



Why everyone should have a Lasting Power of Attorney



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This guide is intended to tell you more about how a Lasting Power of Attorney works and covers the main points you will want to know.

However, it does not address all the details. We recommend you should seek advice and help from us to investigate this further and make suitable arrangements, before taking any action.

Introduction

A Lasting Power of Attorney (LPA) is a legal document which allows an individual to appoint a trusted person, for example a friend or a relative, to make decisions on their behalf.

Imagine you cannot make decisions, due to an illness or injury, and your loved ones must pick up the reins.

It is VERY difficult for them to do so without an LPA.

They wouldn't be able to access your bank account, pay bills, or make key decisions on your behalf. However, with an LPA in place, THEY WOULD.



What exactly is an LPA?

An LPA is a form of Power of Attorney which enables one individual to give another individual the right to take control of their affairs.

- The individual who puts the LPA in place is known as **the donor**.
- The individual who is appointed is known as **the attorney**.
- The donor can only set up and instigate an LPA **when they have the mental capacity to do so**.
- In simple terms, this means at a time when the donor can weigh up information and make their own decisions, understands what they are signing and giving.
- And **not** at a time when they have lost this cognitive ability.

What is “Mental Capacity”?

It is defined as being able to make decisions for yourself. If you cannot, then you lack capacity. This can be caused by many reasons, such as mental illness, dementia, injury or a learning disability.

To have capacity an individual must be able to:

- Understand information given to them about a decision they need to or want to make;
- Remember the information for long enough to be able to make the decision;
- Weigh up all the options available relating to the decision;
- Communicate their decision in any way they can, including through speech, sign language or gestures.

As no-one can know when they may lose this, **this puts an emphasis on early planning or action**.

So, an LPA needs to be organised in advance, when the donor has that mental capacity.

An LPA can only be made by one individual (donor) – it is not possible to have a joint LPA. Couples would therefore need to have one each.

However, it is possible for the donor to appoint more than one attorney, who would then act jointly.

What does the LPA allow an attorney to do?

There are two types of LPA (see next section), the examples below indicate what role an attorney has, in each case.

The attorney takes on responsibility for the affairs of the donor and this allows them to:

- Conduct all the financial aspects relating to bills, property and tax.
- Manage all health aspects – including such things as their accommodation, care, medical needs and daily routine.

The wording in the LPA document may clarify or restrict this further. For example, in relation to health and medical needs the donor may stipulate certain instructions around treatments, resuscitation and other preferences.

An attorney must act in the donor's best interests.

The two types of LPA

A Property & Financial Affairs LPA

A Property and Financial Affairs LPA deals with the donor's finances and all matters relating to their assets and property.

This can cover managing their bank accounts, investments, insurances and pensions.

A Health and Welfare LPA

A Health and Welfare LPA can be very wide ranging in scope and will cover such things as where the donor lives, their day to day routine, including contact with other people, what food they are given and their medical treatments.

The duties covered by the two different LPAs can often overlap. A good example is when care must be considered, not only will the health needs be relevant but the financial consequences (e.g. care fees) may come into focus and require payments to be organised.

It is generally considered that both types of LPA should be put in place. If only one is arranged, then this could cause difficulties.

For instance if a Health and Welfare LPA is arranged, but **not** a Property and Financial Affairs LPA, and later on the attorney has to make medical or care decisions for the donor, and this involves financial considerations, they may not be able to make an appropriate decision as they would not have the financial decision-making authority.

Registering an LPA

To be effective the LPA must be registered with the Office of the Public Guardian.

The donor can register the LPA once they have completed all the forms.

If an LPA is unregistered, then the attorney cannot act or make decisions on the donor's behalf.

When can an attorney start to act?

Assuming the LPA has been registered, then in the case of a Health and Welfare LPA, the attorney can only act when the donor loses capacity. In the case of a Property and Financial Affairs LPA, the attorney can act before or after the donor lacks capacity (unless the donor has instructed differently in the document).



The different positions between England, Scotland, Wales and Northern Ireland

Most of the principles we outline in this document are consistent across all four countries.

However, in Scotland and Northern Ireland there are some variations which make the technical nature different and the legal framework is not consistent in every aspect with those in England and Wales.

In Scotland there is a Continuing Power of Attorney to cater for financial decisions and a Welfare Power of Attorney for health and care decisions.

In Northern Ireland there is an Enduring Power of Attorney which covers both financial and health matters in the one document.

Some common questions about LPAs

Q. "Is an LPA the same as an Enduring Power of Attorney (EPA)?"

No. LPAs replaced the previous Enduring Power of Attorney (EPA) system.

If an EPA was set up before 1 October 2007 it will still be valid, even if it has not been registered, though they must be registered when the donor loses capacity.

An EPA does not provide the same level of protection as an LPA. If you have an EPA it may be an idea to consider whether to replace it with an LPA.

Q. "And what about an Ordinary Power of Attorney, how is this different?"

These are valid or relevant when you have capacity and are typically used in situations when you want someone to act for you for a short period. And only in respect of your financial affairs. This could be useful if you are going into hospital for a period and need someone to deal with your bills or travelling overseas for a prolonged period and need your affairs, maybe a property arrangement, managed.

