

Legal Services



Guide to getting a Lasting Power of Attorney

The legal right to have your loved ones make important decisions on your behalf.



What is a Lasting Power of Attorney?



"The importance of a Lasting Power of Attorney (LPA) is the one thing that I wish more people knew about. You have taken the first step toward a better understanding of LPAs by reading this free guide and I hope you find it useful."

Finally, don't forget to ask about discounted Will and Lasting Power of Attorney Estate Planning Packages #AWill2TackleCancer when we call."

James Antoniou

Senior Solicitor and Head of Practice at Co-op Legal Services

A Lasting Power of Attorney (LPA) is a legal document that allows you to appoint one or more people to make important decisions on your behalf during your lifetime. Your LPA can be used when and if you can't make decisions for yourself or you're struggling to do so. It may seem strange at first to think that someone could make decisions for you but there are some very good reasons to have LPAs in place. They can help protect you and can also make the lives of your loved ones easier.

The people you choose to appoint in your LPA to make decisions for you are called the 'Attorneys'. These can be family members, friends or professionals. There are two types of LPA available. They are Property and Financial Affairs and Health and Welfare. They allow important decisions to be made on your behalf when you are at your most vulnerable.

The Property and Financial Affairs LPA legally allows your Attorney to, among other things, use your bank account, buy or sell your home, pay your household bills and expenses and deal with your pension or claim benefits for you.

The Health and Welfare LPA allows your Attorney to make decisions when you can't. This may include things such as what treatments you will or won't have, whether life sustaining treatment can be withheld, when and if you move into residential care or arranging for you to receive the right help and support to stay in your home.

Lasting Powers of Attorney are not to be confused with writing a Will.

They are completely separate legal documents to your Will. Many people do make a Will at the same time, so they've made clear plans for the future.



Why is a Lasting Power of Attorney so important?

If you live in England or Wales and want a loved one to be in a position to legally make decisions for you, you must follow the legal process of putting a Lasting Power of Attorney in place.

We are all living longer. But living longer comes with its problems. As we get older, there is a growing chance that we could start to lose the ability to make sound judgements or communicate our wishes properly. This could include choices about our savings and investments, our home, our health or even our welfare.

These are vital aspects of most people's lives. Take a moment to think about your own circumstances and ask yourself: "Who would I want to act in my best interests and be able to make important decisions on my behalf?"

Some people assume that if needed their husband or wife, partner or children would make decisions for them.

However, there is **no automatic legal right for your loved ones to make such decisions on your behalf.**

What are my options?

You have two:

- 1 Put an LPA in place.** This allows you to give someone you trust the legal authority to deal with your affairs if you can't do it yourself. Your LPA will reflect your wishes and needs and will give you the peace of mind of knowing you've taken care of the things that matter most to you.
- 2 Do nothing.** But, if you choose this option and you can't manage your own affairs because of old age, illness or an accident, your family will be paralysed and legally unable to make decisions for you. They could then face a long and expensive legal process to take control of your affairs. They would have to apply to the Court of Protection to be appointed your 'Deputy', which commonly involves instructing lawyers and can cost thousands of pounds.

Can anyone put a Lasting Power of Attorney in place?

You must be over 18 years old and have sufficient 'mental capacity' to make an LPA. Mental capacity is a legal term that defines if you have the ability to make and understand specific decisions when they need to be made. So in order to make an LPA, you must be capable of understanding what a Lasting Power of Attorney is, as well as who you are appointing as your Attorneys.

An LPA can only be put in place by you. It cannot be made by a friend or relative on your behalf. You have to act independently and make independent decisions about what you would like to do.



When is the best time to put a Lasting Power of Attorney in place?

The best time to make an LPA is as soon as possible. No one knows what's round the corner so the sooner you can put an LPA in place, the better for you and for your loved ones. Accidents or illness can leave you without capacity, not just old age, so plan ahead and make your Lasting Power of Attorney now.

There is a specific process to follow when you put your Lasting Power of Attorney in place:

- 1 Firstly, the Lasting Power of Attorney needs to be prepared. Like a Will, this can be done by you or by a legal professional. We always recommend you take professional advice so you fully understand your options and the implications of making an LPA.
- 2 Once your LPA is prepared, it needs to be signed by a number of people:
 - You have to sign it in the presence of an independent witness.
 - A person called a 'certificate provider' needs to sign it. This is someone who is impartial that can verify that you understand what you're doing and that you're acting independently. A certificate provider needs to be over 18 years old and have known you for at least two years. Alternatively, it has to be someone with relevant professional skills such as a doctor.
 - Finally, the Attorneys and any replacement Attorneys must sign it in the presence of an independent witness.
- 3 Once your LPA has been signed, it needs to be registered with the Office of the Public Guardian before it can be used. The court charges a fee of £110 for each LPA they register and there is an application process to follow. You can apply to have the court fee waived, if you're on a low income.

What next?

- 1 Decide if you want to put a Lasting Power of Attorney in place to deal with your financial affairs or your welfare, or both.
- 2 Think about who you trust to be your Attorneys and make decisions on your behalf. You might want to also include replacement Attorneys if, for any reason, your first choice is unable to act for you.
- 3 Think about whether you can make the LPA yourself or if you'd prefer to use a legal professional to make sure everything is done properly.

If you decide to take advice and use the services of a legal professional, Co-op Legal Services offers a professional Lasting Power of Attorney service giving you peace of mind. We can take you through all the stages of making an LPA. Our specialist LPA writers will discuss your circumstances and explain what's involved so you can make choices that are right for you. We offer fixed cost LPAs so the price is agreed at the start, with no surprises when you get the bill.

