

The LPA-PA and the LPA-PW Explained

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Introduction

On 1st October 2007 the Enduring Power of Attorney (EPA) became the Lasting Power of Attorney (LPA).

As well as replacing the EPA's use as a document to protect your property and affairs, the introduction of the Lasting Power of Attorney also meant the introduction of a second document allowing you to specify somebody to look after your personal welfare.

So now we have **two** documents, and they are:-

1. The '**Lasting Power of Attorney - Property & Affairs**' ('**LPA-PA**') - which allows you to appoint somebody to look after **your property and money** and related affairs.

This effectively replaces the old Enduring Power of Attorney (EPA).

2. The '**Lasting Power of Attorney - Personal Welfare**' ('**LPA-PW**') - which allows you to appoint somebody to look after **you** and your personal welfare and healthcare.

This effectively replaces what was commonly known as the 'Living Will'.

WE OFFER BOTH OF THESE **TWO** NEW DOCUMENTS and we actually recommend that everybody should have one of each.

The rest of this document explains what you can do with each type of LPA. How to actually create (either of) these two documents is covered in detail at our website.

Acknowledgement: -

A lot of this document has been based on extracts from 'A guide for people who want to make a Property & Affairs Lasting Power of Attorney' and 'A guide for people who want to make a Personal Welfare Lasting Power of Attorney' produced by the Office of the Public Guardian (Crown copyrighted and hence "may be reproduced free of charge in any format or medium provided it is reproduced accurately and not used in a misleading context".)

If you want further details on any section of this document, then the relevant OPG Guide is the place to look. Links to both Guides are provided for you as part of your Document Package when you've made your purchase at our website.

The Lasting Power of Attorney - Property & Affairs ('LPA-PA')

An overview of the LPA-PA

A Property and Affairs Lasting Power of Attorney (LPA-PA) allows you (the 'Donor') to plan ahead by choosing one or more people to make decisions on your behalf regarding your **property and financial affairs**.

It is a document that you sign to appoint one or more 'Attorneys' to act for you should you for any reason become unable to manage your own financial affairs.

You can **also** appoint a property and affairs Attorney to manage your finances and property whilst you still have capacity, as well as when you lack capacity. For example, it may be easier for you to give someone the power to carry out tasks such as paying your bills or collecting your benefits or other income. This might be easier for lots of reasons: you might find it difficult to get about or to talk on the telephone, or you might be out of the country for long periods of time.

You can decide to give your Attorney(s) the power to make decisions about any or all of your property and affairs matters. This could include paying your bills, collecting your benefits or selling your house.

This type of LPA does **not** allow the person(s) you have chosen (your Attorney) to make decisions about your personal welfare. If you want someone to be able to make personal welfare decisions on your behalf you will need to make a Personal Welfare LPA (see the section of this document entitled '*The Lasting Power of Attorney – Personal Welfare*').

Who can make an LPA-PA

Anyone aged 18 or over, with the capacity to do so, can make an LPA-PA appointing one or more Attorneys to make decisions on their behalf. You cannot make an LPA-PA jointly with another person; each person must make his or her own LPA-PA.

You do not have to live in England and Wales to make an LPA-PA, but unless you have assets there, there may not be a need to make one.

An LPA-PA made in England and Wales will not be legally binding for use in other countries including Scotland, the Republic of Ireland or Northern Ireland. It will be up to institutions (such as banks) in other countries to decide whether to recognise the LPA-PA. This will be your responsibility and not ours.

When your Attorneys can act on your behalf

If you don't specify any restrictions or conditions (there is a special section in our online software allowing you to specify restrictions and conditions) in your LPA-PA, then your Attorneys can start to act for you straight away. You may therefore want to specify that they can only act when you lack capacity to manage your own affairs: to make this easy for you to do, it is a standard option in our software.

(Note that if you have capacity to make a decision, you can still act for yourself while your LPA-PA is active).

