

Lasting Power of Attorney for Health and Welfare

An introduction

This factsheet explains what a Lasting Power of Attorney for Health and Welfare is and how to make one. It is for people living in England and Wales. If you live in Scotland or Northern Ireland, or you would like more information about planning ahead for your future care and treatment, please contact us.

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) allows you to give someone you trust the legal power to make decisions on your behalf in case you later become unable to make decisions for yourself. The person who makes the LPA is known as the ‘donor’ and the person given the power to make decisions is known as the ‘attorney’.

There are two different types of LPA.

An LPA for Property and Financial Affairs covers decisions about money and property.

An LPA for Health and Welfare covers decisions about health and personal welfare.

This factsheet is only about the LPA for Health and Welfare.

Why might I be unable to make decisions for myself?

There are many reasons why you might be unable to make decisions for yourself. For example, you could become unconscious or have dementia, a mental health condition, a brain injury or a stroke. If you cannot make decisions for yourself, it is called not having 'capacity'. You lack capacity to make a decision if you cannot do one of these things:

- understand information relating to the decision;
- retain that information for long enough to make the decision;
- take that information into account when making the decision; or
- communicate the decision.

The Mental Capacity Act says that people must be assumed to have capacity unless it is proven otherwise. However, if a decision needs to be made about your health or care and a healthcare professional thinks that you might lack capacity, then they will need to assess whether or not you have the capacity to make that decision.

Whether or not you have capacity is decided on a decision-by-decision basis. For example, you might have capacity to decide what you want to eat every day but not have capacity to understand what will happen if you refuse life-sustaining treatment. You might lose capacity to make a decision for a short time (for example, if you are knocked unconscious) or for the indefinite future (for example, if you are in a vegetative state).

Your attorney can only make decisions for you if you have lost capacity and cannot make the decision yourself. If you have capacity then you can still make your own decisions and your attorney cannot override them.

What decisions can my attorney make?

In an LPA for Health and Welfare, your attorney can make decisions about anything to do with your health and personal welfare. This includes decisions about medical treatment, where you are cared for and the type of care you receive, as well as day-to-day things like your diet, how you dress and your daily routine.

You can list any instructions that your attorney must follow, or any preferences that you would like them to take into account when making decisions on your behalf.

You must also choose whether or not you want your attorney to be able to make decisions about life-sustaining treatment. If you choose not to, then all decisions about life-sustaining treatment will be made by your healthcare team, unless you have made an Advance Decision to Refuse Treatment. See our factsheet [*Advance Decisions \(Living Wills\) – An introduction*](#) for more information.

Any decision your attorney makes must be made in your ‘best interests’. See our factsheet [*What happens if I cannot make decisions about my care and treatment?*](#) for more information on ‘best interests’ decisions.

Who should I choose to be my attorney?

Your attorney can be anyone over the age of 18, such as a partner, family member or friend.

You need to trust your attorney to understand your wishes, respect your values and make the decisions that you would want. Your attorney must be able to make potentially difficult decisions on your behalf. You should discuss your wishes with anyone who you would like to act as your attorney.

To help you decide who to choose, you can ask yourself these questions:

- Do they understand my wishes?
- Will they respect my values?
- Could they stand up for what I want, even if a doctor disagrees?

Can I have more than one attorney?

Yes, if you want to you can have more than one attorney. There is no limit to the number of attorneys you can have.

You can also choose one or several replacement attorneys who will take over if your original attorney cannot continue to act.

If you have more than one attorney then you can choose how they make decisions. Your attorneys can act in one of three ways:

- **Jointly and severally** – If you choose for your attorneys to act ‘jointly and severally’ then they can act together but they can also act on their own. This means, for example, that if you were in hospital and a decision needed to be made on your behalf but the doctors could only get in contact with one of your attorneys, then that one attorney could still make the decision for you.
- If you choose for your attorneys to act jointly and severally it also means that if one attorney is unable to act, for example because they have died, the remaining attorneys will still be able to act. If you have chosen any replacement attorneys, they can step in to act with the remaining attorneys.
- **Jointly** – If you choose for your attorneys to act jointly then your attorneys must make decisions together and agree unanimously on all the decisions they make. This means that if you were in hospital and a decision needed to be made on your behalf but the doctors could only get

in contact with one of your attorneys, then that one attorney would not be able to make the decision for you because all attorneys have to agree before any action can be taken.

- If you choose for your attorneys to act jointly it also means that if one attorney is unable to act, for example because they have died, then your LPA will become invalid and the remaining attorneys will not be able to make decisions for you. If you have chosen any replacement attorneys, they will step in to act alone.
- **Jointly for some decisions, and jointly and severally for other decisions** – This means you can specify the decisions that must be made together and the decisions where the attorneys can act alone.

When filling in the form if you do not specify how your attorneys must act then they will have to act jointly.

How do I make an LPA?

