

THE **LAW SOCIETY**
OF NORTHERN IRELAND



WRITTEN EVIDENCE TO THE AD HOC JOINT COMMITTEE ON THE MENTAL CAPACITY BILL

96 Victoria Street

Belfast BT1 3GN

Tel: 02890 23 1614

Fax: 02890 232606

Email: info@lawsoc-ni.org

Website: www.lawsoc-ni.org

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Law Society of Northern Ireland Written Evidence to the Ad Hoc Joint Committee on the Mental Capacity Bill

Introduction

1. The Law Society of Northern Ireland ("the Society") is a professional body established in 1922 by Royal Charter and invested with statutory functions in relation to solicitors, primarily under the Solicitors (NI) Order 1976. The functions of the Society are to regulate responsibly and in the public interest the solicitors' profession in Northern Ireland and to represent solicitors' interests.
2. The Society represents over 2,200 solicitors working across the whole of Northern Ireland. Members of the Society represent private clients in legal matters and are therefore uniquely placed to comment on policy and law reform proposals.
3. The Society welcomes the opportunity to provide written evidence to the Ad Hoc Joint Committee ("the Committee") on the Mental Capacity Bill ("the Bill") in relation to the proposed legislative framework for mental capacity and mental health legislation in Northern Ireland. Solicitors perform a vital role in advising members of the public in relation to mental capacity and mental health law, including the most appropriate way to handle their affairs should they become mentally incapacitated.

Evidence and Proposed Amendments to Specific Sections / Schedules of the Bill

Sections 1 – 4 – The Capacity Test

4. The Society is concerned that the test for capacity set out in Section 3 of the Bill is in breach of the UN Convention on the Rights of Persons with Disabilities ("UNCRPD") on the basis that having a diagnostic limb within a capacity test can be argued as being inherently discriminatory. The UNCRPD was ratified by the United Kingdom on 8th June 2009 after the Mental Capacity Act 2005 ("MCA") was passed in England and Wales and the Westminster government is currently reviewing the legislation on this basis. On 11th April 2014 the UN Committee on the Rights of Persons with Disabilities adopted its General Comment on Article 12 of the UNCRPD which made this point. Additionally, Denzil Lush, Senior Judge of the Court of Protection in England and Wales gave evidence to the House of Lords Post-Legislative Scrutiny Committee on the MCA

stating “I am not entirely convinced that the Act is compliant with Article 12 of that Convention, so one might explore statutory amendments that gave a wider range of powers to the Court, rather similar to the Bill just published in the Irish Republic enabling assisted decision making and possibly co-decision making agreement”.

5. If having a diagnostic limb is considered necessary (without it, there is a risk that merely indecisive people could be found to lack capacity), it may need to be reframed to ensure that a person is considered to lack capacity only where they are unable to make a decision because of the impairment or disturbance of the mind or brain. The Court of Appeal in *PC and NC* [2013] EWCA Civ 478, observed that Section 2 (the capacity test) and Section 3 (the functional test) in the MCA did not establish a series of additional, free-standing tests of capacity. Instead Section 2(1) was a single test, interpreted by applying the more detailed description given in Sections 2 and 3. Section 3(2)(a) – (b) should include the words “and / or” so that it reads:

- (a) “Whether the impairment or disturbance is permanent or temporary; and / or
- (b) What the cause of the impairment or disturbance is”.

6. Section 3(1) prefixes the meaning of “lacks capacity” by “for the purposes of this Act”. This creates uncertainty as to whether all decisions where capacity may be in doubt or later challenges to capacity should apply the same test. For example, where a person is making a will is this the test to be applied even though it may never come to be decided by a Court? Additionally, does the presumption of capacity apply to the making of a will, as this could create difficulties to challenges post death where there are doubts as to capacity? With whom does the burden of proof lie? It may be almost impossible to challenge a will post death.

7. The relevant information which a person would be expected to understand includes under Section 4(2) of the Bill the information about the reasonably foreseeable consequences of:

- (a) deciding one way or another; or
- (b) failing to make the decision.

This would mean that a testator would need to understand what would happen if he did not make a will or made it on different terms. This would extend the current common law position and would include advice on the rules of intestacy.

8. The definition of capacity within the Bill is determined by reference to inability to make “a decision” rather than inability to make decisions generally. Capacity is therefore to be

determined on each occasion that a decision needs to be made. Assessing capacity every time a decision needs to be made is time consuming and has cost implications. However, the Court of Protection in England and Wales has adopted a more pragmatic approach to capacity when appointing deputies, highlighted in the case of *A, B, & C v X & Z* [2012] EWHC 2400 (COP) when Mr Justice Hedley said,

“the general concept of managing affairs is an ongoing act and, therefore, quite unlike the specific act of making a will or making an enduring power of attorney. The management of affairs relates to a continuous state of affairs whose demands may be unpredictable and may occasionally be urgent.”

This complex case involved an elderly man with dementia, with fluctuating mental capacity. The Court had refused to make declarations that he lacked mental capacity to get married, make a will, or make a Lasting Power of Attorney (“LPA”). The presumption being that he had mental capacity to undertake those acts. The Court accepted there would be times when he had capacity to make decisions about his property and affairs, but nevertheless appointed a deputy as management was an ongoing concept even if capacity was not. Mr Justice Hedley did not comment on what would happen during a period of lucidity, although Section 20(1) of the MCA (the equivalent restriction is in Section 116(1) of the Bill) shifts the power of decision making from the deputy back to the person for whom he is appointed to act, where the deputy reasonably believes the patient has mental capacity in relation to the matter.

Most property and affairs orders made by the Court in England and Wales are empowerment orders, granting general authority with the power to manage and invest as if the deputy were himself the beneficial owner. A deputy would be in breach of Section 20(1) of the MCA if he were to make a decision at a time he believed that the patient had sufficient mental capacity to make the property and affairs decision. This can create practical problems for the deputy, who must accommodate this possibility when setting up financial management arrangements. Financial institutions struggle to adapt to the possibility of different people managing the same funds under different authorities (i.e. at times the person subject to the order will be deemed to be able to act autonomously and the deputy will be able to act under an order of the Court).

9. The Society is also concerned at the potential for a conflict of interest to arise in making an assessment of a person’s capacity. In particular, whether it is a conflict of interest if the person making the capacity assessment is also involved in the ongoing treatment or ongoing management of the patient’s affairs.

Section 5(2)(c) – Supporting the person to make a decision

10. Section 5(2)(c) provides that persons whose involvement is likely to help a person to make a decision are to be involved in helping and supporting that person. There may be a risk of conflict with legal professional conduct rules, particularly the duty of confidentiality and undue influence. The definition of “likely to help” may need to be explained in the Code of Practice (once published) so that it makes clear that it is not appropriate to involve anyone where there is a risk of undue pressure or influence or permission of the person where capacity is in doubt is obtained.
11. The Society in general welcomes the personal autonomy provisions within the Bill in relation to supporting a person to make a decision. Care would need to be taken however to ensure that the presumption of capacity and support to make a decision does not become an excuse for the provision of substandard care or indeed the denial of care entirely on the basis of a suspect view that the patient was agreeing to and had the capacity to agree to such inappropriate care. This can be particularly the case when the care decision results in a cost saving for the service provider.
12. The Society has concerns that individuals with significant communication difficulties will come within the definition of not being capable of making a decision (whether supported or otherwise) despite actually having capacity but simply not being able to communicate that properly. Detail on assessments and support for people in that situation will need to be fleshed out in the Code of Practice.

Section 5(2)(c) – Co-Decision Makers

13. The Society notes that the Bill places an emphasis on supporting individuals to make a decision, including under Section 5(2)(c) ensuring that “persons whose involvement is likely to help the person to make a decision are involved in helping and supporting the decision”. Consideration should also be given as to whether assisted and / or co-decision making measures could be incorporated as in the Republic of Ireland’s Assisted Decision-Making (Capacity) Bill 2013.

Sections 7 & 8 – Substituted Decision-Making and Best Interest

14. The Society is concerned that the regime of substituted decision making in a person's best interests pursuant to Sections 7 and 8 of the Bill are unlawful by virtue of being a breach of the UNCRPD. In its General Comment on Article 12 the UN Committee on the Rights of Persons with Disabilities stated (at paragraphs 22 and 23):

"The Committee....has repeatedly stated that States parties concerned must.....take action to develop laws and policies to replace regimes of substituted decision-making by supported decision-making, which reflects the person's autonomy, will and preferences. Substitute decision-making regimes can take many different forms. They can be defined as systems where.....any decision made by a substitute decision-maker is based on what is believed to be in the objective "best interests" of the person concerned, as opposed to being based on the person's own will and preferences".

Careful consideration needs to be given as to what steps should be taken to ensure that those supporting the patient are not imposing their own desired outcome or unduly influencing the patient.

15. If the Bill continues with its current substituted decision-making provisions, the Society recommends that the patient's wishes and feelings are given considerably greater weight in the determination of how that decision is made. It may be the case that the patient's wishes and feelings should be determinative if they are identified and capable of being implemented lawfully.

16. It is the view of the Society that, if the current substituted decision-making provisions are retained in the legislation, it may be of benefit to have a ranking of the statutory criteria in the determination of best interests.

17. Section 7 sets out people who should be consulted however an attorney acting under an Enduring Power of Attorney ("EPA") is omitted. We note that reference to such a person is included within the Draft Mental Capacity Bill (NI) Consultation Document (page 9) and therefore that person should properly be included within the Bill itself.

Section 9 – Deprivation of Liberty

18. The Bill contains a significant distinction between general acts done in connection with the care, treatment or personal welfare of a patient (which mirrors Section 5 MCA) and those acts to which additional safeguards apply before reliance can be placed upon the protection. There are also different provisions in relation to short-term detentions in hospital for examinations which can be authorised on the basis of a medical report stating that the criteria for authorisation are met.