What your Attorneys can do on your behalf

Making an LPA-PA that does **not** contain **any** restrictions or conditions (there is a special section in our online software allowing you to specify restrictions and conditions) means that once the LPA-PA is registered your Attorney(s) will be able to do anything that you can do now in relation to your property and affairs. This might include:

- opening, closing or operating any account containing your money;
- claiming and receiving on your behalf, for example, all pensions, benefits, allowances, services, financial contributions, repayments, rebates to which you may be entitled;
- making all tax returns and adjusting and settling any claim for tax;
- paying your household expenses;
- buying, leasing, selling and otherwise dealing with any interest in property of any kind or description;
- paying for private medical care and residential care costs;
- making gifts on your behalf, including any limits on the size of such gifts or the people that receive them, subject to any restrictions;
- selling your home (provided that it is in your best interests);
- purchasing out of your income or capital, a vehicle or any other equipment which may be required for your benefit; and
- implementing tax planning or similar arrangements (this may need an application to the Court of Protection).

The list above is just to give you examples of the types of powers that are included in a LPA-PA and it is not intended to be exhaustive.

You may wish to include a condition that your Attorney(s) must act in a certain way or include restrictions preventing your Attorney(s) from specifically making some of the decisions listed above. There is a special section in our online software allowing you to specify such restrictions and conditions. It is important when making your LPA-PA that you are satisfied that you have given your chosen Attorney(s) the right powers to enable them to make the decisions you want made about your property and affairs in the future should you lack the capacity to make them yourself.

There may be times when carrying out their duties that your Attorney needs to access personal information about you, for example from a doctor, a bank or solicitor, to help them make a decision that is in your best interests. Most of this information will be personal information about you and much of it will be sensitive and/or confidential.

Provided they are acting within the powers you have given them in the LPA-PA, they are entitled to ask for this information in the same way you would do, subject to some limitations.

Where possible they should only ask for information about you that will help them make a decision on your behalf.

For further guidance on access to personal information please see chapter 16 of the *Mental Capacity Act 2005 Code of Practice*. This document is available in the 'FREE Documents' section of our website.

Choosing Attorneys

Appointing an Attorney to make decisions on your behalf is a very important decision. Unless you specify otherwise in your LPA-PA, once your LPA-PA is registered your Attorney will be able to make any decision about your property and affairs that you do now, even when you have the capacity to make them yourself.

You can limit the type of decisions your Attorney can make for you by specifying this in the LPA. You can also specify that your Attorney should not act for you until you lack capacity. If you do not specify this, your Attorney will be able to act as soon as the LPA-PA is registered.

However, even though acting under a registered LPA-PA means that your Attorney is your chosen decision-maker, it is important to remember that where you still have the capacity to be involved in decision-making your Attorney must consult you before making a decision on your behalf.

It is therefore important to choose someone you know well, someone you trust to make decisions in your best interests and someone who is happy to take on the role.

You can choose and appoint a family member, friend or anyone willing to act for you, providing they are aged over 18. You can also appoint your spouse, partner or civil partner as your Attorney if you wish.

If you choose your spouse or civil partner, it is important to remember that should your marriage or civil partnership be dissolved or annulled in the future then the LPA-PA will cease, unless:

- you have included a condition within the LPA-PA that your spouse or civil partner can continue to act as your Attorney; or
- you have appointed a replacement Attorney able to replace them; or
- you have appointed Attorneys to act 'together and independently'.

You can appoint as many Attorneys as you wish, but it is important that you consider how you are appointing them. You will need to specify whether you want to appoint your Attorneys to act. Please read the 'Appointing more than one Attorney' section towards the end of this document for more details.

You can also appoint Replacement Attorneys – please read the 'Appointing more than one Attorney' section towards the end of this document for more details.

Things to avoid when appointing an Attorney

Your Attorney(s) must always be a named individual and not listed as an office holder or as the name of a solicitors firm – for example, you cannot appoint the 'Director of Social Services' or 'Joe Bloggs & Co Solicitors'. (However, you can appoint an office holder if you simply specify their name on the form as you would any other Attorney).

You can choose anyone over the age of 18 to be your Attorney. However, the person you choose must not be bankrupt when they sign the LPA-PA form. You should also note that if your Attorney(s) become bankrupt in the future, this could result in the LPA-PA being cancelled if it has been registered with the Office of the Public Guardian ('the OPG').

