



MOMENTS
THAT MATTER

A guide to LPAs

hcr

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We all make decisions daily about our personal affairs, from financial planning and buying property to more personal choices about our health and wellbeing. If you were unable to make these decisions for yourself due to incapacity, have you established who would help and ensure that your best interests were protected?

What is an LPA and why do I need one?

Lasting powers of attorney (LPAs) are legal documents which allow someone else to make decisions on your behalf if you become unable to do so in the future.

An individual (known as the Donor) appoints one or more people (known as Attorneys) to take decisions for them at some point in the future, if they become unable to do so themselves. The Attorney's requirement to make decisions could be temporary (if, for example, you were in a coma) or longer term (if you do not regain capacity).

Without an LPA in place, your loved ones are unlikely to be able to make decisions about your care or property and finances without applying to the Court of Protection for an order known as a Deputy Order (also referred to as Deputyship). This process takes longer than putting in place an LPA, costs more and you do not have the opportunity to decide who will be appointed to make decisions on your behalf.

An LPA can be made at any time if you are capable of understanding the document and the consequences of it. If you do not have sufficient mental capacity to make an LPA, the only option available would be for someone to make an application to the Court of Protection for a Deputy Order.

It is important to note that you do not lose any control by making LPAs. In fact, you retain control by choosing the individual(s) you trust to act for you and you can decide how they act and what decisions they can or cannot make on your behalf.

What types of powers of attorney are there?

There are two types of LPA. A **Property and Financial Affairs LPA** is used to make decisions about your finances and property. This gives your Attorney(s) responsibility and authority to deal with ongoing tasks such as banking, paying bills and managing investments as well as more specific tasks such as renting or selling a property.

This LPA has the practical benefit of being able to be used even while the Donor still has capacity but needs support, so long as the Donor has agreed to the Attorney acting in those circumstances.

A **Health and Welfare LPA** gives your Attorney(s) the right to make decisions about your health including decisions relating to ongoing care, medical treatment and where you should live if you are not able to remain in your own home. It can also make provision for the Attorney(s) to make decisions on your behalf in relation to life sustaining treatment, should this be required. This LPA can only be used if you have lost capacity to make these decisions yourself.

Putting an LPA in place as soon as possible will prevent any delays or difficulties should the need arise for someone to take decisions on your behalf.

Enduring powers of attorney

LPAs have been used since 1st October 2007. The previous system allowed you to make an Enduring Power of Attorney (EPA). EPAs can no longer be made but EPAs drawn up and fully signed prior to 1st October 2007 are still valid.

It should be noted that EPAs only relate to financial affairs and cannot be used for decisions relating to your health and welfare. If you do have an EPA in place, it is worth reviewing it to ensure that it provides for your current needs and to decide if you should also put a Health and Welfare LPA in place to sit alongside it.

Different types of LPAs can be put in place allowing you to specify who can make what decisions on your behalf in the future, should you lose capacity.

LPAs for business purposes

If you are a business owner, you should also consider creating a separate business LPA to support business related decisions. Please see our separate guide to business LPAs for more information.

Who can be an Attorney and what are their responsibilities?

You can nominate anyone aged eighteen or over to act as your Attorney. It should be someone who you trust implicitly to act in your best interests. People often choose family members to take decisions for them. You can also appoint a trusted friend or a solicitor and many people choose more than one person. If you prefer to have more than one attorney, you will also have to state whether all decisions need to be agreed by the Attorneys as a group (jointly) or whether they can act on their own in some or all scenarios (jointly and severally).

Attorneys for Property and Financial LPAs must also not be bankrupt or subject to a debt relief order and all Attorneys must follow the Mental Capacity Act code of practice.

Professional Attorneys

Acting as an Attorney can be a time-consuming and sometimes onerous job for individuals. However, a professional Attorney will have the time and expertise to support you with the management of your affairs and decisions. They are also impartial, helping to avoid any chance of conflict between family members.

A professional Attorney is not only independent and objective, but they will have a wealth of knowledge and experience to bring to the role, giving you peace of mind that your affairs will be managed effectively.

In turn, this allows your friends and family to remain just that, avoiding the stress and burden that often comes with acting as an Attorney. Please ask a member of our team about how the firm's Trust Corporation can assist you.



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How are LPAs put in place?

An LPA must be signed by the Donor, the Attorney(s) and the certificate provider. The certificate provider signs the document to confirm that the Donor understands what the LPA is for and is not under pressure to sign it. After it has been signed, the LPA must also be registered with the Office of the Public Guardian (OPG) before it can be used. We would recommend that it is registered as soon as possible. Registration typically takes approximately 12 weeks, often longer depending on case load at the OPG. Registering it straight away prevents any delay in your attorney(s) being able to use the LPA if it is needed.

What do I need to consider when putting an LPA in place?

An LPA is a significant document as you are granting the ability for trusted individuals to take decisions on your behalf. It is extremely useful to put in place an LPA as soon as possible, preventing any delays or difficulties should the need arise for someone to make decisions for you. Before signing your LPA, it is important to take specialist advice on its implications. This includes the type of LPA you need, the role of the Attorney and who you should appoint, what scope and authority each Attorney should have and whether to include replacement Attorneys should the initial Attorney(s) no longer be able to act on your behalf.



How and when can LPAs be used?

Once signed and registered, a Property and Financial LPA can be used straight away so long as the Donor agrees, whilst a Health and Welfare LPA can only be used if the Donor no longer has capacity. You can also revoke an LPA at any time whilst you still have capacity.

To discuss your individual circumstances and putting LPAs in place, contact our Private Client Team.



[Click here
to contact
the team](#)

Glossary

Lasting Power of Attorney (LPA)	A legal document which allows someone else to make decisions on your behalf if you become unable to do so in the future
Court of Protection	A court which has the authority to appoint a Deputy if you have not already put an LPA in place
Deputy Order/ Deputyship	An order which must be applied for to manage someone's affairs if they do not have a Lasting Power of Attorney and are incapacitated
Attorney	An individual over the age of eighteen who is nominated to act on your behalf if you lose capacity
Donor	The individual who has a Lasting Power of Attorney allowing others to make decisions on their behalf if they become incapacitated
Enduring Power of Attorney (EPA)	A previous type of Power of Attorney. These are no longer created however it is still valid if you have one which was fully signed before 1 October 2007
Certificate Provider	Someone who will sign an LPA to state that you understand what you are signing and are not being put under any pressure to sign it. Your solicitor at HCR would usually perform this role for you
Office of the Public Guardian (OPG)	The OPG registers LPAs and also keeps a register of attorneys, deputies and guardians. It also ensures they carry out their duties and investigates any concerns about decisions made

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