19. The position in England and Wales was stated by the Supreme Court in *P v Cheshire West & Chester Council and P & Q v Surrey County Council* [2014] UKSC 19, which found that the “acid test” to establish whether a person is being deprived of their liberty is whether the person concerned “was under continuous supervision and control and was not free to leave”. The person’s compliance or lack of objection is not relevant; the relative normality of the placement (whatever the comparison made) is not relevant and the reason or purpose behind a particular placement is also not relevant. The experience in England and Wales under the MCA was summarised by the House of Lords Report referred to above. It described the deprivation of liberty safeguards under the MCA as being unduly complicated and not understood or owned by the people on the ground. They recommended that the entire existing regime be scrapped and new legislation be introduced. The Society strongly urges lessons to be learnt from this to ensure that Northern Ireland does not suffer from a repeat of the experience in England and Wales.

20. The Bill will also need to ensure the deprivation of liberty provisions include supported living and shared lives placements.

Section 45 – 51 – Mental Health Review Tribunal

21. The Society notes the expanded remit of the Mental Health Review Tribunal under the Bill. Confirmation is required that the Tribunal will be given a corresponding increase in resources to deal with this expansion in its activities.

22. The Society notes that historically the Tribunal has been chaired by either a solicitor or a barrister but that there is nothing in the Bill confirming that this will continue. It is the Society’s view that it is essential that the existing position continues. The Tribunal exercises a legal function akin to the Magistrates Court with the power to detain patients for up to 6 months at a time therefore the Tribunal should be chaired by legally qualified persons.

23. It is the Society's view that the patient must always have legal representation at the Tribunal should the patient so wish. The Health Trust will always have legal representation and it is therefore vital for patients to have access to the same standard of representation to ensure that they have full access to their rights. It is important in this regard that the current merits test continues to apply in relation to a patient's access to Legal Aid funding for the Tribunal. These are among the most vulnerable people in society and require as much protection as they can possibly receive.
24. The Society notes that there is no provision in the Bill for any appeal of a decision of the Tribunal and is concerned that this is in breach of Article 6 of the European Convention on Human Rights. If such a right of appeal is introduced, consideration must be given as to the correct forum for that hearing, whether in the High Court or otherwise.
25. The Society is concerned that there is no mechanism within the Bill for approval of a solicitor's terms of engagement when acting for a patient in the Tribunal. Under the Solicitors (Client Communication) Practice Regulations 2008, a solicitor is required to provide their terms of engagement to the client however if the client does not have capacity to enter in to a contract and there is no other suitably appointed person to contract on the patient's behalf, the solicitor is placed in a very difficult position. Clarification is required in either the final Bill or the Code of Practice in relation to this situation.

New Section – Mental Capacity Champion

26. The Society notes the view in England and Wales that Health and Social care decision makers in particular do not generally understand the MCA. The House of Lords Report recommended to embed the Act in every day practice and that a single independent body should be established with responsibility for oversight of the implementation of the MCA. The Society recommends that provision is made for this in the Bill.

Sections 67 – 76 – Nominated Persons

27. The Society recommends that a provision should be included within the Bill to automatically prevent a default nominated person being able to act where they have previously been found

guilty of ill treatment and neglect under the Bill or removed as an attorney or deputy by the Court.

Sections 95 – 109 & Schedule 4 – Lasting Powers of Attorney

28. The Society favours the retention of the EPA regime however it can see benefits to the introduction of the LPA regime particularly with the introduction of the health and welfare provisions. The Society sees no reason why the two regimes cannot co-exist by giving clients the choice of the “Rolls Royce” or “Mini”.
29. The Society has consulted with practitioners from England and Wales to learn lessons from their experience after the introduction of their MCA and these consultations substantially inform our evidence.
30. The LPA forms are considered to be too long and are trying to do too much. It is estimated that 30% of the forms are completed incorrectly¹. By way of illustration of the point, attached at Appendix 2 is the documentation required for both a Property and Affairs LPA (“P&A LPA”) and a Health and Welfare LPA (“H&W LPA”) which runs in total to over 100 pages. These forms have continually had to be revised and improved with the latest versions attached to this evidence having been issued on 1st July 2015. This compares with the EPA which only requires a 4 page form and a copy of which is attached at Appendix 1.
31. When the Office of Public Guardian (“OPG”) in England and Wales was introduced, it did not have capacity to deal with the flood of applications that it received almost immediately. There has had to be continuous consultations to fix the problems. There can be a wait of between 9 and 16 weeks for registration of an LPA which is completely impractical. The Society is concerned with the current lack of detail in relation to the funding of the Northern Ireland OPG and it is concerned that there will be a replication of the situation in England and Wales. In particular, the OPG in England and Wales requires a huge IT capacity to function and the Society is concerned at both the cost and potential delay in putting this in place.
32. The Society welcomes the increased investigatory powers proposed for the OPG in Northern Ireland but concerns remain as to implementation and the Code of Practice is awaited in this regard. The Society views the current standard of service provision from the Court Service as

¹ As per Martin John, the Public Guardian, the Law Gazette, 7th August 2008

being generally of a high quality and wishes this to continue under the new OPG. The Society also wishes to seek clarification on whether the OPG will be self-funding.

33. The Society's view is that the notification provisions in the LPA are essentially worthless. These are supposed to be a safeguard (as they are with an EPA) but any objection is by definition speculative as you cannot know how the attorney is going to act in the future and it should be for the Court to decide on the available evidence. There are approximately 350,000 LPA being registered every year in England and Wales² but there are only approximately 100 objections and therefore the provisions are disproportionate. If a person objects to the OPG that triggers suspension of the registration of the LPA but the person still has to make an application to the Court on the issues as well. This double application is unnecessarily complex, time-consuming and costly. Also, given the ability of the donor of the LPA to specify the parties to be notified, the notification provisions too easily sidestepped to be of any value.
34. Furthermore in relation to the notification process, the Society notes that the donor can choose not to notify anyone but, as currently drafted, the Bill still requires that the notification period must elapse before registration is completed or that there must be a Court order dispensing with that notification period. This is either an unnecessary delay (in the event that notification is required) or an unnecessary cost (in the event that a Court order must dispensing with notification must be obtained).
35. The Society appreciates the potential benefits of the immediate registration of the LPA as opposed to registration of the EPA at the point that capacity is lost. This removes the issue of having to confront the person with their lack of capacity. However, the immediate cost may deter people from creating or registering the LPA.
36. The Society would prefer a notification process which takes place after registration of the LPA. This will allow other interested parties, usually family members, to know that the LPA is in place and that they can report the attorney to the OPG if there has been any wrongdoing. It is suggested that the class of notification parties should include spouse / civil partner, co-habitees and children and perhaps a wider class.
37. The Bill intends to provide an additional safeguard with the certificate provider being able to explain the form to the person signing it. The Society's view is that there should be a

² Public Guardian Board Annual Report 28th June 2012.

requirement that the certificate provider must see the donor to ensure that they fully understand what they are signing and that the LPA is signed by the donor in the presence of that certificate provider.

38. The Society notes that a lot more work needs to be done in England and Wales on educating attorneys in relation to what constitutes misuse or abuse. There must be a massive education process for the public in Northern Ireland prior to the introduction of the Bill, especially in relation to the H&W LPA. It is estimated in England and Wales that 15% of LPA / EPA are misused or abused. There is provision in that jurisdiction to name and shame attorneys who have been found to have misused or abused their position.
39. The Society has major concerns in relation to the likely cost of making an LPA. It is estimated that the average solicitor's fee for making an LPA in England and Wales is in the region of £500 plus VAT and when added to the application fee to the OPG for immediate registration (currently £110) then it can be reasonably expected that the total cost will put off a large number of people who would previously have made an EPA (the cost of which is approximately £100 with a further £115 payable at the point of registration). This has the effect of pricing the most vulnerable out of being able to avail of the protections provided by the LPA and it is they who are the most in need of having those protections in place.
40. The Bill does not address issues that the OPG will have in relation to the Data Protection Act 1998. When exercising its investigative function, the OPG will have cause to request details from the High Court however, due to the restrictions that the Court has by virtue of the Data Protection Act 1998, the OPG cannot gain access to the Court files and must therefore make their own enquiries with the Court. This leads to unnecessary delay and is completely impractical when dealing with urgent cases. The Society would suggest ensuring that the transfer of information between the OPG and the High Court is included as one of the exemptions under Part IV of the Data Protection Act 1998.
41. In relation to the certificate provider provisions, the Bill requires (in Schedule 4 Paragraph 2(1)(e)) they need the skills or expertise to provide the necessary opinion. The Society's view is that all certificate providers should self-certify to say that they have the skills so that they are not automatically assumed to have those skills. The difficulty comes in how to measure those skills against a standard and further guidance is awaited on that point.

42. The Society would make the following points in relation to certificate providers:

- (a) They are intended to protect the most vulnerable but more detail is required on who can be a certificate provider.
- (b) The only challenge to a certificate provider appears to be in the event of extreme negligence and loss being suffered.
- (c) In Scotland, a certificate provider was limited to being doctors and solicitors and in that jurisdiction they also removed the notification provisions.
- (d) It is noted that in England and Wales there has been no impact on a solicitor's professional indemnity insurance premium when they have acted as a certificate provider.
- (e) It was also noted that Courts do not treat solicitors or lay certificate providers any differently when judging whether the provider's assessment was valid.

43. The Society notes that, strictly speaking, English LPA and EPA are not valid in Northern Ireland. They are operative in Scotland as it has ratified the Hague Convention and can provide Article 38 Certificates. The Bill needs some mechanism for this to be done in Northern Ireland. Is the intention for Northern Ireland to ratify the Convention? Also, reference should be included in the legislation specifically confirming that LPA and EPA from England, Wales and Scotland are valid in Northern Ireland. Reciprocal legislation would be required in those jurisdictions to ensure that powers made in Northern Ireland are valid there and the Society advocates having this done.

44. Clarification is required in relation to the position where a patient has more than one power of attorney. Is it going to be the case where the latter revokes the former automatically or can the powers be read together?

Section 110 – Enduring Powers of Attorney

45. The Society notes with concern that the Bill proposes to abolish the EPA by repeal of the Enduring Powers of Attorney (NI) Order 1987. It is the Society's view that the EPA has brought a number of benefits to this jurisdiction and that the current system of the EPA should be retained.

