



# Making a Lasting Power of Attorney (LPA) for Property and Affairs

**LPAs are very useful, if not essential, legal documents that everyone should consider making. They are, however, rather detailed and there are many variables to consider before completing one.**

## Who can make an LPA?

Anyone who is over 18 and capable of understanding the document (known as the Donor).

## What are the benefits of making an LPA?

- It allows you to appoint someone to manage your property and affairs should you decide that you do not wish to manage them yourself, or if you become incapable of managing them.
- You choose the person or people (the Attorney) that you wish to make those decisions.
- You can set down how you want the Attorney to act and the factors that they must consider at the time.
- Choosing who you want to act and how puts you in control of decisions eventually made on your behalf.
- If you do not complete an LPA and lose mental capacity, the Court of Protection will appoint someone to manage your finances who might not be the person you would choose. Having an LPA means you choose who you want, and you decide how you want the Attorney to make those decisions and the factors they must consider.
- The costs of an application to the Court of Protection are substantial. The exact amount depends on the size of your estate and other matters, but in most cases it will run into several thousands of pounds, and there are ongoing annual costs to pay as well.

## What sort of decisions can the Attorney make on my behalf?

- Essentially, any decisions that you can make regarding the day-to-day running of your financial affairs, such as:
  - *Operating, closing or opening bank accounts;*
  - *Instructing agents (such as solicitors, estate agents, stockbrokers) on your behalf;*
  - *Claiming and receiving benefits on your behalf;*
  - *Dealing with your tax affairs;*
  - *Paying your household expenses;*
  - *Buying, selling or letting your property;*
  - *Paying for your medical treatment or nursing care fees;*
  - *Making small gifts on your behalf (such as birthday or Christmas presents)*
- The Attorney must only make decisions that are in your best interests.

## What decisions is the Attorney not able to make on my behalf?

- Decisions regarding your health and welfare – that must be

dealt with in a different form of LPA.

- Making a will. It is only possible to do this with the express agreement of the Court and if this is in your best interests.
- Making substantial gifts on your behalf, perhaps as part of a tax planning exercise. Again, this is only possible with the express agreement of the Court and must be in your best interests.

## Is there any official guidance for the Attorney?

Yes, the Attorney should be aware of the Code of Practice and Principles which set out the factors that should be considered when making decisions, including the overriding principle that they must act in your best interests.

These documents are very comprehensive, and we can help guide your Attorney through them.

## What is meant by 'Best Interests'?

The Code of Practice states that the Attorney must at all times act in your best interests when making decisions and you must be involved as much as possible. When looking at this the Attorney must take into account all relevant factors that it would be reasonable to consider, not just those that they think are important, and they must not act or make a decision based on what they would want to do if they were the person who lacked capacity.

## Who can be appointed as Attorney?

- Anyone over the age of eighteen can be appointed although usually it would be a close family member or professional. It is important to remember that the Attorney will have complete control of your finances, unless you impose conditions or restrictions (see overleaf).
- From a more practical point of view it is usually sensible to appoint someone younger than you. For example, an elderly couple may wish to appoint one another, but it may well make sense for one or more of their children to be appointed, or for children to be appointed as replacements should the spouse be unable to act (see overleaf).

## How many people can I appoint as Attorney?

There is no actual limit on the number of people that can be appointed, but we suggest no more than four. To appoint more than four can lead to difficulties in getting documents signed quickly and efficiently.

## What are the options if I appoint more than one Attorney?

There are three options:

- Joint: this means that all must sign each and every document, for example cheques. This can be a cumbersome arrangement, and problems can arise on the death or incapacity of one joint Attorney;
- Jointly and Separately: this means that one attorney can sign without the others, so for example one could sign cheques without involving the other Attorney;
- Joint for some matters and Jointly and Separately for others: there is some flexibility as to how this can be defined. For example, you could state that for large transactions over a certain limit, all must sign but otherwise one may sign. Great care must be taken when drawing up such an appointment as precise wording must be used to avoid confusion. We can make sure that such wording is correct.

## Replacement Attorney

You can if you wish appoint a replacement to act if the Attorney (or one of them) dies or becomes incapable of acting.

## Limiting the powers of the Attorney

- You can define the limits of the authority of the Attorney as follows:
  - Impose Conditions or Restrictions. These are matters that are binding on the Attorney and which he/she/they **must** follow, for example that the LPA shall not come into force until you are mentally incapable.
  - Provide Guidance. This does not bind the Attorney, but may be useful when making decisions, for example, you may wish to instruct a particular agent, or ask your Attorney to invest only in ethical investments.
- Many people prefer not to limit the powers, as this gives the Attorney the maximum amount of flexibility to react to circumstances that might not have been foreseen at the time the LPA is signed.
- If you wish to impose limitations, again the wording used is very important to avoid confusion and/or conflict and we can assist you in making sure the wording is correct.

## Payment

- The Attorney is entitled to be reimbursed for any out of pocket expenses incurred whilst acting as Attorney.
- You also have the option of allowing the Attorney to charge a fee for their services. A professional Attorney will only act if they are able to charge a fee for their services.

## Registration

- Your Attorney can only use the LPA when it has been registered with the Office of the Public Guardian (OPG). This can be done as soon as the LPA is signed, or left until it is actually needed. It should be remembered that the registration process takes several months, and if registration is left there will be some delay in the Attorney being able to gain control and manage your finances.
- A registration fee of £120 is payable to the OPG for each LPA registered, unless your income is below certain limits or you are in receipt of certain benefits.

- When the LPA is signed, you can decide whether anyone should be notified when registration takes place. This is intended to prevent fraud by ensuring that at least one other person is aware that the Attorney is in the process of registering the LPA.

## Notification

- Anyone can be notified apart from the Attorney. The spouse of the Attorney can be notified, but we suggest that you name someone entirely independent if possible.
- If you do not wish anyone to be notified, you will need two certificate providers when the LPA is signed. Again, the intention behind this rule is to prevent fraud.

## Certificate Provider

- When the LPA is signed, someone must act as Certificate Provider. That person is confirming that you understood the document and were under no undue influence when it was signed.
- A friend can act as Certificate Provider if they have known you personally for at least two years.
- A solicitor, doctor or other professional can act even if they have not known you for two years, provided they are experienced in this field.
- If no-one is to be notified of the registration, there must be two Certificate Providers.
- The role of Certificate Provider is very important and not to be taken lightly. The Certificate Provider must take you through the document and through certain information prescribed by law. Ideally, this should be done without the Attorney being present.

## Conclusion

Sitting down to consider all the options available to you regarding an LPA can seem a daunting task, but at mfg we have a huge amount of experience of completing such documents and can guide you through the process.

The forms may appear complex and can be made so, but they can also be relatively simple and straightforward.

## Other information

The OPG has a number of forms and booklets to assist anyone interested in an LPA, but many of these are longer than the forms themselves. This helpsheet is intended to serve a similar purpose, but in a more concise manner. If you wish to consult the more detailed information available from the OPG we suggest that you look at their website [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk).

**For more information please  
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