

Planning Your Lasting Power of Attorney: Things to consider before you apply for Lasting Power of Attorney



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Contents

What is a Lasting Power of Attorney? 3

Why do you need a Lasting Power of Attorney? 3

The Two Different Types of Lasting Power of Attorney: 4

 Property & Financial Affairs 4

 Health & Welfare 4

With a HEALTH & WELFARE Lasting Power of Attorney:..... 5

Who can be Appointed as an Attorney(s)?..... 6

How can your Attorneys act?..... 6

Replacement Attorney(s)..... 8

IMPORTANT NOTE: If Your Attorney(s) act JOINTLY..... 9

Practical, Operational, and Legal limitations of acting Jointly: 9

The Moral of the Story..... 10

Choose when your Lasting Power of Attorney is in force (Property & Financial Affairs LPA only) 10

People to Notify When You Apply to Register Your LPA..... 10

You MUST nominate a Certificate Provider..... 11

A WITNESS must watch the Donor and each Attorney sign..... 12

LPA Signing - Date order of Signatures 12

Key Rules to Avoid LPA Application Rejection 13

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that allows you to appoint a person or persons that you trust, known as your Attorney(s), to make certain decisions on your behalf. Your Attorney(s) can legally manage your finances, or make decisions about your health and care, should you ever reach a point where you are no longer able to make those decisions for yourself.

There are two different types of Lasting Power of Attorney: Lasting Power of Attorney for Property and Financial Affairs and Lasting Power of Attorney for Health and Welfare.

The two different variants each cover a different range of 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 for both, or you can have different attorneys.

The information in this factsheet is for people living in England and Wales, and isn't intended for those living in Scotland or Northern Ireland, where the laws governing powers of attorney are different.

Why do you need a Lasting Power of Attorney?

If you ever get to the position where you are unable to make a decision for yourself in the future, without an LPA your loved ones may have to apply to the Court of Protection for a Deputyship Order to enable them to handle your affairs. This could be both very costly and time consuming.

Having an LPA ensures that the person you want to make decisions for you will have the authority to do so, and should help avoid problems in the future.

The Two Different Types of Lasting Power of Attorney: Property & Financial Affairs

The LPA for Property and Financial Affairs covers decisions about your finances and property. If there ever comes a time when you can't manage your finances yourself, the attorney can do this for you. This can include paying your bills, collecting your income and benefits, or selling your house. However, if you wish to, you can restrict their powers, or place conditions on what they can do. It can only be used once it has been registered at the Office of the Public Guardian (OPG) who are responsible for the registration of LPAs.

Health & Welfare

A Health and Welfare LPA allows your Attorney(s) to make decisions on your behalf concerning your Health and Welfare, if there comes a time when you are unable to make these decisions for yourself.

Your Attorney(s) can make decisions for example, about where you live, or regarding your day-to-day care such as 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 and you will be asked whether you wish to do this or not on our interactive LPA instruction form. This is a big decision, and as such, you will need to state your wishes regarding this matter clearly.

It's important to be aware of the effect this decision can have on any advance decision that you may have previously made. If you allow your attorney to make these treatment decisions for you, this will overrule any earlier advance decision you made about the same treatment. If you choose not to give your attorney this power, your advance decision will still stand.

NB: Unlike an LPA for Property & Financial Affairs, where the Attorney(s) Powers can come into force potentially from the date your LPA is registered, an LPA for Health & Welfare can ONLY be used once the form is registered and you no longer have mental capacity to make such decisions yourself.

With a **HEALTH & WELFARE** Lasting Power of Attorney:

You can choose whether your Attorneys can give or refuse consent to life-sustaining treatment – surgery, medicine or medical assistance to keep you alive – for example an organ transplant, cancer treatment, artificial nutrition & hydration. It can also apply if something unexpected happens during a routine operation.

You can also consider more day to day wishes such as where you would like to live, or any conditions and facilities you would like to have. Ensure you convey your wishes to your Attorney so that they know what you would like.

The following pages will guide you through the information needed for your LPA.

Donor – this is the person making the LPA. It may be you, or you may be completing it on behalf of someone else.

DONOR	
Title	
First Name	
Middle Names	
Surname	
Other names	
Date of Birth	
Full postal address	
Telephone	
Mobile	
E Mail	

Who can be Appointed as an Attorney(s)?

You can choose anyone you wish to be your attorney, as long as they are 18 or over and are a person you trust to make these decisions on your behalf. You can appoint more than one Attorney if you so wish, and generally a Spouse or close family members are chosen to act. Do be aware that with a Lasting Power of Attorney for Property & Financial Affairs, you cannot appoint an Attorney who is bankrupt or subject to a debt relief order.

In addition, you are able if you wish to appoint a professional such as a Solicitor or an Accountant, but you need to be aware that a professional will make charges for their time, and these costs have the potential to mount up over time!

In any eventuality, it is also very important that you choose replacement or replacements to act on your behalf should your appointed Attorney become unable or unwilling to act.