46. The simplicity of the current EPA system has led to widespread use by members of the public. It has also meant that the cost of putting an EPA in place both in terms of the legal costs in assisting with the completion of the prescribed forms and the Court fees for registration of the EPA has been kept low.
47. It is understood that one of the primary drivers for the proposed introduction of the LPA in Northern Ireland is that it will decrease fraud. This is not the experience in England and Wales, quite the opposite. More cases of fraud are now being prosecuted resulting from the actions of an attorney under an LPA than were ever taken under the EPA regime.
48. While the Society would not suggest that the EPA regime is beyond reproach, it would recommend that, given its significant benefits, the system be retained. If necessary this would be alongside the introduction of the LPA regime so that clients are given the maximum choice and flexibility when choosing how to order their affairs.
49. Despite the proposed abolition of the EPA regime, there will be a transitional period in which existing EPA must continue to be administered. It is the Society's view that the responsibility for oversight of any existing EPA should be transferred to the new OPG but that its remit should also include oversight of unregistered EPA.

Sections 111 – 129 – Court and OPG Powers

50. Section 112(4)(b) of the Bill requires that the appointment of deputies is limited in scope and duration. The practice in England and Wales is that a full application must be made every 3 years ab initio, including medical evidence. It is then a Court (not OPG) decision to consider whether the appointment is still required to stay in place. This application is at full cost and, to date, no application has ever been refused. It is the view of the Society that such a fresh application every 3 years is completely unnecessary and that it would be better not to limit the duration of such appointments. The Society does agree that it is necessary to limit the scope of the appointments in certain circumstances as envisaged by the Bill. Under the existing Controllership system, there is an annual reporting requirement and included within this is a statement on the condition of the patient. The Society sees no reason for this to change.
51. In England and Wales there have been approximately 55,000 property and affairs deputies appointed but under 300 health and welfare deputies. Partly this is because in England and

Wales the applicant pays the costs, not the patient's estate, when applying to be a welfare deputy. The scope of their appointment is also limited so often it is not worth making the application. The Society would suggest that the costs should be met from the patient's estate so as to facilitate the uptake of health and welfare deputies.

52. The Court and the OPG both need to be able to access financial records as part of their investigatory powers. They can get access currently to health records without needing to give reasons and it is the Society's view that there is no practical difference for financial records. At the moment in England and Wales, both the Court and the OPG have to go through the attorney for access to financial records which obviously does not work as they may be the abuser.
53. The Society notes that under the current proposals the OPG does not have retrospective power to investigate deputies or attorneys who have been removed or parties who have intermeddled in a patient's affairs without having been formally appointed as a deputy or attorney. It is the Society's view that this needs to be included within the final Bill and that the definition of deputies and attorneys needs to include prior appointees or those who have intermeddled.
54. The Society notes Section 124 of the Bill in relation to the duty on OPG, not a Health and Social Services Trust, to investigate cases. This duty falls on the Office of Care and Protection at the moment in Northern Ireland and it is assumed that this will be transferring to the new OPG however confirmation is required. Also, it is noted that this can be wider than the current function as it will include the deprivation of liberty rules. Resources are a massive issue for this in England and Wales and the Society urges this area to be properly resourced in Northern Ireland.
55. Under the Mental Health (NI) Order 1986, the Office of Care and Protection had to be notified if a person went in to a nursing home. The Society considers this to be a very useful provision and it should be retained in the new Bill for notification to the OPG. The Society also considers that an obligation should be placed on health professionals to notify the OPG in the event of incapacity. The current legislation does not apply to a person at home, not in a nursing home, and this loophole should be closed.
56. The Society notes that there is no provision within the legislation for the appointment of a deputy of last resort. Currently, the Official Solicitor is appointed as controller of last resort,

often in very difficult circumstances where there is no one else within the family who is suitable. Clarification is required on who will perform this function under the new regime.

Section 256 – Ill Treatment and Neglect

57. The Society notes that the rules in relation to ill treatment and neglect do not currently extend to attorneys under an EPA. There does not appear to be any reason for this and it should therefore now be done.

Section 268 – Dealing with Money and Valuables

58. Section 268 codifies the common law position so that a third party may make arrangements with a supplier for necessary goods and services on behalf of a person who lacks mental capacity. The recent English case of *Aster Healthcare Ltd v the estate of Mohammed Shafi [2014] EWHC 77 (QB)* considered the equivalent provision contained in Section 7 MCA and had to rely on the case of *Re Rhodes [1890] 44 Ch Div 94* to clarify that the provision does not come into play in circumstances in which it was not intended by the supplier that the recipient should pay for those goods and services, but that the person making those arrangements, or someone else, should. It is the Society's view that it may be sensible for this to be clarified in the Bill.

Section 272 & Schedule 9 – International Protection of Adults

59. LPA and EPA are not classed as protective measures. It may be useful to create a mechanism (for example by designating them as a protective measure) so that the Court is able to make declarations as to enforceability and recognition of foreign LPA and EPA from States which are not a Convention State.

Non Section Specific Evidence

Advanced Directives

60. Clarification is required in relation to an Advance Directive and how it works with a H&W LPA. In particular, confirmation is required as to whether the last document to be signed is the

operative document, especially given that this is most likely to be the H&W LPA as the important date is the date of registration not execution.

Non-application to Under 16s

61. The Society notes with concern that the Bill excludes children and young people under the age of 16 entirely. The Society believes that this exclusion is potentially discriminatory and does not comply with the European Convention on the Rights of the Child and the European Convention on Human Rights. This is particularly the case given that the age of capacity for criminal offences is deemed to be 10 years old but this is not taken in to account within the Bill.
62. The Society urges the government either to include under 16s within the Bill or to bring forward separate legislation as soon as possible so as to rectify this deficiency.

Wills

63. The Society requests confirmation whether the provisions of the Bill in relation to capacity will apply when a person is making a will. The Bill should make it clear that the common law presumption of capacity still applies in relation to the making of wills rather than being replaced by the definition of capacity in the Bill.
64. The Society notes that part of understanding a decision is that the person must understand what happens if they do not do anything so the question must be answered as to whether a solicitor will also now be required to explain the intestacy rules to a client and also whether more information is required over and above the Banks v Goodfellow test³?
65. The Bill is also an opportunity for legislation on whether attorneys should see a donor's last will. The Society notes the following differing viewpoints:

- (a) The Society of Trust and Estate Practitioners code on will writing in England and Wales says that it should not be disclosed.

³ This states that the testator must (1) understand the nature of making a will and its effects (2) understand the extent of property of which he is disposing and (3) be able to comprehend and appreciate the claims to which he ought to give effect and is not affected by any disorder of the mind that influences his will in disposing of his property.

- (b) The OCP says that an attorney should not however act contrary to the will.
- (c) Guidance from the Law Society of England and Wales states that specific authority should be obtained from the client to permit disclosure.

The view of the Society is that the attorney should be entitled to see a copy of the will once the donor has lost capacity unless there are specific instructions to the contrary from the testator.

66. Under Section 103 of the Mental Health (NI) Order 1986, if property which has been specifically bequeathed is sold by a Controller there is no ademption (i.e. that the property is no longer within the estate so that the gift would fail) so that the proceeds of sale can be tracked and the intentions of the testator given effect (as far as possible). The Society advocates including an equivalent provision with the Bill and also that the provision should be extended to attorneys (both under an EPA and a LPA) as well as Controllers.

Legal Aid

67. The Society notes that no Legal Aid Impact Assessment has been provided with the Bill. This will need to be reviewed and commented upon by the Society once it has been produced and the Society urges its completion and publication as soon as possible.

APPENDIX 1

Enduring Power of Attorney

Prescribed Form

Part A: Explanatory Information

1. An enduring power of attorney enables you to choose a person (called an "attorney" to deal with your property and affairs, and will continue in the event of your becoming mentally incapable of managing your affairs. You may choose one attorney or more than one. If you choose more than one, you must decide whether they are to be able to act:
 - Jointly (that is, they must all act together and cannot act separately)
 - or
 - Jointly and severally (that is, they can all act together but they can also act separately if they wish).
2. If you give your attorney(s) general power in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.
3. If you do not want your attorney(s) to have such wide powers, you can include any restrictions you like. For example, you can include a restriction that your attorney(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction that your attorney(s) may not sell your house. Any restrictions you choose must be written or typed at the place marked 2 in Part B of this form.
4. Unless you put in a restriction preventing it your attorney(s) will be able to use any of your money or property to benefit themselves or other people by doing what you yourself might be expected to do to provide for their needs. Your attorney(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.
5. Your attorney(s) can recover the out-of-pocket expenses of acting as your attorney(s). If your attorney(s) are professional people, for example solicitors or accountants, they may be able to charge for their professional services as well.
6. If your attorney(s) have reason in the future to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the High Court (Office of Care and Protection) for registration of this power. Once registered, an enduring power of attorney cannot be revoked (or cancelled) effectively unless the Court confirms the revocation.
7. Before applying to the Court for registration of this power, your attorney(s) must give written notice that that is what they are going to do, to you and your nearest relatives as defined in the Enduring Powers of Attorney (Northern Ireland) Order 1987. You or your relatives will be able to object if you or they disagree with registration.
8. This is a simplified explanation of what the Enduring Powers of Attorney (Northern Ireland) Order 1987 and the Rules and Regulations say. If you need any more guidance you or your advisers will need to look at the Order itself and the Rules and Regulations. The Rules are contained in the Rules of the Supreme Court (Northern Ireland) 1980, Order 109A (as inserted by S. R. 1989 No. 79). The Regulations are the Enduring Powers of Attorney Regulations (Northern Ireland) 1989 (S. R. 1989 No. 64).
9. Do not sign this form unless you understand what it means. If you are in any doubt you should obtain legal advice.
10. Note for attorney(s): after the power has been registered the attorney(s) should notify the High Court (Office of Care and Protection) if the donor dies or recovers.

