LEGAL MATTERS AND PLANNING AHEAD

Lasting Power of Attorney: a guide for families

Last updated 30 October 2026; sources last checked 30 October 2026.

IN BRIEF

A Lasting Power of Attorney (LPA) is a legal document that lets you choose people you trust to make decisions for you if you cannot make them yourself. There are two types, one for property and financial affairs and one for health and welfare. You must make it while you still have mental capacity, and registering each one with the Office of the Public Guardian costs £92.



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What is a Lasting Power of Attorney?

A Lasting Power of Attorney, or LPA, is a legal document in which one person (the **donor**) appoints one or more people they trust (the **attorneys**) to make decisions on their behalf. It is made under the Mental Capacity Act 2005 and applies in England and Wales. Scotland and Northern Ireland have their own systems.

To make an LPA, you must be 18 or over and have the mental capacity to understand what you are signing. That is why timing matters so much.

The two types of LPA

There are two separate LPAs. You can make one or both, and you can choose the same or different attorneys for each.

- **Property and financial affairs.** Covers things like managing bank and building society accounts, paying bills, collecting a pension or benefits, and selling the home. Once registered, it can be used straight away with your permission, even while you can still manage, which many people find helpful if they are in hospital or less mobile.
- **Health and welfare.** Covers decisions about daily routine (washing, dressing, eating), medical care, moving into a care home and, if you specifically give this power, life-sustaining treatment. It can only be used when you cannot make the decision yourself.

Why it is worth making one early

Many people think of an LPA as something for later life or for dementia. In reality, capacity can be lost suddenly, through a stroke, a fall, an infection or an accident, at any age. If it happens and there is no LPA:

- no family member automatically has the right to manage the person's money or speak for them
- the bank may freeze access to a sole account
- paying for care, selling a house or dealing with benefits can stall
- the family may have to apply to the Court of Protection, which is slower, more expensive and more closely supervised

An LPA also gives you the chance to say, in your own words, what matters to you, through the preferences and instructions section.

Choosing your attorneys

Attorneys must be 18 or over. For a property and financial affairs LPA, they must not be bankrupt or subject to a debt relief order. Think about:

- whether they know you well and will respect your wishes, not just their own views
- whether they are organised, and live close enough to help
- how they will get on with each other

If you appoint more than one, you choose how they work together. The Office of the Public Guardian's guidance says most people choose **jointly and severally**, meaning attorneys can act together or on their own, because it is the most flexible. If attorneys must act **jointly** on every decision and one dies or stops acting, the whole LPA can stop working. You can also name **replacement attorneys** to step in if needed.

Information to gather before you start

- the donor's full name, any other names, date of birth, address and email
- for each attorney and replacement attorney: full name, date of birth and address
- the name and address of the certificate provider
- names and addresses of up to five people to notify (optional)
- how you want attorneys to act (jointly and severally, jointly, or a mix)
- for a health and welfare LPA, whether attorneys may decide about life-sustaining treatment
- any preferences or instructions, in your own words
- if applying for a reduced fee, evidence of the donor's income or benefits

How to make and register an LPA, step by step



You can make an LPA online or on paper. Online is usually quicker and helps avoid mistakes.

1. **Start the form.** Go to GOV.UK and search for "Make a lasting power of attorney", create an account and choose which type of LPA to make. On paper, download form LP1F (property and financial affairs) or LP1H (health and welfare) and the LP12 guide.

2. **Fill in each section.** Add the donor, attorneys, how they act, replacement attorneys, the life-sustaining treatment choice (health and welfare only), people to notify, preferences and instructions, and the certificate provider.

3. **Choose who will apply to register.** Either the donor or the attorneys can apply. Registering straight away is best, so any errors can be put right while the donor still has capacity.

4. **Pay.** Online, you pay by card at the end. On paper, pay by card (the OPG will contact you) or by cheque payable to "Office of the Public Guardian". To claim a reduced fee or exemption, complete form LPA120 and send proof of the donor's income or benefits.

5. **Print and sign in the right order.** Everyone signs the same original paper document; copies and electronic signatures are not accepted:
    - the donor signs first, in front of a witness
    - then the certificate provider
    - then each attorney, in front of a witness, ideally on the same day
    - then any replacement attorneys

    Witnesses must be 18 or over. Attorneys cannot witness the donor's signature, though they can witness each other's.

6. **Notify people.** If you named people to notify, send each of them form LP3 just before you post the LPA.

7. **Post the signed LPA** to: Office of the Public Guardian, PO Box 16185, Birmingham, B2 2WH.

8. **Wait for registration.** The law requires a four-week wait before the OPG can register, and people to notify have three weeks from being notified to object. The OPG says registration takes 8 to 10 weeks overall if there are no mistakes. It then stamps the original and posts it back: this is the official LPA.

9. **Put it to use.** Attorneys can use the GOV.UK "Use a lasting power of attorney" service to give banks, care providers and others an access code, instead of posting paper copies.

Fees. It costs **£92** to register each LPA (£184 for both). If the donor earns less than £12,000 a year, the fee may be halved to £46, and there may be no fee if they receive certain means-tested benefits. If the OPG returns an LPA because of a mistake, you may be able to correct it and reapply within three months for £46.

Help from the OPG. Phone 0300 456 0300 (Monday to Friday, 9am to 5pm; Wednesday 10am to 5pm), or email customerservices@publicguardian.gov.uk.

Checking whether someone already has an LPA. If you are unsure whether a relative has a registered LPA, EPA or deputy, you can ask the OPG to search its registers using form OPG100 on GOV.UK.