Restrictions and Conditions

Restrictions and Conditions are where you specify – if you don't want your Attorney(s) to be able to anything you can – exactly what your Attorney(s) can and can't do.

You may want to add a condition to your LPA-PA so that your Attorney must act in a particular way. For example, you may include a condition for them to continue charitable donations on your behalf.

Alternatively, you may want to add to your Attorney(s) powers: for example, your Attorney(s) would not normally be able to gain access to your Will without an application to the Court of Protection for an order to release the Will (which would take time, might not be successful, and would incur a charge). You might therefore want to include a condition authorising your Attorney(s) to have access to your Will. *(Note that your Attorney(s) cannot amend your Will under any circumstances, although they can apply to the Court of Protection for a Statutory Will).*

You may also want to limit the powers your Attorney(s) have. For example, you could include a restriction that says your Attorney(s) cannot make decisions about your investment portfolio because you have given this responsibility to someone else.

You should think carefully about how you word any restrictions or conditions that you include in your LPA-PA. To ensure that anybody dealing with your financial and property affairs, such as banks, building societies and solicitors, can follow them effectively in the future, any restrictions or conditions should be straightforward, easy to understand and capable of being put into practice.

If there are any conditions or restrictions that are considered to be too complicated or not practical it is possible that the OPG will need to refer your LPA-PA to the Court of Protection for them to consider cancelling that condition or restriction from your LPA-PA.

You should remember that restrictions and conditions are there for your Attorney(s) to follow when making decisions on your behalf and in your best interests. They are not intended to act as statements of your intentions for others to follow.

There is a special section in our online forms where you can specify restrictions and conditions when drafting your LPA-PA.

The Lasting Power of Attorney – Personal Welfare ('LPA-PW')

An overview of the LPA-PW

A Personal Welfare Lasting Power of Attorney (LPA-PW) allows you (the 'Donor') to plan ahead by choosing one or more people to make decisions on your behalf regarding your personal healthcare and welfare.

It allows you to appoint one or more 'Attorneys' to make decisions on your behalf about your **personal welfare and healthcare**, including whether to give or refuse consent to medical treatment on your behalf and deciding where you live.

These decisions can be taken on your behalf when you lack the capacity to make them yourself, for example if you are ill, unconscious or because of the onset of a condition such as dementia.

The Attorney(s) you appoint to make personal welfare decisions will only be able to use this power once the LPA-PW has been registered and provided that you cannot make the required decision for yourself.

You can decide to give your Attorney the power to make decisions about any or all of your personal welfare matters, including healthcare matters. This could involve some significant decisions, such as:

- giving or refusing consent to particular types of health care, including medical treatment decisions; or
- whether you continue to live in your own home, perhaps with help and support from social services, or whether residential care would be more appropriate for you.

If you want your Attorney(s) to have the power to make decisions about 'life-sustaining treatment', you have to expressly give your chosen Attorney(s) the power to make such decisions. With our online software, this is done by simply selecting the relevant option: we then complete the relevant section of the form and tell you where to sign it.

You can also give your Attorney(s) the power to make decisions about day-to-day aspects of your personal welfare, such as your diet, your dress, or your daily routine. It is up to you which of these decisions you want to allow your Attorney to make.

This type of LPA-PW does not allow the person(s) you have chosen (your Attorney) to make decisions about your property and affairs. If you would like someone to be able to make property and affairs decisions on your behalf you will need to make a LPA-PA (see the section of this document entitled '*The Lasting Power of Attorney – Property & Affairs*').

Finally, **you can still make decisions** if your LPA-PW has been registered. Registration of an LPA-PW does not mean that you lack capacity. You are assumed to have capacity to act unless it is shown that you do not. Your Attorney is always obliged to help you to make as many of your own decisions as you possibly can. If you do lack the capacity to make a decision, your Attorney can act for you in your best interests according to the contents of your LPA-PW.

Who can make an LPA-PW

Anyone aged 18 or over, with the capacity to do so, can make an LPA-PW appointing one or more Attorneys to make decisions on their behalf. You cannot make an LPA-PW jointly with another person; each person must make his or her own LPA-PW.

