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Lasting Powers
of Attorney (LPAs)
Guide



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Lasting powers of attorney (LPAs)

A power of attorney is a legal document where a person gives another person or persons (the attorney(s)) authority to make certain decisions on his or her behalf.

THERE ARE TWO TYPES OF LASTING POWER OF ATTORNEY:

- A property and financial affairs LPA, which allows your attorney to deal with your property and finances, as you specify.
- A health and welfare LPA, which allows your attorney to make welfare and healthcare decisions on your behalf, but only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment.

Any Enduring Power of Attorney (EPA), legitimately made before 1 October 2007 (when LPAs replaced EPAs), will continue to be valid but only in respect of your property and affairs. If you wish to give authority over your health and welfare you will need to make an appropriate LPA.

WHAT HAPPENS IF YOU HAVE NOT MADE A LPA OR EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This can be both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes you can give a person(s) authority to make those decisions on your behalf by making a health and welfare LPA.

YOUR ATTORNEY

As with any power of attorney, it is an important document. You should consider carefully who you appoint as they should be trustworthy, have the ability to make the required decisions and be someone you trust to act as you would wish and in your best interests.

If you appoint more than one attorney, you can appoint them to always act together (jointly) or together and separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power. For example, if attorneys are appointed together they must be able to sign together which can be difficult in practice and if one dies, loses mental capacity or becomes bankrupt (if the power is a financial power), the document can no longer be used.

You can appoint one attorney, but it is advisable to appoint more than one to lessen the chance of abuse of the power and ensure continuity in case the attorney cannot act. You may also choose to appoint successors to your attorneys, in case they die.

If you appoint your spouse or civil partner, be aware that dissolution of the marriage or civil partnership terminates the appointment of your spouse/civil partner, unless you have indicated otherwise.

When choosing your attorney(s), please consider that they:

- must be over 18.
- cannot be an undischarged or interim bankrupt person, if you are making a property and affairs power.
- should be people with whom you have a settled and easy relationship and if more than one, who get on with each other well, or who are likely to do so.
- can be a family member (it is common to appoint partners and children, friends or a professional adviser (such as your solicitor) if the latter is prepared to accept the role.
- must agree to be your attorney and should understand the role they will be fulfilling. We can provide them with a guide to being your attorney under an LPA.
- must always act according to the principles laid down in the Mental Capacity Act 2005, in your best interests as set out in the Act and follow the guidance contained in the Code of Practice. All this is set out in our information sheet on the role of attorneys.
- will need to sign the LPA document accepting their role and their responsibilities. You will need to supply the full name, address, date of birth, telephone number (landline or mobile) and email address of your attorney(s).

WHEN CAN THE ATTORNEY(S) ACT?

The attorney will only be able to act when the LPA has been signed by you and your attorney, and certified by a person that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. The certificate will also need to confirm there has not been any fraud or another reason why you cannot make the power.

The LPA must then be registered with the Office of Public Guardian before it can be used. The property and financial affairs LPA can be used both when you have the capacity to act, as well as if you lack mental capacity to make a financial decision. The health and welfare LPA can only be used if you lack mental capacity to make a welfare or medical decision.

HOW DO YOU PLACE RESTRICTIONS OR CONDITIONS ON THE ATTORNEY(S) YOU ARE APPOINTING?

You may wish to consider restricting the occasions when the attorneys should act for you, however any restriction will be legally binding and could cause difficulties.

If you do wish to restrict your attorney(s) in some way, you must be careful that the documentation can still work. We can advise you about this at our meeting.

DO YOU WANT TO GIVE YOUR ATTORNEY(S) GUIDANCE?

You may like to give your attorneys some idea of the way in which you would like your finances dealt with should you no longer have capacity. For example, you could indicate that your attorneys were not to make any gifts on your behalf.

Please consider carefully the types of decisions you would like your attorney to make on your behalf, so we can discuss this in our meeting and draft the power to meet your wishes.

DO YOU WANT YOUR ATTORNEY(S) TO BE PAID?

Generally, family and friends would not expect to be paid, although they would be entitled to recover their out-of-pocket expenses. If you elect to have professional attorneys, they must be paid for their work and allowance for this should be covered.