The Powers of Attorney Act 2023 allows the OPG to modernise how LPAs are made and checked, including a more digital process, so some steps may change. Check the current instructions on GOV.UK before you start.

The certificate provider

The certificate provider is an impartial person who confirms that you understand the LPA and that nobody is pressuring you into making it. They must be 18 or over and either:

- someone who has known you well for at least two years, such as a friend, neighbour or former colleague, or
- someone with relevant professional skills, such as your GP, another doctor, a solicitor or a social worker

They cannot be a family member (yours or an attorney's), an attorney or replacement attorney, a business partner or employee of you or your attorneys, or anyone who runs or works for a care home where you live.

What attorneys must do

Attorneys must follow the principles of the Mental Capacity Act. That means helping you make your own decisions wherever possible, acting in your best interests when you cannot, choosing the least restrictive option, and taking account of your wishes and feelings. Finance attorneys should keep your money separate from their own and keep records and receipts. Our guide to mental capacity and best interests explains these principles.

What happens if there is no LPA

If someone has lost capacity and has no LPA, a family member or friend can apply to the **Court of Protection** to be appointed as a **deputy**. Current fees on GOV.UK are:

- £432 to apply, plus £266 if the court decides a hearing is needed
- a £100 assessment fee for new deputies
- an annual supervision fee of £320 (or £35 for minimal supervision in some smaller property and affairs cases)

Deputies may also need to buy a security bond, and must send an annual report to the OPG. The process usually takes months. Health and welfare deputies are appointed much less often, because the court usually prefers individual decisions to be made in the person's best interests. For benefits alone, the Department for Work and Pensions can appoint an **appointee** to manage them.

Common mistakes to avoid

- Waiting until capacity is already in doubt.
- Signing in the wrong order, or using the wrong witness.
- Choosing “jointly” without understanding the consequences.
- Leaving the LPA unregistered in a drawer.
- Forgetting the life-sustaining treatment section on a health and welfare LPA.
- Not telling attorneys where the document is.

What to do next

1. Talk with the person about who they would trust, and whether they want one LPA or both.
2. Choose a certificate provider and check they are eligible.
3. Make the LPA online at GOV.UK or download the paper forms.
4. Sign in the correct order and register it with the OPG straight away.
5. Keep the registered LPA safe and set up the “Use a lasting power of attorney” service.

How we can help

We are a care provider, not solicitors, so we cannot give legal advice, but a registered LPA makes planning care much smoother, because an attorney can speak for the person and agree arrangements when they cannot. If you are thinking about care at home, whether home care visits, night care or live-in care anywhere in England from £1,550 a week, our free initial assessment is a good time to bring your attorney or a family member into the conversation. Call us on 01865 715780.

Common questions

Can we make an LPA for a parent who has dementia?
Only your parent can make an LPA, and only if they have the mental capacity to do so at the time. A diagnosis of dementia does not automatically mean they cannot: many people in the earlier stages can understand what an LPA is and who they want to appoint. The certificate provider must be satisfied that they understand and are not under pressure. If your parent can no longer make an LPA, you would need to apply to the Court of Protection to become their deputy.

Does being next of kin give us the right to make decisions?

No. In England and Wales, being next of kin, a spouse or a child gives no legal authority to manage someone's money or make decisions about their care. Banks may restrict access to a sole account once they know the holder cannot manage it. Families are consulted about best interests decisions, but only an attorney under a registered LPA, or a deputy appointed by the court, can make decisions on someone's behalf.

How long does it take to register an LPA?

The Office of the Public Guardian says registration takes 8 to 10 weeks if there are no mistakes in the application, and is usually quicker if you make and pay online. The LPA cannot be used until it has been registered, so it is wise to register it straight away rather than waiting until it is needed. Mistakes can add weeks, so check the signing order and every section carefully before sending it.

Do we need a solicitor to make an LPA?

No. Many people make their own LPA using the GOV.UK online service or the paper forms, and pay only the registration fee. A solicitor can be helpful if your affairs are complicated, you own a business, there may be family disagreement, or there could be doubts about capacity. Solicitors charge for this, so ask for a fixed fee in writing. Some charities can also help you fill in the forms.

Can an attorney use the person's money for themselves?

No. Attorneys must act in the person's best interests, keep their money separate from their own, and keep records of what they spend. They can only make modest gifts on customary occasions, such as birthdays, in line with the person's means. They cannot benefit themselves beyond that. If you think an attorney is misusing their position, report it to the Office of the Public Guardian on 0300 456 0300.

Is an old enduring power of attorney still valid?

Yes. Enduring powers of attorney (EPAs) made before 1 October 2007 can still be used. An EPA covers property and financial affairs only, not health and welfare decisions. It can be used before registration while the person still has capacity, but once the attorney believes the person is losing or has lost mental capacity, it must be registered with the Office of the Public Guardian.

Sources and further information

- GOV.UK: Make, register or end a lasting power of attorney
- GOV.UK: Register a lasting power of attorney (fees)
- Office of the Public Guardian: LP12 Make and register your lasting power of attorney, a guide
- GOV.UK: Deputies, fees
- GOV.UK: Report a concern about an attorney, deputy or guardian
- legislation.gov.uk: Mental Capacity Act 2005

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Talk to our care team: 01865 715780
enquiries@dayandnightcare.co.uk · Out of hours: 07775 686272
Day and Nightcare Live In Limited, 9 Hollow Way, Cowley, Oxford OX4 2NA
CQC overall rating: Good (report published 20 April 2018)

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