Part B: [To be completed by the 'donor' (the person appointing the attorney(s))]

[Please read the notes in the margin

Donor's name and address

Donor's date of birth

Attorney(s) name(s) and addresses

See note 1 in Part A of this form. If you are appointing only one attorney you should cross out everything between the square brackets.

Cross out the one which does not apply (see note 1 in Part A of this form).

Cross out the one which does not apply (see note 2 in Part A of this form).

If you do not want the attorney(s) to have general power, you must give details here of what authority you are giving the attorney(s).

Cross out the one which does not apply

If you choose the second alternative you must give details here of the property and affairs in relation to which the power is to apply.]

I _____
of _____
born on _____
appoint _____
of _____
[and _____
of _____

- [1.] • jointly
• jointly and severally]

to be my attorney[s] for the purpose of the Enduring Powers of Attorney (Northern Ireland) Order 1987.

- with general authority to act on my behalf
- with authority to do the following on my behalf:

in relation to

- all my property and affairs
- the following property and affairs

Cont'd

[Note - anything on this page within square brackets is for guidance only and may be retained, deleted or omitted as appropriate, except that you must make it clear whether one attorney or more than one attorney is being appointed; and if more than one, whether the attorneys are being appointed to act jointly or jointly and severally.]

[Part B: continued]

[Please read the notes in the margin

Cont'd

[2.] subject to the following restrictions and conditions:

If there are restrictions or conditions, insert them here; if not, cross out these words (See note 3 in Part A of this form).

I intend that this power shall continue even if I become mentally incapable.

I have read or have had read to me the notes in Part A which are part of, and explain, this form.

Your signature

Signed, sealed and delivered by me _____ (I.S.)

Date

on _____

Someone must witness your signature

Signature of witness

In the presence of _____

Your attorney(s) cannot be your witness. If you are married it is not advisable for your husband or wife to be your witness.]

Full name of witness _____

Address of witness _____

[Note - anything on this page within square brackets is for guidance only and may be retained, deleted or omitted as appropriate.]

Part C: [To be completed by the Attorney(s)]

[This form may be adapted to provide for sealing by a trust corporation with its common seal.]

[If there are more than two attorneys attach an additional Part C.]

[Do not sign this form before the donor has signed Part B

You must be at least 18 when you sign

Signature of attorney

Date

Signature of witness

Each attorney must sign the form and each signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.]

[To be completed only if there is a second attorney

You must be at least 18 when you sign

Signature of attorney

Date

Signature of witness

Each attorney must sign the form and each signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.]

I understand that I have a duty to apply to the High Court for the registration of this form under the Enduring Powers of Attorney (Northern Ireland) Order 1987 when the donor is becoming or has become mentally incapable.

I also understand my limited power to use the donor's property to benefit persons other than the donor.

I am not a minor.

Signed, sealed and delivered by me _____ (L.S.)

on _____

In the presence of _____

Full name of witness _____

Address of witness _____

I understand that I have a duty to apply to the High Court for the registration of this form under the Enduring Powers of Attorney (Northern Ireland) Order 1987 when the donor is becoming or has become mentally incapable.

I also understand my limited power to use the donor's property to benefit persons other than the donor.

I am not a minor.

Signed, sealed and delivered by me _____ (L.S.)

on _____

In the presence of _____

Full name of witness _____

Address of witness _____

[Note - anything on this page within square brackets is for guidance only and may be retained, deleted or omitted as appropriate.]

APPENDIX 2



Office of the
Public Guardian

Form

LP1F



Lasting power of attorney



Financial decisions

This LPA costs
£110
This fee is means-tested:
see the application
Guide part B

Use this for:

- running your bank and savings accounts
- making or selling investments
- paying your bills
- buying or selling your house

How to complete this form

PLEASE WRITE IN CAPITAL LETTERS USING A BLACK PEN

Mark your choice with an X

If you make a mistake, fill in the box and then mark the correct choice with an X

Making an LPA online is simpler, clearer and faster

Our smart online form gives you just the right amount of help exactly when you need it: www.gov.uk/power-of-attorney

**Before
you start...**

This form is also available in Welsh. Call the helpline on 0300 456 0300.

The people involved in your LPA

Helpline
0300 456 0300



You'll find it easier to make an LPA if you first choose the people you want to help you. **Note their names here now** so you can refer back later.



People you must have to make an LPA

Donor

If you are filling this form in for yourself, you are the donor. If you are filling this in for a friend or relative, they are the donor.

Attorneys

Attorneys are the people you pick to make decisions for you. They don't need legal training.

They should be people you trust and know well, for example, your husband, wife, partner, adult children or good friends.

Choose one attorney or more. If you have a lot, they might find it hard to make decisions together.

A person on the Disclosure and Barring Service's barred list cannot act as an attorney.

Certificate provider

You need someone to confirm that no one is forcing you to make an LPA and you understand what you are doing. This is your 'certificate provider'. They must either:

- have relevant professional skills, such as a doctor or lawyer
- have known you well for at least two years, such as a friend or colleague

Some people can't be a certificate provider. See the list in the Guide, part A10.

Witnesses

You can't witness your attorneys' signatures and they can't witness yours. Anyone else over 18 years old can be a witness.

People you might want to include in your LPA

Replacement attorneys

You don't have to appoint replacement attorneys but they help protect your LPA. Without them, your LPA might not work if one of your original attorneys stops acting for you.

People to notify

'People to notify' add security. They can raise concerns about your LPA before it's registered – for example, if they think you are under pressure to make the LPA.



Lasting power of attorney for property and financial affairs

Section 1 The donor

You are appointing other people to make decisions on your behalf.
You are 'the donor'.

Restrictions – you must be at least 18 years old and be able to understand
and make decisions for yourself (called 'mental capacity').



For help with
this section,
see the
Guide, part A1.

If you are filling this in for
a friend or relative and
they can no longer make
decisions independently,
they can't make an LPA.
See the Guide 'Before you
start' for more information.

Title First names

Last name

Any other names you're known by (optional – eg your married name)

Date of birth

Day Month Year

Address

Postcode

Email address (optional)

For OPG office use only

LPA registration date

Day Month Year

OPG reference number

Only valid with the official stamp here.

Section 2 The attorneys

Helpline
0300 456 0300



The people you choose to make decisions for you are called your 'attorneys'. Your attorneys don't need special legal knowledge or training. They should be people you trust and know well. Common choices include your husband, wife or partner, son or daughter, or your best friend.

You need at least one attorney, but you can have more.

You'll also be able to choose 'replacement attorneys' in section 4. They can step in if one of the attorneys you appoint here can no longer act for you.

To appoint a trust corporation, fill in the first attorney space and tick the box in that section. They must sign Continuation sheet 4. For more about trust corporations, see the Guide, part A2.



For help with this section, see the Guide, part A2.

Restrictions – Attorneys must be at least 18 years old and must have mental capacity to make decisions. They must not be bankrupt or subject to a debt relief order.

Title	First names	
<input type="text"/>	<input type="text"/>	
Last name (or trust corporation name)		
<input type="text"/>		
Date of birth		
<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year
Address		
<input type="text"/>		
<input type="text"/>		
Postcode	<input type="text"/>	
Email address (optional)		
<input type="text"/>		
<input type="checkbox"/>	This attorney is a trust corporation.	

Title	First names	
<input type="text"/>	<input type="text"/>	
Last name		
<input type="text"/>		
Date of birth		
<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year
Address		
<input type="text"/>		
<input type="text"/>		
Postcode	<input type="text"/>	
Email address (optional)		
<input type="text"/>		

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)

Section 2 – continued

Helpline
0300 456 0300



Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Date of birth	
<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Day	Month Year
Address	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>
Email address (optional)	
<input type="text"/>	

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Date of birth	
<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Day	Month Year
Address	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>
Email address (optional)	
<input type="text"/>	

More attorneys – I want to appoint more than 4 attorneys. Use Continuation sheet 1

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)

Section 3

How should your attorneys make decisions?

Helpline
0300 456 0300



You need to choose whether your attorneys can make decisions on their own or must agree some or all decisions unanimously.

Whatever you choose, they must always act in your best interests.

I only appointed one attorney (turn to section 4)

How do you want your attorneys to work together? (tick one only)

Jointly and severally

Attorneys can make decisions on their own or together. Most people choose this option because it's the most practical. Attorneys can get together to make important decisions if they wish, but can make simple or urgent decisions on their own. It's up to the attorneys to choose when they act together or alone. It also means that if one of the attorneys dies or can no longer act, your LPA will still work.

If one attorney makes a decision, it has the same effect as if all the attorneys made that decision.

Jointly

Attorneys must agree unanimously on every decision, however big or small. Remember, some simple decisions could be delayed because it takes time to get the attorneys together. If your attorneys can't agree a decision, then they can only make that decision by going to court.

Be careful – if one attorney dies or can no longer act, all your attorneys become unable to act. This is because the law says a group appointed 'jointly' is a single unit. Your LPA will stop working unless you appoint at least one replacement attorney (in section 4).

Jointly for some decisions, jointly and severally for other decisions

Attorneys must agree unanimously on some decisions, but can make others on their own. If you choose this option, you must list the decisions your attorneys should make jointly and agree unanimously on Continuation sheet 2. The wording you use is important. There are examples in the Guide, part A3.

Be careful – if one attorney dies or can no longer act, none of your attorneys will be able to make any of the decisions you've said should be made jointly. Your LPA will stop working for those decisions unless you appoint at least one replacement attorney (in section 4). Your original attorneys will still be able to make any of the other decisions alongside your replacement attorneys.

 **Help?**

For help with this section, see the Guide, part A3.



If you choose 'jointly for some decisions...', you may want to take legal advice, particularly if the examples in part A3 of the the Guide, don't match your needs.

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)

Section 4

Replacement attorneys

Helpline
0300 456 0300



This section is optional, but we recommend you consider it

Replacement attorneys are a backup in case one of your original attorneys can't make decisions for you any more.

To appoint a trust corporation, fill in the first attorney space below and tick the box in that section. They must sign Continuation sheet 4.

Reasons replacement attorneys step in – if one of your original attorneys dies, loses capacity, no longer wants to be your attorney, becomes bankrupt or subject to a debt relief order or is no longer legally your husband, wife or civil partner.