Lasting powers of attorney (LPAs)

NOTIFYING PEOPLE OF THE REGISTRATION OF THE POWER

Under the registration procedure, there is no longer a requirement to notify people of the registration of the LPA. You may still wish to notify friends or family. If so, you can choose up to five people to be notified when the LPA is registered.

Ideally those you choose to notify should be a person(s) with whom you are likely to have contact throughout your life and trusted to take your wellbeing and best interests seriously.

You should tell them that you are naming them, and make sure that they will take their role seriously, as it is for your protection. You need to supply their full personal details as above.

WHO WILL BE THE CERTIFICATE PROVIDER?

You must choose a person to act as your certificate provider on the LPA form. Without this the power cannot be registered or used. This is a vital role, as the person concerned is confirming facts about the form and about you, namely that:

- they have read the prescribed information on the LPA and the part of the form which you have completed, and that part which they will complete.
- you understand the purpose of the LPA and the scope of the authority which it conveys (they can only do this if they themselves understand what it is, in order that they can ask you the appropriate questions).
- no fraud or undue pressure is being used to induce you to create the LPA. (They will need to ask various questions to establish this).
- there is nothing else that would prevent your LPA from being created (for example, a defect in the way in which it has been completed).

They can be someone:

- of your choice and over 18 years of age.
- whom you have known for at least two years, or
- who, on account of their professional skills and expertise, considers themselves competent to make the judgements necessary to give the certificate, for example, a solicitor or a doctor.

They cannot be:

- a member of your family.
- a relative of any of your attorneys.
- your business partner or a paid employee.
- any attorney appointed by you under this document or another LPA or EPA.
- the owner, manager or employee of a care home in which you are living, or their family member of partner.
- a director or employee of a trust corporation appointed as your attorney.

If we are not appointed as attorneys, we can act as certificate provider. In order to fulfil the requirements of the document itself, we may need to see you alone at some point, even though you are with your spouse, civil partner or partner. If we agree to act as attorney, we cannot act in the role of certificate provider, but will supply you with a list of appropriately qualified local solicitors. Alternatively, your doctor may be prepared to act as certificate provider.

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Client

“For individuals and their families, the firm has one of the strongest private client teams in the south of England.”

Chambers UK

Our Estimate of Charges

Generally, our charges are calculated mainly by reference to the time spent by the person carrying out the work, and their level of experience. However, the following is intended to provide you with an indication of the likely charges for preparing Lasting Powers of Attorney on your behalf. The figures are not intended to be fixed and the exact level of charges will depend upon your circumstances and requirements.

Preparation and Registration of Lasting Powers of Attorney (LPA)

Property and Financial Affairs

Single LPA	£600 plus VAT
Pair of LPAs, made by a couple in almost identical terms	£1,000 plus VAT

Health & Welfare

Single LPA	£600 plus VAT
Pair of LPAs, made by a couple in almost identical terms	£1,000 plus VAT

Both Types

Individuals	£1,000 plus VAT
Couples	£1,600 plus VAT

Court Fee	£82 per LPA
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These figures relate to the preparation of straightforward LPAs.

We regard a straightforward LPA as one which:

- appoints one or two attorneys
- if two, the appointment is on the basis that they can act together or independently
- contains no restrictions or additional guidance for your attorneys
- names one or two people to be notified when the LPA is registered
- is registered at the point it is executed.

Additional charges will apply if:

- your requirements are more complex than outlined above
- further meetings are required to discuss any aspects of the LPA before it is signed
- a home or hospital visit is required, when travel expenses will also be payable
- an external Certificate Provider is required
- registration takes place at a later date.

If separate preparation or registration of LPAs is required we will quote for our charges separately. Once registered, your attorneys will require copies of the LPA. We do not recommend sending the original LPA to financial institutions. "Office copies" can be obtained from the Office of the Public Guardian for a fee. Alternatively, we can provide certified copies (signed on each page by a solicitor) for use by the attorneys. Due to the length of the LPA, we reserve the right to charge a fee of £20 plus VAT for each certified copy.

We will store the original LPA in our strongroom and do not currently charge for this service.

The current rate of VAT is 20%.

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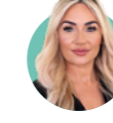
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"A very professional, friendly and helpful service and an excellent experience. Highly recommended."

Client

"Clients have complete confidence in them. They give a very personalised and bespoke service."

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"Helpful and sympathetic. I will definitely use the firm again."

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