Q. "Who can be my attorney?"

The attorney needs to be a capable adult, they cannot be an undischarged bankrupt, nor can they be involved (e.g. as an owner or employee) of a care home in which the donor is resident.

Attorneys can be a relative and they can also be a beneficiary of the donor's Will.

Q. "Can I have more than one attorney?"

Yes. If you do have more than one, then you need to decide, and the document needs to make clear if the attorneys are able to act independently in some instances or whether they must always act (i.e. make decisions) jointly. You can have as many attorneys as you like.

Q. "Will an LPA still be valid on the donor's death?"

No, once the donor dies the LPA is no longer valid.

Q. “What happens if my attorney becomes incapacitated or dies before they can act for me?”

This depends on whether you have more than one attorney appointed and the terms upon which you have appointed them. If there is more than one and you have stipulated they must act jointly, either for all decisions or even some decisions, then they are considered ‘one unit’ and clearly if one cannot fulfil their duties the LPA has to end and a new one arranged.

If you have more than one attorney and they can make decisions individually, then the surviving attorney(s) can continue to act.

If you have just one attorney and you have included in your document details of a **Replacement Attorney** (an option which is often included) then the replacement attorney can take over.

If you have just one attorney and no replacement provision, the LPA will end, and you will need to arrange a new one.

Q. “What fees and costs are there for registering an LPA?”

The fees vary depending where you are in the UK. In England and Wales, the fee is £82, in Scotland it is £79 and in Northern Ireland £151. This is a fee applicable to each LPA or equivalent – therefore if you have each type, the total fee will be double. There are reductions for those earning less than £12,000 per year and exemptions for those on benefits. These figures are correct as of October 2020.

Q. “How does an LPA interact with other documents or instructions, such as a Will?”

Both documents are important for planning ahead to protect your interests and those of your family. A Will dictates what you would like to happen when you die, to your assets and possessions and in terms of your legacy wishes. The LPA is there to cater for your needs in your lifetime, but it still protects family members who could face great challenges if you do become incapable of making decisions for yourself. So, one is giving instructions for your lifetime, the other for after you have gone.

There may well be other questions you have. It is also worth noting that the laws relating to LPAs are extensive, so considering and organising an LPA is always best done with an expert to help you.

Getting help and advice

It is entirely feasible to arrange your own LPA and to obtain the relevant forms and documents from multiple sources. However, there are very good reasons why it may be a better idea to get professional advice:

1. Although on the surface putting an LPA in place is relatively straightforward there are many subtle, but highly relevant, aspects to this where it is easy to trip up and end up with a position, maybe many years later, when your intended outcomes are not as you wanted them.
2. Similarly, the LPA is a legal document and there are several legal factors relating to the whole process of sorting an LPA which need to be carefully considered.
3. Perhaps, though, the most important factor is that your wish and desire to make provision for future uncertain possible events, is **unlikely** to require one bit of activity. So, putting an LPA in place, however sensible this is, is unlikely to cover all your requirements on its own, or to protect all that you want to protect.

You will want to make sure your LPA works alongside the wording and instructions in your Will, that it dovetails with your planning towards possible future care fees, your intended legacy wishes, and your general financial planning.

The LPA should be co-ordinated to work with and alongside these other important aspects of future planning and protection measures.

In this respect, arranging an LPA is part of wider picture - a very important part -and one that should be considered as such. Working with a professional who can help you with this overall view of your future requirements, makes perfect sense.

In Conclusion

Arranging an LPA is something which works for everyone.

Clearly, the need comes into focus later in life and this is understandable. But really, anyone - at any time - should be looking at what would happen if they were to lose mental capacity.

There are some aspects of planning future finances which may not be appropriate for all individuals. For example, sophisticated tax planning.

But this is not the case with an LPA – literally everyone can benefit from having this sorted. And the only way of properly sorting it satisfactorily is to do so in advance, when you have mental capacity.

So, please take advice and look at this as soon as you can. It is truly a worthwhile exercise for you and your loved ones.

About Us

"Protecting Wealth, the common sense approach you can trust...."

We pride ourselves in giving unbiased honest advice. You can have confidence in the knowledge and guidance we can offer.

No matter your estate and trust planning needs, Watermead Trust Planning Ltd are here to help you.

Our flexible approach allows us to provide face to face consultations, conduct business by post or via the worldwide web.

Where the need is identified for regulated financial advice as part of estate planning, the advice is provided via SFA Independent Financial Advisers, www.schoolfeeadviser.co.uk.

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Compliance Statement

This guide is intended to provide you, the reader, with an **overview** of the new rules, it is not meant to be a technical guide nor is there any aspect of this guide which is meant to be construed as financial or tax advice.

This information is based on our understanding of current tax law and practice (January 2017), which may change in the future. The way in which tax charges, reliefs and allowances are applied depends upon individual circumstances and may also be subject to change in the future.

You should take professional advice before making any tax planning decisions, changing your Wills or making any changes to your overall finances.

The FCA does not regulate certain tax planning activities and services, will writing or advice on charitable giving. Not all inheritance tax solutions are authorised and regulated by the Financial Conduct Authority (FCA).