Restrictions – replacement attorneys must be at least 18 years old and have mental capacity to make decisions. They must not be bankrupt or subject to a debt relief order.



Help?

For help with this section, see the Guide, part A4.

Title	First names				
<input type="text"/>	<input type="text"/>				
Last name (or trust corporation name)					
<input type="text"/>					
Date of birth					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year			
Address					
<input type="text"/>					
<input type="text"/>					
<input type="text"/>					
Postcode	<input type="text"/>				
<input type="checkbox"/>	This attorney is a trust corporation.				

Title	First names				
<input type="text"/>	<input type="text"/>				
Last name					
<input type="text"/>					
Date of birth					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year			
Address					
<input type="text"/>					
<input type="text"/>					
<input type="text"/>					
Postcode	<input type="text"/>				

More replacements – I want to appoint more than two replacements. Use Continuation sheet 1.

When and how your replacement attorneys can act

Replacement attorneys usually step in when one of your **original** attorneys stops acting for you. If there's more than one **replacement** attorney, they will all step in at once. If they **fully** replace your original attorney(s) at once, they will usually act jointly. You can change some aspects of this, but most people don't. See the Guide, part A4.



You should consider taking legal advice if you want to change when or how your replacement attorneys act.

I want to change when or how my attorneys can act (optional). Use Continuation sheet 2.

Only valid with the official stamp here.

LP1F Property and financial
affairs (07.15)

Section 5

When can your attorneys make decisions?

Helpline
0300 456 0300



You can allow your attorneys to make decisions:

- as soon as the LPA has been registered by the Office of the Public Guardian
- only when you don't have mental capacity

While you have mental capacity you will be in control of all decisions affecting you. If you choose the first option, your attorneys can only make decisions on your behalf if you allow them to. They are responsible to you for any decisions you let them make.

Your attorneys must always act in your best interests.



Help?

For help with this section, see the Guide, part A5.

When do you want your attorneys to be able to make decisions?

(mark one only)

- As soon as my LPA has been registered
(and also when I don't have mental capacity)**

Most people choose this option because it is the most practical.

While you still have mental capacity, your attorneys can only act **with your consent**. If you later lose capacity, they can continue to act on your behalf for all decisions covered by this LPA.

This option is useful if you are able to make your own decisions but there's another reason you want your attorneys to help you – for example, if you're away on holiday, or if you have a physical condition that makes it difficult to visit the bank, talk on the phone or sign documents.

- Only when I don't have mental capacity**

Be careful – this can make your LPA a lot less useful. Your attorneys might be asked to prove you do not have mental capacity each time they try to use this LPA.

Only valid with the official stamp here.

LP1F Property and financial
affairs (07.15)

Section 6

People to notify when the LPA is registered

Helpline
0300 456 0300



This section is optional

You can let people know that you're going to register your LPA. They can raise any concerns they have about the LPA – for example, if there was any pressure or fraud in making it.

When the LPA is registered, the person applying to register (you or one of your attorneys) must send a notice to each 'person to notify'.

You can't put your attorneys or replacement attorneys here.

People to notify can object to the LPA, but only for certain reasons (listed in the notification form LP3). After that, they are no longer involved in the LPA. Choose people who care about your best interests and who would be willing to speak up if they were concerned.



For help with this section, see the Guide, part A6.

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

I want to appoint another person to notify (maximum is 5) – use Continuation sheet 1.

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)

Section 7

Preferences and instructions

Helpline
0300 456 0300



This section is optional

You can tell your attorneys how you'd **prefer** them to make decisions, or give them specific **instructions** which they must follow when making decisions.

Most people leave this page blank – you can just talk to your attorneys so they understand how you want them to make decisions for you.



Help?

For help with this section, see the Guide, part A7.

Preferences

Your attorneys don't have to follow your preferences but they should keep them in mind. For examples of preferences, see the Guide, part A7.

Preferences – use words like 'prefer' and 'would like'

I need more space – use Continuation sheet 2.

Instructions

Your attorneys will have to follow your instructions exactly. For examples of instructions, see the Guide, part A7.

Be careful – if you give instructions that are not legally correct they would have to be removed before your LPA could be registered.



If you want to give instructions, you may want to take legal advice.

Instructions – use words like 'must' and 'have to'

I need more space – use Continuation sheet 2.

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)

Section 8

Your legal rights and responsibilities

Helpline
0300 456 0300



! Everyone signing the LPA must read this information

In sections 9 to 11, you, the certificate provider, all your attorneys and your replacement attorneys must sign this lasting power of attorney to form a legal agreement between you (a deed).

By signing this lasting power of attorney, you (the donor) are appointing people (attorneys) to make decisions for you.

LPAs are governed by the Mental Capacity Act 2005 (MCA), regulations made under it and the MCA Code of Practice. Attorneys must have regard to these documents. The Code of Practice is available from www.gov.uk/opg/mca-code or from The Stationery Office.

Your attorneys must follow the principles of the Mental Capacity Act:

1. Your attorneys must assume that you can make your own decisions unless it is established that you cannot do so.
2. Your attorneys must help you to make as many of your own decisions as you can. They must take all practical steps to help you to make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision through those steps.
3. Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.
4. Your attorneys must act and make decisions in your best interests when you are unable to make a decision.
5. Before your attorneys make a decision or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

Your attorneys must always act in your best interests. This is explained in the Application guide, part A8, and defined in the MCA Code of Practice.

Before this LPA can be used:

- it must be registered by the Office of the Public Guardian (OPG)
- it may be limited to when you don't have mental capacity, according to your choice in section 5

Cancelling your LPA: You can cancel this LPA at any time, as long as you have mental capacity to do so. It doesn't matter if the LPA has been registered or not. For more information, see the Guide, part D.

Your will and your LPA: Your attorneys cannot use this LPA to change your will. This LPA will expire when you die. Your attorneys must then send the registered LPA, any certified copies and a copy of your death certificate to the Office of the Public Guardian.

Data protection: For information about how OPG uses your personal data, see the Guide, part D.



For help with this section, see the Guide, part A8.

Section 9

Signature: donor

Helpline
0300 456 0300



By signing on this page I confirm all of the following:

- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I appoint and give my attorneys authority to make decisions about my property and financial affairs, including when I cannot act for myself because I lack mental capacity, subject to the terms of this LPA and to the provisions of the Mental Capacity Act 2005
- I have either appointed people to notify (in section 6) or I have chosen not to notify anyone when the LPA is registered
- I agree to the information I've provided being used by the Office of the Public Guardian in carrying out its duties



Be careful

Sign this page (and any continuation sheets) before anyone signs sections 10 and 11.

Donor

Signed (or marked) by the person giving this lasting power of attorney and delivered as a deed.

Signature or mark

Date signed or marked

--	--	--	--	--	--	--	--	--	--

Day Month Year

If you have used Continuation sheets 1 or 2 you must sign and date each continuation sheet at the same time as you sign this page.

If you can't sign this LPA you can make a mark instead. If you can't sign or make a mark you can instruct someone else to sign for you, using Continuation sheet 3.

Witness

The witness must not be an attorney or replacement attorney appointed under this LPA, and must be aged 18 or over.

Signature or mark

Full name of witness

Address

Postcode

Help?

For help with this section, see the Guide, part A9.

Only valid with the official stamp here.

LPIF Property and financial affairs (07.15)

Section 10

Signature: certificate provider

Helpline
0300 456 0300



! Only sign this section after the donor has signed section 9

The 'certificate provider' signs to confirm they've discussed the lasting power of attorney (LPA) with the donor, that the donor understands what they're doing and that nobody is forcing them to do it. The 'certificate provider' should be either:

- someone who has known the donor personally for at least 2 years, such as a friend, neighbour, colleague or former colleague
- someone with relevant professional skills, such as the donor's GP, a healthcare professional or a solicitor

A certificate provider **can't** be one of the attorneys.



Help?

For help with this section, see the Guide, part A10.

Certificate provider's statement

I certify that, as far as I'm aware, at the time of signing section 9:

- the donor understood the purpose of this LPA and the scope of the authority conferred under it
- no fraud or undue pressure is being used to induce the donor to create this LPA
- there is nothing else which would prevent this LPA from being created by the completion of this instrument

By signing this section I confirm that:

- I am aged 18 or over
- I have read this LPA, including section 8 'Your legal rights and responsibilities'
- there is no restriction on my acting as a certificate provider
- the donor has chosen me as someone who has known them personally for at least 2 years **OR**
- the donor has chosen me as a person with relevant professional skills and expertise

Restrictions – the certificate provider must not be:

- an attorney or replacement attorney named in this LPA or any other LPA or enduring power of attorney for the donor
- a member of the donor's family or of one of the attorneys' families, including husbands, wives, civil partners, in-laws and step-relatives
- an unmarried partner, boyfriend or girlfriend of either the donor or one of the attorneys (whether or not they live at the same address)
- the donor's or an attorney's business partner
- the donor's or an attorney's employee
- an owner, manager, director or employee of a care home where the donor lives

Certificate provider

Title First names

Last name

Address

Postcode

Signature or mark

Date signed or marked

Day Month Year

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)

Section 11

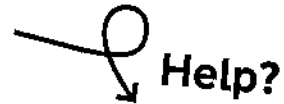
Signature: attorney or replacement

Helpline
0300 456 0300



! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.



Help?

For help with this section, see the Guide, part A11.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered and at the time indicated in section 5 of this LPA

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------	----------------------	----------------------

Day Month Year

Title First names

<input type="text"/>	<input type="text"/>
----------------------	----------------------

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)

Section 11

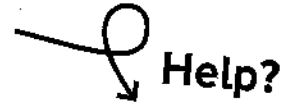
Signature: attorney or replacement

Helpline
0300 456 0300



! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.



Help?

For help with this section, see the Guide, part A11.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered and at the time indicated in section 5 of this LPA

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

Day Month Year

Title First names

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LP1F Property and financial
affairs (07.15)

Section 11

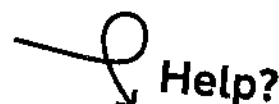
Signature: attorney or replacement

Helpline
0300 456 0300



! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.



