



W  
O  
R  
L  
D

| **A guide to  
Lasting Powers  
of Attorney**

# THE LAW FIRM WITH A PASSION FOR PEOPLE



We all make decisions on a daily basis about our personal affairs, from financial matters to more personal choices about our health and wellbeing, but have you thought what would happen if you became unable to make decisions due to incapacity? Who would you want to manage your affairs and make decisions for you?

You can plan ahead for this eventuality well before capacity becomes an issue by putting in place Lasting Powers of Attorney (LPAs) naming those you wish to make decisions for you. The LPAs may never be needed but if they are, they become hugely important.

While it may be possible to create LPAs when capacity is a little less certain, this depends on the particular circumstances and a medical opinion may be required. Sometimes it will be too late and the

only option is for someone to apply to the Court of Protection for a court order authorising them to make decisions on your behalf.

## What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document in which you appoint someone, or more than one person, to act on your behalf and make decisions for you. You are 'the donor' and the people you appoint are your 'attorneys'.

## There are 2 types of LPA:

# 01

### A property and financial affairs LPA

This enables the attorneys you choose to act on your behalf in relation to financial matters. They can deal with ongoing tasks such as banking, paying bills and managing investments as well as specific 'one-off' tasks such as selling a property. Their role will depend on your circumstances and may change over time to reflect your needs.

Under this type of LPA the attorneys can act for you while you have capacity if the LPA is drafted in this way, but only with your consent. This may be useful if you are away or unwell or simply need some support. They will also be able to act for you if you lose capacity.

**It is advisable to sign LPAs while you have capacity, so you have attorneys who can act for you if you lose capacity.**



### A health and welfare LPA

This enables the attorneys you choose to make decisions on your behalf about health and welfare matters. Their responsibilities may include day to day decisions about the care you receive or more significant decisions about where you are to live and the medical treatment you should receive. You need to state in the LPA whether or not your attorneys can make decisions on your behalf about life-sustaining treatment.

Under this type of LPA the attorneys can only act on your behalf if you lack the capacity to make health and welfare decisions for yourself.



# 02

Our advice is to put in place both types of LPA so there are attorneys who can act for you in relation to financial matters and health and welfare matters should the need arise. You can, however, choose to put in place one type of LPA but not the other.

## Commonly asked questions



### Who should I appoint as attorneys?

Attorneys must be 18 or over and capable of making decisions on your behalf. In the case of a Property and Financial Affairs LPA, they must not be bankrupt or subject to a debt relief order.

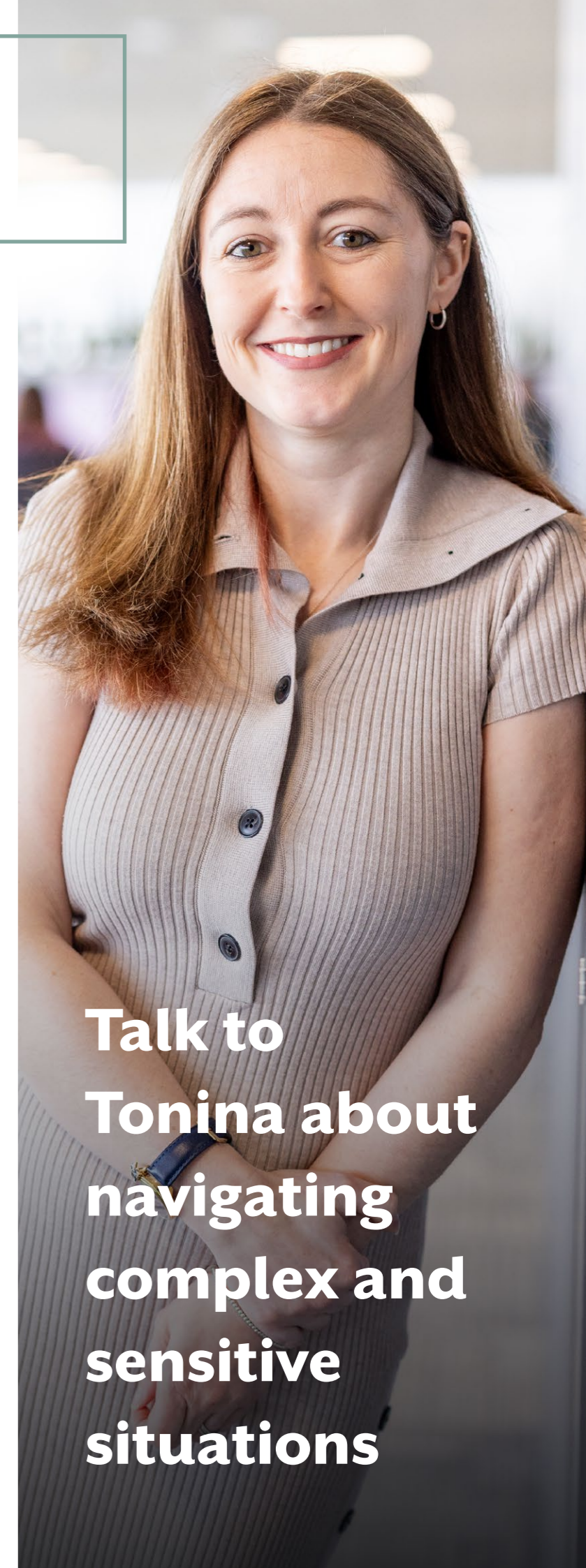
An LPA enables the attorneys to make decisions as if they were you, subject to some limitations, and it is vital to choose attorneys who you trust completely to act in your best interests and who you think are suitable for the role.


