

Lasting Powers of Attorney



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Introduction

There are two types of Lasting Power of Attorney (LPA), a Financial Decisions LPA and a Health and Care Decisions LPA.

The Financial Decisions LPA permits the person who you appoint to make decisions on your behalf (known as your “attorney”) to deal with your property and financial affairs. This can include buying and selling property and operating your bank account.

The Health and Care Decisions LPA permits your attorney to make decisions in relation to your health and welfare. This includes decisions such as the type of health care and medical treatment you receive, where you live, and day-to-day matters such as your diet and daily routine.

Why should I make an LPA?

If you lose mental capacity without having a Financial Decisions LPA in place, your assets would effectively be ‘frozen’.

You can no longer make decisions, and nobody is authorised to do so on your behalf. If that were to happen, someone would have to apply to the Court of Protection to be appointed as your Deputy to be able to manage your affairs. This can take several months and is an expensive process.

There are many time-critical matters that may need to be dealt with and delays can cause significant problems.

If you lose mental capacity without having a Health and Care Decisions LPA in place, your next of kin would not be legally entitled to make healthcare decisions for you. Putting in place an LPA ensures that the people who know you best can make these personal decisions for you.

Who should be my attorney?

Your attorneys must be 18 or over and should be someone who you trust.

In the case of your Financial Decisions LPA, you may wish to appoint someone with professional expertise, such as your financial advisor or your solicitor.

People often choose to appoint their spouse and their children as their

attorneys, particularly in the case of a Health and Care Decisions LPA, as this relates to personal decisions.

Your attorney must appreciate the importance of the role and be willing to accept such responsibility.

You may appoint more than one attorney and you can choose whether they must act jointly.

It is also possible, and often recommended, to appoint replacement attorneys should your original attorney die or lose capacity to act as your attorney.

Creating an LPA

You must be at least 18 years old to create an LPA and it must be created on a standard form.

An LPA must be signed by you as the donor, your attorneys and also by a person known as a 'Certificate Provider'. This is someone independent who confirms that you understand what you are doing by granting the power of attorney, and that you are under no pressure to give it.

Registration

An LPA cannot be used until it has been registered with the Office of the Public Guardian (OPG). The registration fee is currently £82 per LPA.

Registration with the OPG can take 8-12 weeks, and so it is recommended that registration of the LPA should take place immediately after it is made.

Will my foreign power of attorney be valid in the UK?

Foreign Powers of Attorney are not automatically recognised in England, Wales or Northern Ireland. They are often recognised in Scotland.

For a foreign Power of Attorney to be recognised in England, the attorney will usually need to seek a specific declaration from the Court of Protection, which can be an expensive and time consuming process.

In practice, to avoid complications, delay and potential expense, we would recommend that anyone that spends the majority of their time in the UK or holds substantial assets in the UK, have an LPA in place.

They should also ensure that they put in place an equivalent Power of Attorney in any other countries in which they spend their time or have significant assets.

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