You do not need to live in England and Wales to make an LPA-PW, but you will need to be in England or Wales at the time your Attorney needs to use it.

An LPA made in England and Wales will not be legally binding for use in other countries including Scotland, the Republic of Ireland or Northern Ireland. It will be up to institutions (such as hospitals) in other countries to decide whether to recognise the LPA-PW. This will be your responsibility.

If you already have a 'Living Will'

If you make an Advance Decision (a so-called 'Living Will') to refuse treatment it may become invalid if you later make a Personal Welfare LPA which confers authority on the Attorney(s) to give or refuse consent to treatment to which the advance decision relates.

If you have made an advance decision to refuse treatment it would be wise to seek advice when deciding what powers to give to your Attorney(s) when you make your LPA-PW.

You can seek advice on these matters from health or social care professionals and patient support groups or other relevant organisations that can provide information based on experience of specific conditions or situations.

When your Attorneys can act on your behalf

Your Attorney(s) can act on your behalf as soon as the LPA-PW has been registered and if you lack the capacity to make your own decisions.

You can, if you want, be more specific about when your Attorney(s) can act – for example you can specify that they must provide medical evidence that you do not have the capacity to make your own decisions (this is a standard option on our online forms).

Note that there is no one point when you are treated as having lost capacity to make any decisions at all about your personal welfare – you may have capacity to make some decisions but not others. For example, you may be able to decide what to wear but not to consent for an operation.

What your Attorneys can do on your behalf

Your Attorney(s) must always act in your best interests – they are bound by the Mental Capacity Act 2005 Code of Practice (a copy of which may be downloaded free of charge from the 'FREE Documents' facility at our website).

Exactly what they can do will depend on the powers that you give them when making your LPA-PW. If you have made an LPA-PW without any restrictions (or only the standard 'medical proof of lack of capacity' restriction) then your Attorney(s) will be able to do anything that you can do now in relation to your personal welfare. This might include:

- deciding where your permanent place of residence should be;
- deciding what care and accommodation may be appropriate for you;
- consenting to any medical treatment or procedure or therapy of whatever nature for your benefit and providing access for that, or refusing such consent;
- deciding, alone or with others, on the level of care which you may require;
- making decisions about your dress, diet and personal appearance as appropriate;
- choosing your social and cultural activities;
- arranging for you to undertake work, education or training;
- taking you on holiday or authorising someone else to do so;

- consenting to you being involved in certain types of research that meets the strict rules set out by the Act.

The list above is just to give you examples of the types of powers that are included in an LPA-PW and it is not intended to be exhaustive. You may wish to include a condition that your Attorney must act in a certain way or include restrictions preventing your Attorney(s) from specifically making some of the decisions listed above.

Furthermore, there may be times when carrying out their duties that your Attorney needs to access personal information about you, for example from a doctor, a bank or solicitor, to help them make a decision that is in your best interests. Most of this information will be personal information about you and much of it will be sensitive and/or confidential.

Provided they are acting within the powers you have given them in the LPA-PW, they are entitled to ask for this information in the same way you would do, subject to some limitations.

Where possible they should only ask for information about you that will help them make a decision on your behalf.

For further guidance on access to personal information, please see chapter 16 of the Mental Capacity Act 2005 Code of Practice (available from the 'FREE Documents' facility at our website).

It is important when making your LPA-PW that you are satisfied that you have given your chosen Attorney(s) the right powers to enable them to make the decisions you want made about your personal welfare in the future should you lack the capacity to make them yourself.

What your Attorneys CANNOT do

Your Attorney(s) must only act within the powers you have given them. However, the Act does not permit Attorney(s) to make decisions on your behalf on the following matters:

- consenting to marriage or civil partnership;
- consenting to a decree of divorce being granted on the basis of two years' separation;
- consenting to a dissolution order being made in relation to a civil partnership on the basis of two years' separation;
- consenting to place a child up for adoption or consenting to the adoption of a child;
- consenting to sexual relations;
- giving you medical treatment for a mental disorder or consenting to you being given medical treatment for a mental disorder if your treatment is regulated by Part 4 of the Mental Health Act 1983;
- deciding to vote.