If you sign both types of LPA, you can appoint the same attorneys in each or you can choose different attorneys. Sometimes those you choose to make financial decisions may not be best suited to making health and welfare decisions and vice versa.

People often choose close family members or trusted friends. There is also the option of appointing a professional attorney who will charge for the work they do but will be independent and objective and bring a wealth of knowledge and experience to the role. If you appoint more than one attorney, you should feel confident they will work well together.

Attorneys are in a position of trust and responsibility and it is important that they understand their role and obligations. They must always act in your best interests and follow the guidance set out in the Mental Capacity Act Code of Practice.

**Talk to  
Tonina about  
navigating  
complex and  
sensitive  
situations**





# Talk to Bernadette about the benefits of LPAs



## Do attorneys have to act together?

If you appoint more than one attorney in an LPA, you must decide whether they can each act on their own or whether they have to act together. There is a middle course where they can make some decisions together and others separately but this can cause issues in practice.

Appointing attorneys jointly (so they have to act together) can lead to difficulties because all tasks and decisions, however small, must be dealt with by the attorneys together. Moreover, if an attorney dies or becomes unable to act the attorneys can no longer act jointly and so the appointment of all attorneys fails. It is usually more practical to allow the attorneys to act individually although the best form of appointment will depend on the circumstances.



## Who needs to sign the LPA?

The LPA needs to be signed by:

- you as the donor of the LPA;
- the attorneys;
- a person known as a certificate provider who certifies, to the best of their belief, that you understand the LPA and are not under any pressure to sign it. When we prepare an LPA, we can usually act as certificate provider.



## I have an Enduring Power of Attorney – is it still valid?

LPAs replaced Enduring Powers of Attorney (EPAs) from 1 October 2007. EPAs validly made before then remain valid but they only relate to financial matters. Those with EPAs should consider putting in place a health and welfare LPA and should also review the EPA to check whether any changes are required.



## What happens if I lose capacity and do not have an LPA or an EPA in place?

Without an LPA or an EPA in place, someone would need to apply to the court of protection for a deputy order authorising them to make decisions on your behalf about your property and finances. This is a lengthy and costly process and the decision as to who acts for you under the order is out of your hands.



## What if I sign an LPA and later change my mind?

You can revoke (cancel) an LPA at any time while you still have capacity. You should ideally put in place a new LPA to replace the one you revoke.



## When can an LPA be used?

Once signed, an LPA must be registered by the Office of the Public Guardian (the OPG) before it can be used. A fee is payable to the OPG. Our advice is to register the LPA straightaway so it is ready for use if needed.

A registered property and financial affairs LPA can be used by the attorneys with the donor's consent while the donor is still capable, if drafted in this way. It can also be used on incapacity.

A registered health and welfare LPA, by contrast, can only be used if the donor has lost capacity to make their own health and welfare decisions.