How can your Attorneys act?

If you choose to have more than one attorney, you must decide how your attorneys will act. They can act jointly (always together), jointly and severally (together or on their own), or jointly for some decisions and jointly and severally for others.

Jointly – Your Attorneys must always act together, and therefore must agree all decisions and all sign documents.

Jointly and severally – Your Attorneys can act together, but can also act on their own.

You may also choose for your Attorneys to act **Jointly** in respect of some matters and **Jointly and Severally** in respect of others – for certain decisions all your attorneys must agree, but for other decisions they can act independently. For example, selling property or decisions about medical treatment could be for all attorneys to agree, but for day-to-day decisions such as diet or dress they can act on their own.

ATTORNEY 1	
Title	
First Name	
Middle Names	
Surname	
Other names you are or have been known by	
Date of Birth	
Full postal address	
Telephone	
Mobile	
E Mail	

ATTORNEY 2	
Title	
First Name	
Middle Names	
Surname	
Other names you are or have been known by	
Date of Birth	
Full postal address	
Telephone	
Mobile	
E Mail	

Replacement Attorney(s)

If your only Attorney dies or can no longer act, and you haven't appointed a Replacement Attorney, your LPA can no longer be used.

REPLACEMENT ATTORNEY 1	
Title	
First Name	
Middle Names	
Surname	
Other names you are or have been known by	
Date of Birth	
Full postal address	
Telephone	
Mobile	
E Mail	

REPLACEMENT ATTORNEY 2	
Title	
First Name	
Middle Names	
Surname	
Other names you are or have been known by	
Date of Birth	
Full postal address	
Telephone	
Mobile	
E Mail	

IMPORTANT NOTE: If Your Attorney(s) act JOINTLY

If you nominate Attorneys to act **JOINTLY** (meaning they must all agree and all sign), the **death of one ends the LPA**. Under section 13 of the Mental Capacity Act 2005, the remaining Joint attorney **cannot** carry on alone and the Lasting Power of Attorney ends.

The only way an LPA can continue after the death of a Joint Attorney is if the Donor had Appointed Replacement Attorney(s) at outset, so it is of **critical importance** that **Replacement Attorneys are appointed at outset**.

Should an LPA end, if the Donor still has mental capacity, they would need to make a new one, but, if they've lost capacity, someone will have to apply to the Court of Protection to become a deputy. That is a slow and very expensive process, but easily avoided by the appointment of Replacement Attorney(s) at outset.

If the Attorneys were appointed "jointly for some decisions, jointly and severally for others", the survivor can still make the decisions that allowed either attorney to act alone. The decisions that needed both attorneys fail unless a replacement steps in.

By comparison, if they were appointed "jointly and severally" (any attorney can act alone), the death of one attorney ends only that attorney's appointment, and the others carry on as normal.

In the event of the death of an Attorney, the surviving attorney should tell the OPG about the death and send the death certificate. The OPG will then confirm whether the LPA continues, with the replacement, or has ended.

Practical, Operational, and Legal limitations of acting Jointly:

When attorneys are appointed to act **Jointly** under a Lasting Power of Attorney (LPA), it means they are legally required to make every decision together and all attorneys must agree on every action taken.

Running the Donor's Bank Accounts

Because Joint Attorneys must always act together, banks must ensure that one attorney cannot make a decision without the other(s). **As a result, banks restrict access to many everyday conveniences:**

No Online or Mobile Banking:

Many banks don't provide online access or banking apps to joint attorneys because digital tools generally operate on single-user logins, which cannot enforce dual authorisation.

No Individual Debit Cards:

Many banks won't issue debit or ATM cards to joint attorneys, as a card allows one person to withdraw or spend money without the explicit consent of the other.

No Telephone Banking:

Sole-operator telephone banking is generally unavailable because agents cannot verify dual authorisation over the phone in real time.

Operational & Transactional Limitations:

Executing day-to-day transactions on the donor's accounts involves strict administrative hurdles:

Dual Signatures Required: Every cheque, payment instruction, account opening/closing, or setting up/cancelling of standing orders and direct debits requires the written signature of all joint attorneys.

In-Branch Requirements (if you can find one!):

Many transactions must be done in person at a bank branch so all attorneys can present identification and sign simultaneously.

Delays in Urgent Payments: If a bill, care cost, or mortgage payment is due and one attorney is travelling, ill, or unreachable, the bank will refuse to process the payment on a single signature.

Disagreements and Deadlocks

If joint attorneys cannot reach a consensus on a bank-related decision (e.g., whether to move funds, close an account, or pay for a specific expense):

Total Stalemate: The bank cannot act on contradictory or single-attorney instructions.

Court Intervention: The attorneys must either seek mediation or apply to the Court of Protection to resolve the dispute, which can be costly and time-consuming.

The Moral of the Story

Whilst of course, you can appoint your Attorneys to act Jointly, and sometimes this can be desirable for Lasting Powers of Attorney Health & Welfare (with the caveat that Replacement Attorneys should always be appointed), for the reasons outlined above, we would recommend that if you appoint more than one Attorney to act in an LPA Property & Financial Affairs, that they are appointed to act **Jointly and Severally**.

