

Lasting powers of attorney (LPAs)

Though none of us likes to think about losing the ability to manage our own affairs, it can happen. Dementia, brain injuries and mental health problems are a few of the conditions that can render us incapable of making our own decisions, temporarily or permanently.



It is important to put arrangements in place so that others can make decisions for us should the need arise. You do that through a lasting power of attorney (LPA).

What is an LPA?

A lasting power of attorney (LPA) is a legal document that enables you to choose one or more people to make decisions on your behalf. There are three different types of LPA:

- > **Health and welfare LPA:** enables decisions to be made about your personal wellbeing such as where you live, who provides day-to-day care, medical treatment etc.
- > **Property and financial affairs LPA:** enables decisions to be made about your financial assets such as selling your house, managing your bank account, paying bills etc.
- > **Business LPA:** ensures that your business can continue to operate should you be unable to fulfil your role for any reason such as managing payroll, performing contracts, employing staff etc.

The three LPAs are completely separate: you can choose to make one or more, depending on your circumstances and needs. Brief details on each are set out on the following pages.

Are LPAs new?

LPAs were introduced in October 2007 replacing the traditional enduring power of attorney (EPA). They are more complex to create than EPAs.

If you have an existing EPA, it will remain valid. Your attorney(s) will still be able to take care of your property and affairs but it is advisable to review your EPA to ensure that you are still happy with your appointed attorneys and that they have all the required powers needed to manage your assets effectively.

Further, an attorney appointed under an EPA will not be able to make decisions

about health and welfare. If you would like to be able to delegate decision-making powers over your personal welfare, you should consider making a health & welfare LPA.

Do attorneys act together or independently?

You can specify that your attorneys have to act together at all times, independently at all times, or that they can act together on some matters and independently on others. It is entirely up to you how you wish them to act and we will, of course, be able to advise you at our meeting.

If I wish to have more than one LPA, do my attorneys have to be the same?

No, it is up to you. You may appoint the same set of attorneys for all LPAs, or different ones. The skills and expertise required for each role may be very different. For example, a financial attorney should be well organized and financially savvy whereas a welfare attorney may be more familiar with your personal feelings towards certain medical treatments and care plans.

If you are appointing different attorneys, it is essential to choose people who get on with each other. This will avoid the potential for disagreements about your care. For example, if your welfare attorneys choose a care home but the financial attorneys disagree with the choice, they could refuse to pay.

How do I set up and use an LPA?

The process is lengthy and complex.

Every LPA needs one person (referred to as a 'certificate provider') to confirm that you are capable of signing the document and understanding the implications of it.

We strongly recommend our clients seek expert professional advice in setting up these important documents. A meeting

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Lasting powers of attorney (LPAs)



HOW CAN WILLANS HELP?

Our knowledgeable team handles all aspects of wills, trusts and inheritance tax planning and Court of Protection applications. Our work is often for clients who have been with us for many years; in some instances we act for second or third generations of the same family.

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can be arranged at which we can explain all the issues, discuss your particular needs and assist in completing the forms.

Once signed the LPA needs to be registered with the Office of the Public Guardian before it can be used, and a registration fee must be paid.

What if I change my mind?

You may revoke this power at any time, as long as you have capacity to do so.

Once signed, you cannot replace, remove or add attorneys or instructions to your existing LPA. A new LPA must be prepared in its place and the old LPA revoked.

When should I think about LPAs?

People often wait until they have concerns about their mental capacity before thinking about preparing LPAs. Often this can be too late as you need to be capable of understanding the complexities involved. If your capacity is in question, the process can be longer, more complex and therefore, more expensive.

In some cases it may be too late to prepare an LPA resulting in a long and expensive court process.

Therefore, anyone who has property and/or investments should consider preparing an LPA.

Do I need to tell anyone about my LPA?

You may nominate people who should be informed if and when the LPA comes into force but this is no longer a legal requirement.