Choosing Attorneys

A Personal Welfare Attorney is the person you choose and appoint to make decisions on your behalf about your personal welfare. It is an important role and one that the person you have chosen has to agree to take on.

Appointing an Attorney to make decisions on your behalf is a very important decision. If you want them to, your Attorney(s) will be able to make any decision about your healthcare and welfare where

you lack the capacity to do so yourself. Or you can limit the type of decisions they make for you by specifying this in the 'Restrictions and Conditions' section when drafting your LPA-PW.

It is important to choose someone you know well, someone you trust to make decisions in your best interests and someone who is happy to take on the role.

You can choose and appoint a family member, friend or anyone willing to act for you, providing they are aged over 18. You can also appoint your spouse, partner or civil partner as your Attorney if you wish.

If you choose your spouse or civil partner, it is important to remember that should your marriage or civil partnership be dissolved or annulled in the future then the LPA-PW will cease, unless:

- you have included a condition within the LPA-PW that your spouse or civil partner can continue to act as your Attorney; or
- you have appointed a replacement Attorney able to replace them; or
- you have appointed Attorneys to act 'together and independently'.

You can appoint as many Attorneys as you wish, but it is important that you consider how you are appointing them. You will need to specify whether you want to appoint your Attorneys to act. Please read the 'Appointing more than one Attorney' section towards the end of this document for more details.

You can also appoint Replacement Attorneys – please read the 'Appointing more than one Attorney' section towards the end of this document for more details.

Things to avoid when appointing an Attorney

Your Attorney(s) must always be a named individual and not listed as an office holder or as the name of a solicitors firm – for example, you cannot appoint the 'Director of Social Services' or 'Joe Bloggs & Co Solicitors'. (However, you can appoint an office holder if you simply specify their name on the form as you would any other Attorney).

Life-sustaining Treatment

Life-sustaining treatment means any treatment that a doctor considers necessary to sustain your life and it will depend on the circumstances of a particular situation.

Examples of life-sustaining treatment might include:

- a serious surgical operation, e.g. a heart bypass;
- receiving chemotherapy, radiotherapy or undergoing surgery to treat cancer; or
- an organ transplant.

But life-sustaining treatment could also include more day-to-day procedures or treatments – for example, a course of antibiotics if you have breathing problems and develop pneumonia.

Whether treatment is life sustaining or not will depend on the situation. The important factor is if the treatment is needed to keep you alive.

Life-sustaining treatment usually also includes artificial nutrition or hydration (ANH).

ANH is food and water that is given to someone other than through their mouth, usually through a tube but sometimes directly into the veins. It does not mean eating and drinking by mouth.

If you allow your Attorney(s) to make decisions about life-sustaining treatment this may mean making decisions about whether or not to withdraw treatments, including ANH, in situations where that treatment has become burdensome or is not effective.

Restrictions and Conditions

You can include restrictions or conditions in your LPA-PW which allow you to decide which decisions you want your Attorney(s) to make:

- You may want to add a condition to your LPA-PW so that your Attorney(s) must act in a particular way. For example, you could say that your Attorney must always talk to a particular person before making a decision about where you live.
- You may also want to limit the powers your Attorney has. For example, you could include a restriction that your Attorney can only make decisions about your social care but not about any aspect of your healthcare or vice versa.

Please note: You should think carefully about how you word any restrictions or conditions that you include in your LPA-PW. To ensure that health and social care staff and other professionals can follow them effectively in the future, they should be straightforward, easy to understand and capable of being put into practice.

If there are any conditions or restrictions that are considered to be too complicated or not practical it is possible that the OPG will need to refer your LPA-PW to the Court of Protection for them to consider cancelling that condition or restriction from your LPA-PW.

You should remember that restrictions and conditions are there for your Attorney(s) to follow when making decisions on your behalf and in your best interests. They are not intended to act as statements of your intentions for people other than your Attorney(s) to follow.