Choose when your Lasting Power of Attorney is in force (Property & Financial Affairs LPA only)

This can either be immediately, or when you don't have mental capacity.

Immediately is the practical option, as while you have mental capacity, your **Attorneys** cannot act without your consent.

If you choose the "Only when I don't have mental capacity" that means your **Attorneys** may be asked to prove that you lack mental capacity each time they try to use the LPA.

- ☐ Immediately
- ☐ Only when I don't have mental capacity

People to Notify When You Apply to Register Your LPA

You can choose up to 5 people to inform in writing that you are applying to register your Lasting Power of Attorney.

If they feel the need, they can then raise a concern with the OPG if they feel you have been pressurised into making a Lasting Power of Attorney. You may of course choose not to notify anyone.

You MUST nominate a Certificate Provider

A Certificate Provider is someone who signs to confirm that the Donor understands the Lasting Power of Attorney and that no one is pressuring or defrauding them into making it.

The Certificate Provider cannot be:

- A member of your family, or of any of your Attorneys' families (including partners)
- A listed **Attorney** or **Replacement Attorney**
- A business partner or employee of the Donor or of any Attorney
- An employee, owner or manager at a Care Home where the **Donor** lives.

Choose either someone who has known you well for at least 2 years (such as a friend, colleague, former colleague or neighbour), or a professional such as your GP or a solicitor.

They will be asked to confirm that you understand what you are doing, that you haven't been unduly pressured into making the LPA, and that there is no fraud.

CERTIFICATE PROVIDER	
Title	
First Name	
Middle Names	
Surname	
Other names you are or have been known by	
Date of Birth	
Full postal address	
Telephone	
Mobile	
E Mail	

A WITNESS must watch the Donor and each Attorney sign

Your signature, and the signature of every Attorney and Replacement Attorney, must be witnessed by someone aged 18 or over. Your Attorneys can't witness your signature, and you can't witness theirs. The Certificate Provider's signature doesn't need a witness.

WITNESS	
Title	
First Name	
Middle Names	
Surname	
Other names you are or have been known by	
Date of Birth	
Full postal address	
Telephone	
Mobile	
E Mail	

LPA Signing - Date order of Signatures

In the UK (England and Wales), a Lasting Power of Attorney (LPA) must be signed in a strict legal sequence. Signing out of order—or having signing dates that run backward—will cause the Office of the Public Guardian (OPG) to reject the document.

The exact order of signing, along with the witnessing rules for each step, is detailed below:

Step 1: The Donor Signs First (Section 9)

- Who signs: **The Donor** (the person making the LPA). On a Health and Welfare LPA, the Donor also signs Section 5 (life-sustaining treatment), witnessed, at the same time.
- Witness requirement: Must be witnessed by an independent witness who is 18 or older.
- Crucial Rule: An appointed attorney or replacement attorney cannot witness the donor's signature.

- Continuation sheets: If any continuation sheets were used (e.g., for extra preferences or instructions), the donor must sign those on the same date as Section 9.

Step 2: The Certificate Provider Signs (Section 10)

- Who signs: **The Certificate Provider** (the impartial professional or friend confirming the donor understands the LPA and is not being pressured).
- Timing: Must sign after the donor, on the same day or a later date. They must never date their section before the donor.
- Witness requirement: The certificate provider's signature does not require a witness.

Step 3: The Attorneys & Replacement Attorneys Sign (Section 11)

- Who signs: **All named Attorneys and Replacement Attorneys.**
- Timing: **Must sign after (or on the same day as) the Certificate Provider.**
- Witness requirement: **Every attorney's signature must be witnessed by an adult.**
- **Witness Rules:**
- The **Donor cannot act as a witness to an Attorney's signature.**
- Anyone aged 18+ who is of sound mind can also act as the witness.

Step 4: Section 15 (Application to Register)

- Who signs: The applicant registering the LPA (this is usually either the donor or one of the attorneys; if the attorneys were appointed jointly, they must all sign).
- Timing: Signed last, on or after the date the final attorney signs.
- Witness requirement: Does not require a witness.

Key Rules to Avoid LPA Application Rejection

- Date progression rule: Dates must move forward or stay the same down the document. For example: Donor (e.g. 1st Oct), Certificate Provider (e.g. 1st Oct), Attorneys (e.g. 2nd Oct). If a date goes backward at any point, the OPG will reject the form.

IMPORTANT NOTE: Same-day signing is allowed (and **HIGHLY RECOMMENDED**):

- If everyone is together in the same room, all parties can sign on the exact same date — provided they sign in the correct sequence
- Wet ink signatures only: The OPG requires physical "wet ink" signatures; digital signatures or photocopies are not accepted.
- No correction fluid: Never use Tipp-Ex or cross out dates/signatures. If a mistake is made, print that specific page again and re-sign.