What happens once I have made my LPA?

Once the LPA has been signed and registered, we will store the original in our strongroom until it is needed by your attorneys.

We have strict rules governing when the LPAs can be released to ensure that your attorneys only have access to the documents when appropriate.

What happens if my attorney's details change?

You need to write to the Office of the Public Guardian (OPG) if one of your attorneys changes their name (by marriage or deed poll) or address. You will need to supply supporting documentation (e.g. an original marriage certificate with the attorney's new name and address).

You should not make changes to your own LPA document, as there is a risk that it could become invalid. If you need to make changes, you must contact OPG.

To arrange an appointment

Please telephone 01242 514000 and ask to speak to one of our expert and helpful lawyers to arrange an appointment. You should allow approximately 1.5 hours.

We may arrange home or hospital visits if you are not able to travel to us.

There are several steps leading into our buildings. If access is likely to be a problem, please let us know.

Health & welfare LPAs

A health & welfare LPA is a document you (the donor) can make, authorising one or more people (attorneys) to make decisions on your behalf should you become unable to make them for yourself.

What decisions can welfare attorney(s) make?

Attorneys can make decisions on all aspects of your personal welfare, for example where you are to live, people you are to have contact with and whether to give or refuse consent to medical treatment. You can restrict these powers within the LPA if you wish. This may be advisable if you have strong wishes about any particular aspect of your care. Your attorney(s) will be legally bound by whatever is in your best interests.

When can a health & welfare LPA be used?

A health & welfare LPA can only come into force if and when you lack the mental capacity to make such decisions for yourself.

Can welfare attorneys make decisions on 'life sustaining' treatment?

If you want your attorneys to be able to make such decisions, you must expressly give this power in the LPA, otherwise the decisions will be made by doctors or other health professionals.

You can tell your attorney(s) your own views and wishes regarding life sustaining treatment in advance or prepare a letter of wishes to assist them should they be required to make such decisions.

How does an LPA differ from a 'living will'?

A 'living will', or advance directive, is a document that sets out specific circumstances in which you would not want your life to be prolonged.

Although they have been widely used and accepted, 'living wills' are not legal documents and are not legally binding. They are simply an expression of your wishes and are lodged with your GP.

By comparison, an LPA allows you (if you wish) to give your attorney(s) authority to make decisions based on whatever

you have set out in the LPA or your letter of wishes. Unlike a 'living will', an LPA does not need to specify particular circumstances so it provides for a greater number of eventualities.

Who should I appoint?

When setting up a health & welfare LPA, the most important consideration is who to appoint as your attorney(s).

Any adult individual can be an attorney but you must have complete trust in the individual/s to make decisions that you would be happy with if you were able to make them for yourself.

What questions do I need to consider before making a health and welfare LPA?

This is a short checklist of things you might want to think about before your meeting with us.

- > Who would you like to appoint as your attorney(s)? You will probably want to choose people that you trust to carry out your wishes. You may also want to bear in mind their age, and choose someone from a younger generation.
- > Would you also like to appoint a replacement attorney in case the people you have chosen are, for any reason, unable to act?
- > Do your attorneys get on with one another? This ensures that decisions can be taken as quickly and effectively as possible.
- > Do you want to give your attorneys authority to make decisions about life sustaining treatment?
- > Would you like anyone to be informed in the event that your LPA is registered? These individuals would have the opportunity to challenge the registration of the LPA if they thought it inappropriate or invalid.
- > Would you like to restrict your attorney(s) as to what decisions they may or may not be able to make on



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Health & welfare LPAs

your behalf or give them guidance on anything you have particular concerns about?

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Property & financial affairs LPAs

If you already have an enduring power of attorney (EPA) then you may not need to replace this with a property & financial affairs LPA. However, there have been changes in 'best practice' and if your circumstances have changed since you signed your EPA, you may wish to consider making a property & financial affairs LPA in its place.