Further information



Choosing your Attorney

Choosing who you want to be your Attorney is a very important decision to make. You need to make sure that you completely trust that they will act in your best interests. For many, this will be an easy decision but for some people this can be more difficult, particularly when there is no obvious choice.

You can appoint as many Attorneys as you like. You can also choose replacement Attorneys. This will help if your first choice of Attorney can't act on your behalf. They may have already died or lost their own mental capacity, ruling them out. If you decide to have more than one Attorney, you need to consider how you want them all to make decisions. Think about if they need to do this together and agree before any action is taken or if they can make decisions for you independently of each other.

Should you restrict your Attorney's powers?

Consider if you want to limit the decisions your Attorneys can make for you.

You can include binding instructions to your Attorneys in your LPA. A binding instruction will tell your Attorney what they can or can't do on your behalf. For example, you could include that your Attorneys must consult with your financial advisor if they are investing more than £5,000.

If there are things that you would like to guide your Attorneys on when making decisions for you, then you can add in any preferences you have. For example, you might say that you would prefer your Attorneys to invest your money in ethical funds. These preferences are not binding on your Attorneys, but by being there they can consider them when making decisions for you.

However, by including instructions and preferences in your LPA, you can cause problems. It's possible that you try and include something that the law doesn't allow. Getting professional help with your LPA can help to avoid any issues.

You do not have to include any instructions or preferences in your LPA if you don't want to. If you trust your Attorney(s) to always act in your best interests, you may feel there is no need to do this as it could limit their ability to carry out their duties.

Frequently asked questions from our customers

Do I really need an LPA?

If you have financial interests in your own name or joint names, or if you want to name someone who can make decisions over your health and welfare when you are unable to communicate your wishes, then you should strongly consider a Lasting Power of Attorney. It's also worth considering the benefit of making life easier on your loved ones if they need to manage your affairs. Without an LPA in place, an additional burden and expense could be placed on your loved ones if they need to take control of your affairs. It makes sense to review all your options now so you can make an informed decision.

Can't I just leave my LPA until I've lost capacity?

No. Once you've lost capacity it's too late. The LPA must be put in place when you understand what it is and how it will affect you.

How much does it cost to make an LPA?

There are potentially two sets of fees. If you decide to use a professional legal service to write your LPA, then you will be charged their legal fees to advise you on your options and prepare the documentation. The legal fees charged depend on which legal service provider you use. There is also the court fee that needs to be paid when the registration of the LPA takes place. This is currently fixed at £110 for each LPA you register.

All our assets are in joint names, so do we still need LPAs?

Yes. At some point one of you will die first. Once that happens, there would be no one to act for the survivor if they can't manage their affairs.

Can I just add someone as a signatory on my bank account instead?

You may be able to arrange this with your bank but please be aware that if you lose 'mental capacity' then your signatory no longer has the legal authority to access your account. An LPA would allow them to continue to act on your behalf after you lose your decision making ability. Also, a signatory is limited only to that bank account and can't deal with your property, income or any investments with any other provider.

What if the person I appoint to be my Attorney dies before me or can't act as my attorney?

When you put your LPA in place, you can choose replacement Attorneys who can act if your primary Attorney(s) can't.

Does the LPA cover assets overseas?

Your LPA is only to be used in England and Wales. Other countries are unlikely to recognise it as they have different rules and laws. If you do have property overseas, you should think about taking advice from a legal professional in that country.

Is it going to be complicated?

It shouldn't be if you take the right advice. By using a legal professional, you instantly make the process much easier. For example, we've designed our LPA service to be easy to use. If you decide to use Co-op Legal Services, we can make an appointment to discuss your circumstances in order to understand your wishes. We then draft your LPA for you and complete all the associated paperwork too.

When will my LPA be ready?

We aim to send everything to you within seven working days of your appointment so you can arrange for them to be signed and witnessed.

Once your LPA has been signed, witnessed and sent back to us, we'll apply to the court to register your LPA(s). This can take the court a while to do, usually around 12 weeks. However, once registered, your LPA is active and in place.

Co-op Legal Services

Legal matters can seem daunting, so we try to keep things simple. We'll always explain how the law works, walking you through it step by step and try to avoid all legal jargon. And if that's not possible and it's something you really need to know, we'll explain it in simple terms.

There's no need to travel and when you need to talk, we'll always try to agree a time that suits you.

A different approach with extra protection

Our solicitors and legal advisors do things a bit differently. Wherever possible we let you choose the level of advice and support you need. We'll also give you a fixed price, without any hidden costs, so you can be certain of no nasty surprises when it comes to paying.

By using us you also enjoy extra protection. The Solicitors Regulation Authority (SRA) regulates our business and we make sure that everything we do is in line with their guidelines.

Part of the Co-op Group

As part of the Co-op Group, the UK's largest mutual business, we are owned by our millions of members. Unlike other law firms, this means that rather than any profits we make going to our shareholders or private owners, we invest back into the business to improve the service we offer to our customers, members and our communities.

We believe in working in an ethical and responsible manner based on traditional Co-op values, placing openness, honesty and caring for others at the heart of everything we do.

We can offer you peace of mind through our other services:

- **Probate and Estate Administration** - Advice and guidance when a loved one dies
- **Family** - Supporting you through all the ups and downs of family life
- **Personal Injury** - Helping you to get your life back on track
- **Employment Law** - Protecting your rights when you're at work
- **Conveyancing** - Taking the stress and hassle out of moving house
- **Will writing** - Peace of mind knowing your wishes are clear when you die



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