## Will a property and financial affairs LPA cover my business interests?

It will unless it states otherwise, but particular considerations apply and for those with business interests it is usually advisable to sign a separate Business LPA appointing attorneys to deal specifically with business related matters (see 'A guide to Business Lasting Powers of Attorney' on our website).

# About HCR Law

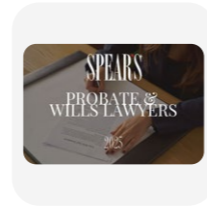
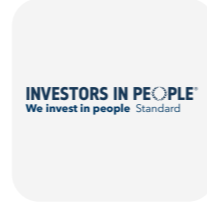
As an award-winning 'Top 50' UK law firm, we provide the full range of services that you would expect to organisations, business leaders and individuals. We are entrepreneurial in our outlook, so we're flexible and responsive to the needs of our clients, delivering the best outcomes for them.

We have more than 1,000 lawyers and support staff, including more than 180 partners. Our annual turnover is over £100m. Our roots go back to 1796 in Cheltenham and 1904 in Worcester, when our predecessor firms were founded. Our growth has been in response to client demand, and we have 13 offices in England and Wales, including an international HQ in London.

Clients value our honesty and our friendly approach, and we've been awarded the Law Society's Lexcel quality mark in recognition of our compliance and client care standards.

We truly partner with our clients and demonstrate our genuine commitment to them and what they're trying to achieve in all that we do. We are pragmatic and won't 'sit on the fence'. Clients have confidence in our advice because of our experience, specialist expertise, and the relationships we build with them.

## Our awards



# How we can help

It is advisable to put LPAs in place at an early stage, as part of planning for the future, so there are people who can act for you in the event of incapacity. Signing an LPA is a significant step and all the implications should be considered. At HCR Law our Private Client team provides specialist advice on all aspects of LPAs, including potential safeguards which can be included in an LPA and the duties and responsibilities of attorneys. If you wish to consider the appointment of a professional attorney, we can discuss the services provided by the firm's Trust Corporation. We can prepare the LPAs for you and deal with the registration of the LPAs.

**HCR Law is a  
Top 50 UK law  
firm with offices  
in England and  
Wales**



**Talk to Kerri  
to understand  
how LPAs can  
help you and  
those you care  
about**

# Contact us

If you would like to talk to us about the benefits of LPAs, please do get in touch. We would be pleased to help.



**Alex Taylor**  
Partner, Joint Head of Private Client  
T: 03301 075 966  
M: 07725 242 595  
E: ataylor@hcrllaw.com



**Daniel Curtis**  
Partner, Joint Head of Private Client  
T: 01223 532 748  
M: 07769 217 795  
E: dcurtis@hcrllaw.com

“HCR are an exceptional firm who go above and beyond for their clients. They are transparent, provide pragmatic advice and are realistic with their expectations. With HCR, you feel as if they truly care about you and the matter at hand.”

Legal 500 private client testimonial

# Glossary

## Lasting Power of Attorney (LPA)

A legal document which allows someone else to make decisions on your behalf in certain circumstances.

## Donor

An individual who signs an LPA appointing others to make decisions on his or her behalf.

## Attorney

An individual who the Donor appoints in an LPA to act on his or her behalf in relation to financial matters or health and welfare matters.

## Certificate Provider

A person who signs an LPA to confirm that the donor understood what they were signing and was not under any pressure to sign.

## Enduring Power of Attorney (EPA)

A previous type of Power of Attorney which can no longer be created but (if validly created before 1 October 2007) can still be used.

## Office of the Public Guardian (OPG)

The OPG registers LPAs (and EPAs) and also keeps a register of attorneys and deputies. It can investigate concerns about an attorney's actions.

## Court of Protection

A Court which has authority to appoint a deputy to act on behalf of an individual who loses capacity without an LPA or an EPA in place.

## Deputy Order

An Order by the Court of Protection appointing a deputy.

## Deputy

A person appointed by the Court of Protection to act on behalf of a person who loses capacity without an LPA or EPA in place.

Putting LPAs in place enables your attorneys to act on your behalf easily and without delay should the need arise



# hcrlaw

Birmingham | Cambridge | Cardiff | Central England | Cheltenham | Hereford  
Leamington Spa | London | Norwich | Shrewsbury | Thames Valley | Worcester | Wye Valley



[www.hcrlaw.com](http://www.hcrlaw.com)