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When can a property & financial affairs LPA be used?

It is up to you. You can specify that it can only be used in the event that you lose your mental capacity. If you prefer, it can be used at any time once it is registered. This might be useful if you have the capacity to be able to look after your affairs but are finding it burdensome or you need someone to act on your behalf while you are away.

What decisions can financial attorneys make?

They can make any decisions relating to your property, such as selling or mortgaging it. They can also make decisions about money and investments, such as your bank accounts, shares and pension.

Whilst financial attorneys cannot make decisions about your care, they would be responsible for the payment of any care which is deemed to be in your best interests by those with authority to make those decisions.

What happens if I lose capacity and have no property & financial affairs LPA?

If you have significant assets, then the court may appoint a 'deputy' to take care of your affairs. This process can take in excess of 9 months and the costs would be paid from your own funds (once available). There is also the cost of the assessor to carry out a mental capacity assessment and the court fee.

The individual appointed by the court won't necessarily be someone you would appoint yourself and they would be subject to stricter supervision by the court than someone you appoint as your attorney.

Can anyone other than my attorney(s) make decisions for me?

No. As a general rule, attorneys cannot delegate their duties. However, if it is a purely administrative matter (something you wouldn't expect an attorney to do personally), or if there are unforeseen circumstances, then an attorney can ask someone to act in their place.

Checklist

These are some of the things you may wish to consider before making an LPA:

- Who would you like to appoint as your attorney(s)? You will probably want to appoint someone who is well organized and financially savvy. You may also want to bear in mind their age and choose someone from a younger generation. The most important consideration is whether you trust them to respect and carry out your wishes.



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Property & financial affairs LPAs

- Would you also like to appoint a replacement attorney in case the people you have chosen are, for any reason, unable to act?
- Do your attorneys get on with one another? This ensures that decisions can be taken as quickly and effectively as possible.
- How your attorneys should act: together, together and separately or together for some and together and separate for others.
- Would you like anyone to be informed in the event that your LPA is registered? These individuals would have the opportunity to challenge the implementation of the LPA if they considered it inappropriate or invalid.
- Would you like to express any instructions or preferences for your attorney(s) to consider, or give them guidance on aspects that you are concerned about?

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Business LPAs

Any person with business interests, be they company directors, partners, LLP partners or sole traders should consider putting business LPAs in place and encouraging their business partners to do the same.

In some professions, a failure to put business LPAs in place may be a breach of your professional regulations.



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What are the risks of not having a business LPA?

Since 2013, it is no longer possible to remove a director on the grounds of mental incapacity despite any express agreement in the company documents. Therefore, in the event that you or your business partner loses capacity you/they can continue to bind the business to certain contractual obligations which may not be in the best interests of the business. Further, business accounts may be frozen leaving the business unable to operate the simple every-day tasks of paying bills and salaries.

An application to the court would be required to appoint somebody to manage your/their business interests which can take months by which time it is likely that the business may have suffered irreparable damage.

When can a business LPA be used?

It is up to you. You can specify that it can only be used in the event that you lose your mental capacity. If you prefer, it can be used at any time for example if you are out of the country or temporarily unavailable due to illness.

What decisions can business attorney(s) make?

They can make any decisions relating to your business interests. Therefore, it is important that you appoint somebody who respects your own business aspirations.

Checklist

These are some of the things you may wish to consider before making an LPA.

- > Who would you like to appoint as your attorney(s)? You will probably want to appoint someone who is well organized and understands your how your business operates.
- > Is your attorney independent? The appointment of your existing business partners is likely to cause a conflict

with their own business agenda.

- > Does your profession require certain accreditations or licensing which would restrict who would be qualified to take your place?
- > Does your attorney get on with your business partners? This ensures that decisions can be taken as quickly and effectively as possible.
- > It is important that you consider any instructions or guidance you would like to prepare for your attorneys to assist them in making business decisions on your behalf.

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