's and with growing reports of 18-45 year olds suffering from mental health problems it can happen to people of any age.

If capacity is lost and there is no LPA in place, any family or friends will have to apply to the Court of Protection for a Deputyship to make decisions on the donor's behalf. This is a lengthier process, costs much more than registering an LPA and will incur ongoing costs which an LPA does not. It can never be certain that the Court of Protection will approve an application and they are particularly reluctant to approve a Deputyship for a person's health and welfare.

By using an LPA the donor can choose who will make decisions for them and how those decisions may be made. This control is lost if a Deputy must be appointed after capacity is lost.

Problems can be created where one member of a couple loses capacity. If the majority of the couple's assets are held in joint names and one loses

capacity, the other will not be able to access the joint accounts or deal with jointly owned property without applying to the Court of Protection. Similarly, if assets are mostly in the name of one partner who loses capacity, it could potentially leave the other unable to access any assets or be unable to maintain the home.

Choosing an Attorney

One or more people may be appointed as attorneys. Replacement attorneys may also be appointed to take over in the event that the original attorneys are unable to act. No limit applies to the amount of attorneys that can be appointed but it is not practical for more than four to be appointed. Any person who has capacity and is 18 or over can be an attorney. For a Property & Financial Affairs LPA there is also the added condition that an attorney must not be bankrupt or subject to a debt relief order.

Who to appoint is very much a personal decision for the donor and it should be someone who they trust completely. The common appointment is a spouse or partner acting either solely with any children as replacements or acting jointly and severally with the children. This may not always be practical, for example if there are family conflicts between potential attorneys they may not agree on what is in the donor's best interests.

It is also possible to appoint a professional as an attorney, and in the case of a Property & Financial Affairs LPA a Trust Corporation may be appointed. Of course there will be costs associated with this as professional attorneys may charge fees.

If more than one attorney is appointed then the donor must decide whether the attorneys must act jointly, jointly or severally, or jointly for some decisions and jointly and severally for others.