Help?

For help with this section, see the Guide, part A11.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered and at the time indicated in section 5 of this LPA

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

--	--	--	--	--	--

Day Month Year

Title First names

--	--

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LP1F Property and financial
affairs (07.15)

Section 11

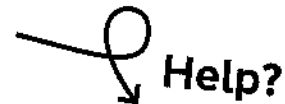
Signature: attorney or replacement

Helpline
0300 456 0300



! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.



Help?

For help with this section, see the Guide, part A11.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered and at the time indicated in section 5 of this LPA

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

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Day Month Year

Title First names

--	--

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LPIF Property and financial
affairs (07.15)



Now register your LPA

Before the LPA can be used, it **must** be registered by the Office of the Public Guardian (OPG). Continue filling in this form to register the LPA. See part B of the Guide.

People to notify

If there are any 'people to notify' listed in section 6, you must notify them that you are registering the LPA now. See part C of the Guide.

Fill in and send each of them a copy of the form to notify people – LP3.

When you sign section 15 of this form, you are confirming that you've sent forms to the 'people to notify'.

Register now

You do not have to register immediately, but it's a good idea in case you've made any mistakes. If you delay until after the donor loses mental capacity, it will be impossible to fix any errors. This could make the whole LPA invalid and it will not be possible to register or use it.

Register your lasting power of attorney

Helpline
0300 456 0300



Section 12 The applicant

You can only apply to register if you are either the donor or attorney(s) for this LPA. The donor and attorney(s) should not apply together.

Who is applying to register the LPA? (tick one only)

- Donor** – the donor needs to sign section 15
- Attorney(s)** – If the attorneys were appointed jointly (in section 3) then they **all** need to sign section 15. Otherwise, only one of the attorneys needs to sign



Help?

For help with this section, see the Guide, part B2.

Write the name and date of birth for each attorney that is applying to register the LPA. Don't include any attorneys who are not applying.

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Date of birth	
<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Day	Month Year

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Date of birth	
<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Day	Month Year

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Date of birth	
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Day	Month Year

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Date of birth	
<input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Day	Month Year

Section 13

Who do you want to receive the LPA?

Helpline
0300 456 0300



We need to know who to send the LPA to once it is registered. We might also need to contact someone with questions about the application.

We already have the addresses of the donor and attorneys, so you don't have to repeat any of those here, unless they have changed.

Who would you like to receive the LPA and any correspondence?

- The donor
- An attorney (write name below)
- Other (write name and address below)

Title First names

Last name

Company (optional)

Address

Postcode

How would the person above prefer to be contacted?

You can choose more than one.

- Post
- Phone
- Email
- Welsh (we will write to the person in Welsh)

 **Help?**

For help with this section, see the Guide, part B3.

Section 14

Application fee

Helpline
0300 456 0300



There's a fee for registering a lasting power of attorney – the amount is shown on the cover sheet of this form or on form LPA120.

The fee changes from time to time. You can check you are paying the correct amount at www.gov.uk/power-of-attorney/how-much-it-costs or call 0300 456 0300. The Office of the Public Guardian can't register your LPA until you have paid the fee.

How would you like to pay?

Card For security, **don't** write your credit or debit card details here. We'll contact you to process the payment.

Your phone number

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Cheque Enclose a cheque with your application.



Help?
For help with this section, see the Guide, part B4.

Reduced application fee

If the donor has a low income, you may not have to pay the full amount. See the Guide, part B4 for details.

I want to apply to pay a reduced fee
You'll need to fill in form LPA120 and include it with your application. You'll also **need to send proof** that the donor is eligible to pay a reduced fee.

Are you making a repeat application?

If you've already applied to register an LPA and the Office of the Public Guardian said that it was not possible to register it, you can apply again within 3 months and pay a reduced fee.

I'm making a repeat application

Case number

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For OPG office use only

Payment reference

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Payment date

--	--

--	--

--	--	--	--

Amount

--

Day

Month

Year

Section 15 Signature

Helpline
0300 456 0300



! Do not sign this section until after sections 9, 10 and 11 have been signed.

The person applying to register the LPA (see section 12) must sign and date this section. This is either the donor or attorney(s) but not both together.

If the **attorneys** are applying to register the LPA and they were appointed to act **jointly** (in section 3), they must all sign.

By signing this section I confirm the following:

- I apply to register the LPA that accompanies this application
- I have informed 'people to notify' named in section 6 of the LPA (if any) of my intention to register the LPA
- I certify that the information in this form is correct to the best of my knowledge and belief



Help?

For help with this section, see the Guide, part B5.

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<p>Date signed</p> <table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Day</td><td>Month</td><td colspan="2">Year</td><td></td><td></td></tr></table>							Day	Month	Year				<p>Date signed</p> <table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Day</td><td>Month</td><td colspan="2">Year</td><td></td><td></td></tr></table>							Day	Month	Year			
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Day	Month	Year																							
Day	Month	Year																							

If more than 4 attorneys need to sign, make copies of this page.

Check your lasting power of attorney

You don't have to use this checklist, but it'll help you make sure you've completed your LPA correctly.

- The donor filled in sections 1 to 7.
- The donor signed section 9 in the presence of a witness. The donor also signed any copies of continuation sheets 1 and 2 that were used, on the same date as signing section 9.
- The certificate provider signed section 10.
- All the attorneys and replacement attorneys signed section 11, in the presence of witness(es).
- Sections 9, 10 and 11 were signed in order. Section 9 must have been signed first, then section 10, then section 11. They can be dated the same day or different days.
- The donor or an attorney completed sections 12 to 15. If the attorneys are applying and were appointed 'jointly' (section 3), they have all signed section 15 of this form.
- I've paid the application fee or applied for a reduced fee. If I've applied for a reduced fee, I've included the required evidence and completed form LPA120A.
- If there were any people to notify in section 6, I've notified them using form LP3.
- I've not left out any of the pages of the LPA, even the ones where I didn't write anything or there were no boxes to fill in.

Helpline
0300 456 0300



Send to:

Office of the Public Guardian
PO Box 16185
Birmingham B2 2WH



Office of the
Public Guardian

Form

LP1H



Lasting power of attorney



Health and care decisions

This LPA costs

£110

This fee is means-tested
see the application
Guide part B

Use this for:

- the type of health care and medical treatment you receive, including life-sustaining treatment
- where you live
- day-to-day matters such as your diet and daily routine

How to complete this form

PLEASE WRITE IN CAPITAL LETTERS USING A BLACK PEN

Mark your choice with an X

If you make a mistake, fill in the box and then mark the correct choice with an X

Making an LPA online is simpler, clearer and faster

Our smart online form gives you just the right amount of help exactly when you need it: www.gov.uk/power-of-attorney

**Before
you start...**

This form is also available in Welsh. Call the helpline on 0300 456 0300.

The people involved in your LPA

Help line
0300 456 0300



You'll find it easier to make an LPA if you first choose the people you want to help you. **Note their names here now** so you can refer back later.



People you must have to make an LPA

Donor

If you are filling this form in for yourself, you are the donor. If you are filling this in for a friend or relative, they are the donor.

Attorneys

Attorneys are the people you pick to make decisions for you. They don't need legal training.

They should be people you trust and know well; for example, your husband, wife, partner, adult children or good friends.

Choose one attorney or more. If you have a lot, they might find it hard to make decisions together.

A person on the Disclosure and Barring Service's barred list cannot act as an attorney.

Certificate provider

You need someone to confirm that no one is forcing you to make an LPA and you understand what you are doing. This is your 'certificate provider'. They must either:

- have relevant professional skills, such as a doctor or lawyer
- have known you well for at least two years, such as a friend or colleague

Some people can't be a certificate provider. See the list in the Guide, part A10.

Witnesses

You can't witness your attorneys' signatures and they can't witness yours. Anyone else over 18 years old can be a witness.

People you might want to include in your LPA

Replacement attorneys

You don't have to appoint replacement attorneys but they help protect your LPA. Without them, your LPA might not work if one of your original attorneys stops acting for you.

People to notify

'People to notify' add security. They can raise concerns about your LPA before it's registered – for example, if they think you are under pressure to make the LPA.



Office of the
Public Guardian

Helpline
0300 456 0300



Lasting power of attorney for health and welfare

Section 1 The donor

You are appointing other people to make decisions on your behalf. You are 'the donor'.

Restrictions – you must be at least 18 years old and be able to understand and make decisions for yourself (called 'mental capacity').



Help?

For help with this section, see the Guide, part A1.

If you are filling this in for a friend or relative and they can no longer make decisions independently, they can't make an LPA. See the Guide 'Before you start' for more information.

Title First names

Last name

Any other names you're known by (optional – eg your married name)

Date of birth

Day Month Year

Address

Postcode

Email address (optional)

For OPG office use only

LPA registration date

Day Month Year

OPG reference number

Only valid with the official stamp here.

Section 2 The attorneys

Helpline
0300 456 0300

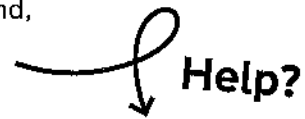


The people you choose to make decisions for you are called your 'attorneys'. Your attorneys don't need special legal knowledge or training. They should be people you trust and know well. Common choices include your husband, wife or partner, son or daughter, or your best friend.

You need at least one attorney, but you can have more.

You'll also be able to choose 'replacement attorneys' in section 4. They can step in if one of the attorneys you appoint here can no longer act for you.

Restrictions – Attorneys must be at least 18 years old and must have mental capacity to make decisions.



Help?

For help with this section, see the Guide, part A2.

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Last name					
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Date of birth					
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Day	Month	Year			
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Postcode		<input type="text"/>			
Email address (optional)					
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Title	First names				
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Last name					
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Email address (optional)					
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Only valid with the official stamp here.

LP1H Health and welfare (07.15)

Section 2 - continued

Helpline
0300 456 0300



Title First names

Last name

Date of birth
Day Month Year

Address

Postcode

Email address (optional)

Title First names

Last name

Date of birth
Day Month Year

Address

Postcode

Email address (optional)

More attorneys – I want to appoint more than 4 attorneys. Use Continuation sheet 1.