Features and issues relevant to both the LPA-PA and the LPA-PW

Safeguards applicable to both the LPA-PA and the LPA-PW

An LPA is a very powerful legal document and it is important to remember that the person you appoint as your Attorney, unless you have included restrictions, will have the same control you have over your money, savings, any investments and property (LPA-PA) and on decisions about your personal welfare (LPA-PW).

When choosing an Attorney, it is important that you are confident that they know what you want and that you are comfortable that they will be making decisions on your behalf. However, there are safeguards to protect you.

Safeguards already built in to both an LPA-PA and an LPA-PW include:

- the requirement that the LPA must be registered with the OPG before use;
- the requirement to identify someone to provide a Part B Certificate confirming, amongst other things, that you understand the purpose of an LPA and the scope of powers you are giving to your Attorney(s);
- that certain persons chosen by you called 'named persons' are notified before registration of the LPA;
- the requirement for the signatures of the Donor and Attorney(s) to be witnessed;
- the right of specific people (you, the Attorney(s) and named persons) to object to registration of an LPA; and
- your Attorney(s) must have regard to the Code of Practice, which provides guidance on the Mental Capacity Act 2005. The Code makes it clear that Attorneys must always act in your best interests. This document may be downloaded from the 'FREE Documents' section of our website.

There are also optional safeguards that you yourself can add into the LPA when drafting it:

- including restrictions or conditions in the LPA, which your Attorney(s) must follow – for example, you may include a condition that your Attorney(s) must keep accounts and that they are to submit these accounts to someone of your choice such as a family member or professional; and
- giving guidance in your LPA which your Attorney should take into account when making decisions on your behalf.

'Named persons'

One of the safeguards of both types of LPA is that you are able to nominate people to be notified when an application is made to register your LPA. These people are must be contacted before the LPA is registered, by whoever is registering the LPA.

Once notified, if the people you choose have concerns about the registration of your LPA – for example they feel that you were put under pressure to make it – they can object to the LPA being registered.

You are **advised to name up to five people** if at all possible. Naming this many people could be particularly useful if in the future one or more of your named persons cannot be contacted.

You are also advised to make your named persons aware of which Attorney(s) you have appointed allow them to raise any queries or concerns that they may have about the LPA with you. This may help to reduce unfounded objections when the application to register the LPA is made, potentially avoiding extra costs and lengthy delays to the process.

Do not nominate anybody who is an Attorney or a replacement – they are automatically informed if an application is made to register the LPA and your LPA may be rejected.

It is very important that you keep the addresses/contact details of your named persons up to date. You should do this on a separate sheet and keep this with your completed LPA – do **NOT** make **ANY** amendments to a completed and signed LPA.

Certificate Providers

A Certificate Provider is a person that you must select to complete a Part B Certificate of the LPA form confirming that you understand the LPA and that you are not under any pressure to make it.

We recommend also making your named persons aware of your choice of Certificate Provider. This will allow them to raise any queries or concerns that they have about the Certificate Provider with you. This may avoid unnecessary delays or objections at the point of registration.

The Certificate is a vital part of the LPA document. Without it, the LPA is not valid and cannot be registered.

If you have specified one or more ‘named persons’ when drafting your LPA, then **one** Certificate Provider is required. If you have not specified any ‘named persons’, then **two** Certificate Providers are required (there is a second section on the LPA form for the second Certificate Provider).

Who can be a Certificate Provider

You can choose two types of Certificate Provider.

Category A

Knowledge certification – a knowledge-based Certificate Provider is someone that you know personally and have done so for at least two years.

or

Category B

Skills certification – a skills-based Certificate Provider is someone who considers that they have the relevant professional skills and expertise to certify your LPA.

The following are suitable skills-based Certificate Providers listed on the LPA form:

- registered healthcare professional (including a GP);
- solicitor, barrister or advocate;
- registered social worker; or
- Independent Mental Capacity Advocate (IMCA).

You can also pick someone not listed on the form. However, they must consider that they have the relevant professional skills and expertise to provide a Certificate and be able to specify on the Certificate what their relevant professional skills and expertise are.

Skills-based certificate providers are entitled to charge a fee for providing the certificate.