There are three key steps to making an LPA:

1. Choose your attorney and the other people involved (see below)
2. Complete the form (available from the Office of the Public Guardian (OPG))
3. Register the form with the OPG

An LPA must be registered with the OPG before it can be used. The OPG is part of the government's Ministry of Justice department. It manages the LPA registration process and has a register of all LPAs. It can also investigate if somebody has concerns about the way an attorney is acting.

Who are the people involved in making an LPA?

There are a number of people involved in making an LPA. They are:

The donor

The donor is the person making the LPA (you).

Your attorney

Your attorney can be anyone over the age of 18 who has capacity.

Certificate provider

The certificate provider is an independent person who signs the LPA form to check that you understand what you are doing and that nobody is putting pressure on you to make the LPA. They can **either** be someone who has known you well for at least two years (like a friend or neighbour), **or** a professional (like a doctor or solicitor).

A certificate provider cannot be:

- under 18;
- a family member of you, your attorney or replacement attorney;
- a business partner or paid employee of you, your attorney or replacement attorney;
- your attorney or replacement attorney; or
- the owner, director, manager or an employee of a care home in which you live or a member of their family.

People to be notified

On the LPA form, you have the option to list up to five people who will be notified that you are making the LPA when it is sent to be registered. They do not have to sign the form itself but you have to send them a notification letter when you register the LPA. They are then given three weeks to say if they have any concerns or objections. This helps to check that you are not being put under

pressure to make the LPA.

Naming people to be notified is optional, so you do not have to name anyone if you do not want to.

Witnesses

Somebody must act as a witness when you and your attorney sign the LPA form. This means that they must watch you sign and then they themselves must also sign the form. The person who witnesses your signature can be different to the person who witnesses your attorneys' signature.

The person who witnesses your signature must be over the age of 18 and cannot be one of your attorneys or replacement attorneys. Your witness can be the same person as your certificate provider.

How can I get an LPA form?

You can get an LPA form in one of three ways. You can:

1. ask the OPG to send the form to you (contact details are at the end of this factsheet);
2. download it from their website here www.gov.uk/government/publications/make-a-lasting-power-of-attorney; or
3. complete it online using their digital tool here www.lastingpowerofattorney.service.gov.uk/home.

For more information on completing the LPA form see our factsheet [*Lasting Power of Attorney for Health and Welfare - A guide to filling in the form.*](#)

How do I register an LPA?

The LPA can be registered by you (while you have capacity) or by your attorney (at any time). Once Sections 1 to 11 of the LPA form have been completed and signed

by everyone then Sections 12 to 15 must be completed in order to register it.

You then post the completed LPA form to the OPG along with payment.

The LPA can only be used after it has been registered by the OPG. Registration can take up to three months.

You do not have to register your LPA straight away but it is recommended that you do so. This is because any mistakes in the form can be corrected while you still have capacity. If your LPA is not registered until you lose capacity and it contains mistakes that mean your form cannot be registered, you will not be able to correct these mistakes and your LPA will be invalid. Registering your LPA straight away also means that there will be no delay when it needs to be used because you will not have to wait for it to be registered.

How much does it cost?

It costs £82 to register an LPA. If you are also completing an LPA for Property and Financial Affairs, the fee applies to each form separately.

Reduced fees

Depending on your situation you may be able to pay a reduced amount or even pay nothing. If you have an income under £12,000 or are on certain benefits you can apply for a reduction.

What happens next?

Once your LPA has been registered by the OPG they will return the form to you (or to the attorney if they registered it). It will be stamped on every page and it is only valid once this is done.

It is important that those close to you, your doctor and anyone else involved in your care know that you have made an LPA.

Can I change my mind?

Yes, while you have capacity you can change your mind at any time and cancel the LPA. If it has not been registered, you can destroy the document and should inform anybody involved in the LPA that you have done so. If you have already registered the LPA, you must contact the OPG.

How can we help?

If you have any questions about Advance Decisions, Lasting Powers of Attorney, planning ahead or decision making more generally then please contact our Information Line (our contact details are on the next page).

- We can send you a copy of [*Planning Ahead: Making Choices for the End of Life*](#), a free and comprehensive guide to planning ahead for your future care and treatment

The following Compassion in Dying factsheets may also be helpful:

- [*What happens if I cannot make decisions about my care and treatment?*](#)
- [*Advance Decisions \(Living Wills\) - Reviewing and updating*](#)
- [*Lasting Power of Attorney for Health and Welfare – A guide to filling in the form*](#)
- [*Advance Decisions and Lasting Power of Attorney for Health and Welfare – What is best for me and can I have both?*](#)

Further sources of help

Office of the Public Guardian:

To contact the Office of the Public Guardian directly:

Tel: 0300 456 0300

Web: www.publicguardian.gov.uk

All the forms mentioned here are available from the Office of the Public Guardian's website: www.gov.uk/government/collections/lasting-power-of-attorney-forms

They are also available in accessible format by ringing 0300 456 0300

To access the online tool visit: www.gov.uk/lasting-power-of-attorney

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Compassion in Dying supports people to plan ahead to ensure their wishes for treatment and care are respected.

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IN DYING.**
SUPPORTING YOUR CHOICES

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A list of references is available on request