



Lasting Powers of Attorney: Information Sheet

What an LPA is

An LPA is a legal document that someone (the Donor) makes using a special form. It allows that person to choose someone now (the Attorney) that they trust to make decisions on their behalf at a time in the future when they either lack the mental capacity or no longer wish to make those decisions themselves.

The decisions could be about the Donors property and financial affairs or about their health and welfare.

Making an LPA is the only way to make plans for a time in the future when you may lack the capacity to make decisions for yourself. An LPA can only be used after it is registered with the OPG. There are two types of LPA:

The Property and Financial Affairs LPA

A Property and Financial Affairs LPA allows the Donor to appoint an Attorney to manage their finances and property whilst they still have capacity to make decisions for themselves.

For example, it may be easier for them to give someone the power to carry out tasks such as paying their bills or collecting their benefits or other income.

This might be easier for lots of reasons: the Donor might find it difficult to get about or to talk on the telephone, or might be out of the country for long periods of time.

Alternatively, the Donor may include a restriction that the LPA can only be used at a time in the future when they lack the capacity to make decisions for themselves – for example, due to the onset of dementia in later life or as a result of a brain injury.

An Attorney will not be able to make decisions about a Donor's health and welfare unless they have also been appointed as a Health and Welfare Attorney using a separate LPA.

The Health and Welfare LPA

A Health and Welfare LPA allows the Donor to appoint an Attorney to make decisions on their behalf about their health and welfare.

A Health and Welfare LPA can only be used when the Donor lacks the capacity to make these decisions for themselves.

An Attorney will not be able to make decisions about a Donor's property and financial affairs unless they have also been appointed as a Property and Financial Affairs Attorney using a separate LPA.

Restrictions and/or conditions

An LPA may contain restrictions and/or conditions that place limits on the decisions you can take, for example you may only be allowed to make decisions about where the Donor lives or you may not be able to sell the Donors house. You must adhere to these restrictions and conditions.

The Donor may also talk to you about their wishes and feelings and may also include guidance in their LPA to assist you when making decisions in their best interests. You should take account of this guidance when making decisions for them.

Who can make an LPA?

Anyone aged 18 or over, with the capacity to do so, can make an LPA. You cannot make an LPA jointly with another person; each person must make his or her own LPA.

Who can be an Attorney?

This depends on the type of LPA that the donor is making, if the donor is making:

- A Health and Welfare LPA then anybody over the age of 18 can be an Attorney as long as their details are correctly written on the LPA form;
- A Property and Financial Affairs LPA then anybody over the age of 18 can be an attorney. However, you must not be bankrupt when you sign the LPA form. You should also note that if you become bankrupt in the future, this could result in the LPA being cancelled if it has been registered with the OPG.

What it means if you have been asked to act with another attorney

The Donor may wish to appoint you to act with one or more other Attorneys and can appoint you to act in different ways. You can be appointed to act:

- ***Jointly***
This means that all attorneys appointed in the LPA must agree on a decision or all attorneys must sign a relevant document. For example, all attorneys appointed jointly would have to agree where the donor was to live.

Appointing attorneys to act jointly is sometimes used as a safeguard by the donor. However, appointing lots of attorneys can mean:

- it is difficult for them to act/make decisions; or
 - the LPA could be cancelled if attorneys appointed together cannot work together or one of them dies or loses the capacity to act.
- ***Jointly and severally***
This means that each attorney appointed can act on their own when making decisions on behalf of the donor and that the attorneys can also act jointly. This means that any one of attorneys appointed jointly and severally can decide on a particular issue.

Even if you are appointed with other attorneys to act jointly and severally it is important to discuss any decisions you are making with the other attorneys, where relevant, before you make them, to avoid any conflicts whilst the LPA is being operated.

- ***Jointly in respect of some matters and jointly and severally in respect of other matters.***
This means that all attorneys are required to agree on certain specified decisions but can act on their own when making other decisions. For example, the donor may state that all attorneys must agree on any decision relating to medical treatment, but can act on their own in deciding in which nursing home they live.

The donor will need to clearly set out what these matters are in their LPA.

Please note: It is very important to remember that if the donor decides to appoint more than one attorney but does not specify in the LPA how they have appointed them, they will automatically be appointed jointly.

Agreeing to become an attorney means taking on an important role. Your role begins when you agree to be an attorney and sign the Lasting Power of Attorney (LPA), although you or any other attorneys cannot use the LPA until it is registered with the Office of the Public Guardian (OPG).

Your role as an Attorney

Your role as an attorney will be different depending on how you have been appointed and the type of LPA you have been appointed under. If you have been appointed as a:

- ***Health and Welfare Attorney:***
you can only act and take decisions on the donor's behalf when the donor lacks capacity to make those decisions. Once the LPA is registered, you will be able to make personal welfare decisions that the donor could have made themselves before they lost the capacity to do so. Depending on how you have been appointed to act under the LPA, you may have to make some or all decisions jointly with the other attorney(s). You will also need to comply with any restrictions and/or conditions that have been included in the LPA.
- ***Property and Affairs Attorney:***
you will be able to take decisions on the donor's behalf even when they have the capacity to make them themselves, unless the donor has included a restriction in the LPA that you can only act when they lack capacity. You will not be able to use the LPA until it has been registered. Depending on how you have been appointed to act under the LPA, you may have to make some or all decisions jointly with other attorney(s). You will also need to comply with any restrictions and/or conditions that have been included in the LPA.

What are my duties as an Attorney?

The Mental Capacity Act 2005 imposes some specific duties. When acting under an LPA you have a duty:

- to act in accordance with the Act's principles;
- in particular to act or make decisions in the donor's best interests;
- to have regard to the guidance in the Code of Practice;
- to act only within the scope of your authority as attorney.

When agreeing to act as attorney under a Lasting Power of Attorney you are taking on a role that carries a great deal of power which you must use carefully and responsibly.

Other duties and obligations include:

- A duty of due care when making decisions on behalf of the donor
- To carry out instructions as required by the LPA
- A duty not to delegate the powers given to you under the LPA unless you have been authorised to do so
- Not to benefit yourself but to benefit the donor - this means avoiding conflicts of interest and in particular not profiting or acquiring personal benefit from your position
- A duty of good faith, which means to act with honesty, and integrity
- A duty of confidentiality - to keep the donor's affairs confidential unless the donor has consented otherwise
- To comply with the directions of the Court of Protection
- Not to give up the role without telling the donor and the Court.

And specifically in relation to Property and Financial Affairs LPAs:

- To keep the donor's money and property separate from your own
- To keep accurate accounts of your dealings as attorney.

These duties are described in greater detail in the Code of Practice which you should read if you are deciding whether to take on the role of attorney. If you become an attorney you will have a legal duty to have regard to the contents of the Code.

If you do not perform your duties properly, you may be ordered to compensate the donor for any losses they have suffered as a result. Anyone ill-treating or wilfully neglecting someone they have care of who lacks capacity, or to whom an LPA appointment relates, can be found guilty of a criminal offence.

The penalty for such an offence is a fine and/or a sentence of imprisonment of up to five years.

The Court of Protection has powers to issue directions to attorneys and require them to produce information (including accounts if they are acting under a Property and Affairs LPA).

The Court can also cancel the registration of the LPA if there is sufficient evidence the Attorney has not acted in the Donor's best interests.