Only valid with the official stamp here.

Section 3

How should your attorneys make decisions?

Helpline
0300 456 0300



You need to choose whether your attorneys can make decisions on their own or must agree some or all decisions unanimously.

Whatever you choose, they must always act in your best interests.

I only appointed one attorney (turn to section 4)

How do you want your attorneys to work together? (tick one only)

Jointly and severally

Attorneys can make decisions on their own or together. Most people choose this option because it's the most practical. Attorneys can get together to make important decisions if they wish, but can make simple or urgent decisions on their own. It's up to the attorneys to choose when they act together or alone. It also means that if one of the attorneys dies or can no longer act, your LPA will still work.

If one attorney makes a decision, it has the same effect as if all the attorneys made that decision.

Jointly

Attorneys must agree unanimously on every decision, however big or small. Remember, some simple decisions could be delayed because it takes time to get the attorneys together. If your attorneys can't agree a decision, then they can only make that decision by going to court.

Be careful – if one attorney dies or can no longer act, all your attorneys become unable to act. This is because the law says a group appointed 'jointly' is a single unit. Your LPA will stop working unless you appoint at least one replacement attorney (in section 4).

Jointly for some decisions, jointly and severally for other decisions

Attorneys must agree unanimously on some decisions, but can make others on their own. If you choose this option, you must list the decisions your attorneys should make jointly and agree unanimously on Continuation sheet 2. The wording you use is important. There are examples in the Guide, part A3.

Be careful – if one of your attorneys dies or can no longer act, none of your attorneys will be able to make any of the decisions you've said should be made jointly. Your LPA will stop working for those decisions unless you appoint at least one replacement attorney (in section 4).

Your original attorneys will still be able to make any of the other decisions alongside your replacement attorneys.



Help?

For help with this section, see the Guide, part A3.



If you choose 'jointly for some decisions...', you may want to take legal advice, particularly if the examples in part A3 of the Guide don't match your needs.

Section 4

Replacement attorneys

Helpline
0300 456 0300



This section is optional, but we recommend you consider it

Replacement attorneys are a backup in case one of your original attorneys can't make decisions for you any more.

Reasons replacement attorneys step in – if one of your original attorneys dies, loses capacity, no longer wants to be your attorney or is no longer legally your husband, wife or civil partner.

Restrictions – replacement attorneys must be at least 18 years old and have mental capacity to make decisions.



Help?

For help with this section, see the Guide, part A4.

Title	First names				
<input type="text"/>	<input type="text"/>				
Last name					
<input type="text"/>					
Date of birth					
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Day	Month	Year			
Address					
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Postcode					
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Title	First names				
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Last name					
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Date of birth					
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Day	Month	Year			
Address					
<input type="text"/>					
<input type="text"/>					
Postcode					
<input type="text"/>					

More replacements – I want to appoint more than two replacements. Use Continuation sheet 1.

When and how your replacement attorneys can act

Replacement attorneys usually step in when one of your **original** attorneys stops acting for you. If there's more than one **replacement** attorney, they will all step in at once. If they **fully** replace your original attorney(s) at once, they will usually act jointly. You can change some aspects of this, but most people don't. See the Guide, part A4.



You should consider taking legal advice if you want to change how your replacement attorneys act.

I want to change when or how my attorneys can act (optional). Use Continuation sheet 2.

Only valid with the official stamp here.

LP1H Health and welfare (07.15)

Section 5

Life-sustaining treatment

Helpline
0300 456 0300



! This is an important part of your LPA.

You must choose whether your attorneys can give or refuse consent to life-sustaining treatment on your behalf.

Life-sustaining treatment means care, surgery, medicine or other help from doctors that's needed to keep you alive, for example:

- a serious operation, such as a heart bypass or organ transplant
- cancer treatment
- artificial nutrition or hydration (food or water given other than by mouth)

Whether some treatments are life-sustaining depends on the situation. If you had pneumonia, a simple course of antibiotics could be life-sustaining.

Decisions about life-sustaining treatment can be needed in unexpected circumstances, such as a routine operation that didn't go as planned.

You can use section 7 of this LPA to let your attorneys know more about your preferences in particular circumstances (this is optional).



Help?
For help with this section, including how your LPA relates to an 'advance decision', see the Guide, part A5.

Who do you want to make decisions about life-sustaining treatment? (sign only one option)

Option A – I give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.

If you choose this option, your attorneys can speak to doctors on your behalf as if they were you.

Signature or mark

Date signed or marked

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Day Month Year

Option B – I do not give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.

If you choose this option, your doctors will take into account the views of the attorneys and of people who are interested in your welfare as well as any written statement you may have made, where it is practical and appropriate.

Signature or mark

Date signed or marked

--	--	--	--	--	--

Day Month Year

Witness

The witness must not be an attorney or replacement attorney appointed under this LPA, and must be aged 18 or over.

Signature or mark

Full name of witness

Address

Postcode

Only valid with the official stamp here.

LPIH Health and welfare (07.15)

Section 6

People to notify when the LPA is registered

Helpline
0300 456 0300



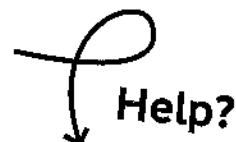
This section is optional

You can let people know that you're going to register your LPA. They can raise any concerns they have about the LPA – for example, if there was any pressure or fraud in making it.

When the LPA is registered, the person applying to register (you or one of your attorneys) must send a notice to each 'person to notify'.

You can't put your attorneys or replacement attorneys here.

People to notify can object to the LPA, but only for certain reasons (listed in the notification form LP3). After that, they are no longer involved in the LPA. Choose people who care about your best interests and who would be willing to speak up if they were concerned.



For help with this section, see the Guide, part A6.

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
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<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

I want to appoint another person to notify (maximum is 5) – use Continuation sheet 1.

Only valid with the official stamp here.

LPIH Health and welfare (07.15)

Section 7

Preferences and instructions

Helpline
0300 456 0300



This section is optional

You can tell your attorneys how you'd **prefer** them to make decisions, or give them specific **instructions** which they must follow when making decisions.

Most people leave this page blank – you can just talk to your attorneys so they understand how you want them to make decisions for you.



Help?
For help with this section, see the Guide, part A7.

Preferences

Your attorneys don't have to follow your preferences but they should keep them in mind. For examples of preferences, see the Guide, part A7.

Preferences – use words like 'prefer' and 'would like'

I need more space – use Continuation sheet 2.

Instructions

Your attorneys will have to follow your instructions exactly. For examples of instructions, see the Guide, part A7.



If you want to give instructions, you may want to take legal advice.

Be careful – if you give instructions that are not legally correct they would have to be removed before your LPA could be registered.

Instructions – use words like 'must' and 'have to'

I need more space – use Continuation sheet 2.

Section 8

Your legal rights and responsibilities

Helpline
0300 456 0300



! Everyone signing the LPA must read this information

In sections 9 to 11, you, the certificate provider, all your attorneys and your replacement attorneys must sign this lasting power of attorney to form a legal agreement between you (a deed).

By signing this lasting power of attorney, you (the donor) are appointing people (attorneys) to make decisions for you.

LPAs are governed by the Mental Capacity Act 2005 (MCA), regulations made under it and the MCA Code of Practice. Attorneys must have regard to these documents. The Code of Practice is available from www.gov.uk/opg/mca-code or from The Stationery Office.

Your attorneys must follow the principles of the Mental Capacity Act:

1. Your attorneys must assume that you can make your own decisions unless it is established that you cannot do so.
2. Your attorneys must help you to make as many of your own decisions as you can. They must take all practical steps to help you to make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision through those steps.
3. Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.
4. Your attorneys must act and make decisions in your best interests when you are unable to make a decision.
5. Before your attorneys make a decision or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

Your attorneys must always act in your best interests. This is explained in the Application guide, part A8, and defined in the MCA Code of Practice.

Before this LPA can be used it must be registered by the Office of the Public Guardian (OPG). Your attorneys can only use this LPA if you don't have mental capacity.

Cancelling your LPA: You can cancel this LPA at any time, as long as you have mental capacity to do so. It doesn't matter if the LPA has been registered or not. For more information, see the Guide, part D.

Your will and your LPA: Your attorneys cannot use this LPA to change your will. This LPA will expire when you die. Your attorneys must then send the registered LPA, any certified copies and a copy of your death certificate to the Office of the Public Guardian.

Data protection: For information about how OPG uses your personal data, see the Guide, Part D.



For help with this section, see the Guide, part A8.

Section 9

Signature: donor

Helpline
0300 456 0300



By signing on this page I confirm all of the following:

- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I appoint and give my attorneys authority to make decisions about my health and welfare, when I cannot act for myself because I lack mental capacity, subject to the terms of this LPA and to the provisions of the Mental Capacity Act 2005
- I confirm I have chosen either Option A or Option B about life sustaining treatment in section 5 of this LPA
- I have either appointed people to notify (in section 6) or I have chosen not to notify anyone when the LPA is registered
- I agree to the information I've provided being used by the Office of the Public Guardian in carrying out its duties



Be careful

Sign this page and section 5 (and any continuation sheets) before anyone signs sections 10 and 11.

Donor

Signed (or marked) by the person giving this lasting power of attorney and delivered as a deed.

Signature or mark

Date signed or marked

--	--	--	--	--	--

Day Month Year

You must also sign Section 5 (page 6) at the same time as you sign this page.

If you have used Continuation sheets 1 or 2 you must sign and date each continuation sheet at the same time as you sign this page.

If you can't sign this LPA you can make a mark instead. If you can't sign or make a mark you can instruct someone else to sign for you, using Continuation sheet 3.

Witness

The witness must not be an attorney or replacement attorney appointed under this LPA, and must be aged 18 or over.

Signature or mark

Full name of witness

Address

Postcode



Help?

For help with this section, see the Guide, part A9.

Only valid with the official stamp here.