Who cannot be a Certificate Provider

You cannot select anyone from the following list to be a certificate provider:

- a member of your or your Attorney's family;
- a business partner or paid employee of yours or your Attorney(s);
- an Attorney appointed in any LPA or any EPA made by you; or
- the owner, director, manager, or an employee of a care home in which you currently live or their family member.

It is important to remember that you must choose a suitable Certificate Provider(s) and that they must complete the Part B Certificate as soon as possible after you fill in and sign your parts of the LPA. Without the completed Certificate your LPA cannot be registered or used.

If you are disagree with what your Attorneys are doing

If you are unhappy with your Attorney's actions and still have the capacity to do so, you can revoke your LPA. If you decide to revoke your LPA you should advise the OPG so that they can update the LPA register.

If your Attorney makes a decision when they believe that you lack the capacity to do so yourself and make it in what they believe to be your best interests, you will need to discuss your concerns with them in the first instance.

If you still feel unhappy with their decision you can contact the OPG and advise them that you believe your Attorney(s) should not be acting or is not acting in your best interests and they will investigate.

Registering an LPA

Your LPA – either an LPA-PA or an LPA-PW - can be registered any time after you have made it and cannot be used until it has been registered. The LPA is made when it has been completed and signed by all those who are required to sign.

The Attorney(s) or you, as the Donor, or a legal professional appointed to act on your behalf, can apply to register an LPA, providing the correct forms are completed and the named persons listed on your LPA are notified.

The benefit of registering the LPA shortly after it is made is that it will be ready to be used by your Attorney(s) when it is needed.

If an application to register your LPA is made a long time before it is needed you may need to look at the registered document from time to time to make sure that the contents are still relevant to your circumstances.

There is a fee of (at the time of writing this document) £120 to be paid to the OPG for each LPA you register. This is a fee payable for each LPA, so if you are wanting to register your LPA-PA **and** your LPA-PW then you will have to pay two separate fees of £120 (i.e. a total of £240).

If the contact details of your named persons or your Attorney(s) have changed you should record these on a separate sheet and keep it with your LPA.

If you need to change any aspect of your LPA – for example any restrictions or conditions or you want to appoint a new Attorney – you will need to consider making a new LPA. This will, of course, necessitate the payment of another fee of £120 to have the LPA registered.

Appointing more than one Attorney

This section applies to both the LPA-PA and the LPA-PW.

You can appoint as many Attorneys as you wish, but it is important that you consider how you are appointing them. You will need to specify whether you want to appoint your Attorneys to act:

- together; or
- together and independently; or
- together in some matters and together and independently in others.

Attorneys acting ‘Together’

Attorneys appointed **together** must always act **together**. They must all agree before doing anything on your behalf. If one Attorney does not agree with a proposed action that decision cannot be made.

Donors often use this as a safeguard to ensure that all those they trust to make decisions for them are in agreement. However, you must remember that this could delay decisions that may need to be taken at short notice.

Please note: Appointing lots of Attorneys to all work **together** could mean:

- it is difficult for them to act/make decisions;
- the LPA could be cancelled if they cannot work together; or
- the LPA could be cancelled if one of them dies or lacks the capacity to make decisions as your Attorney.

There is no right or wrong way to appoint your Attorneys to act but these are points for you to think about – and indeed we do not recommend you to appoint your Attorneys to work **together** unless you are 100% clear about all of the above and are happy to accept all of the possible consequences.

Attorneys acting ‘Together and Independently’

Attorneys appointed together and independently can act on their own and they can act together. This means, for example, that any one of your Attorneys appointed together and independently can decide on a particular issue. This can be useful if one of your chosen Attorneys is not available all of the time to help make decisions on your behalf, for example, if they work abroad for long periods of time.

Also, if one of the Attorneys becomes ill, dies or lacks the capacity to act, the LPA will still continue and the remaining Attorneys can continue to act.

Attorneys acting ‘Together’ on some matters and ‘Together & Independently’ on others

You can also appoint your Attorneys to act together in respect of some matters and together and independently in respect of others – for example, you could appoint your Attorneys to act together when deciding to sell your house but appoint them to act together and independently when paying your nursing home fees.

If you select this option when drafting your LPA, our software will ask you to detail in what circumstances your Attorneys are to act ‘together’ and in what circumstances they are to act ‘together and independently’. If you do not clearly specify this, your LPA will almost certainly be rejected when it is sent to the OPG to be registered.

Replacement Attorneys

Replacement Attorneys are people you can appoint to act in place of an Attorney who is no longer able to or does not wish to make decisions on your behalf as your Attorney. For example, you may choose your spouse as your Attorney, then choose your son/daughter as a replacement if your spouse should die or can no longer act on your behalf.

You can choose as many replacements as you want. They can act in place of any of your Attorneys but you must set out how they are to be appointed. Your Attorneys cannot choose people to replace them.

Your replacement Attorney(s) can replace any of your chosen Attorneys. The replacement Attorney(s) will play no part in making decisions for you unless they are needed to replace your original Attorney(s).

You can specify, if you wish, under what conditions replacement Attorneys are to be appointed – e.g. B replaces A only, and D replaces C only. Or you can choose not to specify any rules – in which case the first replacement named replaces the first Attorney unable to act, and so on.

If an Attorney dies or refuses to or cannot act

You should be aware that any Attorney has the right to refuse to act or – having started to act – give up his or her role.

If your LPA is unregistered your Attorney must give you formal notice to do this. If your LPA is registered the Attorney will need to give formal notice to the OPG and they should notify you too. They can notify the OPG by using form LP5 (disclaimer by Attorney or proposed Attorney) available from the OPG.

You **cannot** authorise your existing Attorney(s) to appoint a replacement Attorney if they wish to leave their role. Only you can appoint replacement Attorney(s) – and you can only appoint them when you **create** the LPA.

If an Attorney dies and you still have capacity you should contact the OPG as a matter of urgency for guidance on what steps you might need to take next.

If you do **not** still have capacity, and an Attorney dies or refuses to or cannot act or gives up his/her role:

- If you have appointed multiple Attorneys to act ‘**together**’, and no replacement, then the LPA **ends** – i.e. it is no longer valid.

- If you have appointed multiple Attorneys to act **‘together and independently’**, then the LPA **is still valid**.
- If you had only appointed one Attorney, and did not appoint any substitutes (or none of your appointed substitutes can act), then the LPA **ends** – i.e. it is no longer valid.
- If you had only appointed one Attorney, and **did** appoint substitutes (and one of your appointed substitutes can act), then the LPA **is still valid**.
- If you had appointed multiple Attorneys but only one remains, and you did not appoint any substitutes (or none of your appointed substitutes can act), then the LPA **ends** – i.e. it is no longer valid.
- If you had appointed multiple Attorneys but only one remains, and you **did** appoint at least one substitute, who can act, then the LPA **is still valid**.

There are other permutations, but you will understand that it is your role to appoint replacement Attorneys when you **create** the LPA, and you are strongly advised to do so. You **cannot** appoint them **after** the LPA has been created.

Fees

Your Attorney(s) will be able to claim out-of-pocket expenses for things such as telephone calls, postage charges and transport costs that are incurred whilst specifically undertaking their duties as your Attorney. The expenses must be in direct proportion to the size of your estate and the duties they undertake.

However, it is entirely up to you whether you want your Attorney(s) to receive payments/fees specifically for taking on the role of Attorney and acting on your behalf.

If you do decide that your Attorney(s) should receive payment for acting on your behalf, or you appoint a professional, for example a solicitor or an accountant, it would be wise to make a note of the agreed fees. There is a section on our online form that enables you to do this.

Guidance

When making decisions on your behalf, your Attorney(s) must follow any restrictions or conditions you included in your LPA. But you may also like to include some broader guidance on your wishes and feelings on particular matters. This will not be binding on your Attorney(s) but may help them when making decisions in your best interests. There is a section on our online form to enable you to do this.

You should also talk to them now and make them aware of any specific views or wishes that you may have. For example, you may want to tell them now that you do not wish to move outside of a particular area when they are looking at your living arrangements in the future.