LP1H Health and welfare (07.15)

Section 10

Signature: certificate provider

Helpline
0300 456 0300



! Only sign this section after the donor has signed section 9

The 'certificate provider' signs to confirm they've discussed the lasting power of attorney (LPA) with the donor, that the donor understands what they're doing and that nobody is forcing them to do it. The 'certificate provider' should be either:

- someone who has known the donor personally for at least 2 years, such as a friend, neighbour, colleague or former colleague
- someone with relevant professional skills, such as the donor's GP, a healthcare professional or a solicitor

A certificate provider **can't** be one of the attorneys.

Certificate provider's statement

I certify that, as far as I'm aware, at the time of signing section 9:

- the donor understood the purpose of this LPA and the scope of the authority conferred under it
- no fraud or undue pressure is being used to induce the donor to create this LPA
- there is nothing else which would prevent this LPA from being created by the completion of this instrument

By signing this section I confirm that:

- I am aged 18 or over
- I have read this LPA, including section 8 'Your legal rights and responsibilities'
- there is no restriction on my acting as a certificate provider
- the donor has chosen me as someone who has known them personally for at least 2 years **OR**
- the donor has chosen me as a person with relevant professional skills and expertise

Restrictions – the certificate provider must not be:

- an attorney or replacement attorney named in this LPA or any other LPA or enduring power of attorney for the donor
- a member of the donor's family or of one of the attorneys' families, including husbands, wives, civil partners, in-laws and step-relatives
- an unmarried partner, boyfriend or girlfriend of either the donor or one of the attorneys (whether or not they live at the same address)
- the donor's or an attorney's business partner
- the donor's or an attorney's employee
- an owner, manager, director or employee of a care home where the donor lives



Help?
For help with this section, see the Guide, part A10.

Certificate provider

Title First names

Last name

Address

Postcode

Signature or mark

Date signed or marked

Day Month Year

Only valid with the official stamp here.

LPIH Health and welfare (07.15)

Section 11

Signature: attorney or replacement

Helpline
0300 456 0300

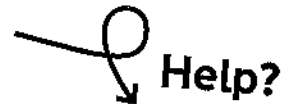


! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered
- I can make decisions and act only when the donor lacks mental capacity.



For help with this section, see the Guide, part A11.

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

--	--	--	--	--	--

Day Month Year

Title First names

--	--

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LP1H Health and welfare (07.15)

Section 11

Signature: attorney or replacement

Helpline
0300 456 0300

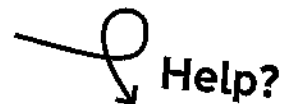


! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered
- I can make decisions and act only when the donor lacks mental capacity.



Help?

For help with this section, see the Guide, part A11.

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

Day Month Year

Title First names

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LPIH Health and welfare (07.15)

Section 11

Signature: attorney or replacement

Helpline
0300 456 0300

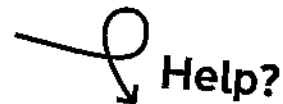


! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered
- I can make decisions and act only when the donor lacks mental capacity.



Help?
For help with this section, see the Guide, part A11.

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

--	--	--	--	--	--

Day Month Year

Title First names

--	--

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LPIH Health and welfare (07.15)

Section 11

Signature: attorney or replacement

Helpline
0300 456 0300

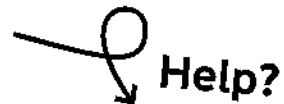


! Only sign this section after the certificate provider has signed section 10

All the attorneys and replacement attorneys need to sign.
There are 4 copies of this page – make more copies if you need to.

By signing this section I understand and confirm all of the following:

- I am aged 18 or over
- I have read this lasting power of attorney (LPA) including section 8 'Your legal rights and responsibilities', or I have had it read to me
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and to have regard to the Mental Capacity Act Code of Practice
- I must make decisions and act in the best interests of the donor
- I must take into account any instructions or preferences set out in this LPA
- I can make decisions and act only when this LPA has been registered
- I can make decisions and act only when the donor lacks mental capacity.



Help?
For help with this section, see the Guide, part A11.

Further statement by a replacement attorney: I understand that I have the authority to act under this LPA only after an original attorney's appointment is terminated. I must notify the Public Guardian if this happens.

Attorney or replacement attorney

Signed (or marked) by the attorney or replacement attorney and delivered as a deed.

Signature or mark

Date signed or marked

Day Month Year

Title First names

Last name

Witness

The witness must not be the donor of this LPA, and must be aged 18 or over.

Signature or mark

Full names of witness

Address

Postcode

Only valid with the official stamp here.

LP1H Health and welfare (07.15)



Now register your LPA

Before the LPA can be used, it **must** be registered by the Office of the Public Guardian (OPG). Continue filling in this form to register the LPA. See part B of the Guide.

People to notify

If there are any 'people to notify' listed in section 6, you must notify them that you are registering the LPA now. See Part C of the Guide.

Fill in and send each of them a copy of the form to notify people – LP3.

When you sign section 15 of this form, you are confirming that you've sent forms to the 'people to notify'.

Register now

You do not have to register immediately, but it's a good idea in case you've made any mistakes. If you delay until after the donor loses mental capacity, it will be impossible to fix any errors. This could make the whole LPA invalid and it will not be possible to register or use it.

Register your lasting power of attorney

Helpline
0300 456 0300



Section 12 The applicant

You can only apply to register if you are the donor or attorney(s) for this LPA.
The donor and attorney(s) should not apply together.

Who is applying to register the LPA? (tick one only)

- Donor** – the donor needs to sign section 15
- Attorney(s)** – If the attorneys were appointed jointly (in section 3) then they all need to sign in section 15. Otherwise, only one of the attorneys needs to sign



Help?

For help with this section, see the Guide, part B2.

Write the name and date of birth for each attorney that is applying to register the LPA. Don't include any attorneys who are not applying.

Title	First names				
<input type="text"/>	<input type="text"/>				
Last name					
<input type="text"/>					
Date of birth					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year			

Title	First names				
<input type="text"/>	<input type="text"/>				
Last name					
<input type="text"/>					
Date of birth					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year			

Title	First names				
<input type="text"/>	<input type="text"/>				
Last name					
<input type="text"/>					
Date of birth					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year			

Title	First names				
<input type="text"/>	<input type="text"/>				
Last name					
<input type="text"/>					
Date of birth					
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year			

Section 14

Application fee

Helpline
0300 456 0300



There's a fee for registering a lasting power of attorney – the amount is shown on the cover sheet of this form or on form LPA120.

The fee changes from time to time. You can check you are paying the correct amount at www.gov.uk/power-of-attorney/how-much-it-costs or call 0300 456 0300. The Office of the Public Guardian can't register your LPA until you have paid the fee.

How would you like to pay?

Card For security, **don't** write your credit or debit card details here. We'll contact you to process the payment.

Your phone number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Cheque Enclose a cheque with your application.

Help?

For help with this section, see the Guide, part B4.

Reduced application fee

If the donor has a low income, you may not have to pay the full amount. See the Guide, part B4 for details.

I want to apply to pay a reduced fee

You'll need to fill in form LPA120 and include it with your application. You'll also **need to send proof** that the donor is eligible to pay a reduced fee.

Are you making a repeat application?

If you've already applied to register an LPA and the Office of the Public Guardian said that it was not possible to register it, you can apply again within 3 months and pay a reduced fee.

I'm making a repeat application

Case number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

For OPG office use only

Payment reference

--

Payment date

--	--

Day

--	--

Month

--	--	--	--

Year

Amount

--

Section 15 Signature

Helpline
0300 456 0300



Do not sign this section until after sections 9, 10 and 11 have been signed.



The person applying to register the LPA (see section 12) must sign and date this section. This is either the donor or attorney(s) but not both together.

If the **attorneys** are applying to register the LPA and they were appointed to act **jointly** (in section 3), they must all sign.



For help with this section, see the Guide, part B5.

By signing this section I confirm the following:

- I apply to register the LPA that accompanies this application
- I have informed 'people to notify' named in section 6 of the LPA (if any) of my intention to register the LPA
- I certify that the information in this form is correct to the best of my knowledge and belief

<p>Signature or mark</p> <input type="text"/>	<p>Signature or mark</p> <input type="text"/>																								
<p>Date signed</p> <table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Day</td><td>Month</td><td>Year</td><td></td><td></td><td></td></tr></table>							Day	Month	Year				<p>Date signed</p> <table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Day</td><td>Month</td><td>Year</td><td></td><td></td><td></td></tr></table>							Day	Month	Year			
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Day	Month	Year																							
Day	Month	Year																							

If more than 4 attorneys need to sign, make copies of this page.

Check your lasting power of attorney

You don't have to use this checklist, but it'll help you make sure you've completed your LPA correctly.

- The donor filled in sections 1 to 7.
- The donor signed both section 5 and section 9 in the presence of a witness. The donor also signed any copies of continuation sheets 1 and 2 that were used, on the same date as signing section 9.
- The certificate provider signed section 10.
- All the attorneys and replacement attorneys signed section 11, in the presence of witness(es).
- Sections 9, 10 and 11 were signed in order. Section 9 must have been signed first, then section 10, then section 11. They can be dated the same day or different days.
- The donor or an attorney completed sections 12 to 15. If the attorneys are applying and were appointed 'jointly' (section 3), they have all signed section 15 of this form.
- I've paid the application fee or applied for a reduced fee. If I've applied for a reduced fee, I've included the required evidence and completed form LPA120A.
- If there were any people to notify in section 6, I've notified them using form LP3.
- I've not left out any of the pages of the LPA, even the ones where I didn't write anything or there were no boxes to fill in.

Helpline

0300 456 0300



Send to:

Office of the Public Guardian
PO Box 16185
Birmingham B2 2WH



Form to notify people

You only need to fill in this form if there are 'people to notify' (also called 'people to be told' or 'named people') listed in the lasting power of attorney.

How to complete this form

PLEASE WRITE IN CAPITAL LETTERS USING A BLACK PEN



Mark your choice with an X



If you make a mistake, fill in the box and then mark the correct choice with an X

Before you start

Helpline
0300 456 0300



You only need to fill in this form if there are 'people to notify' (also called 'people to be told' or 'named people') listed in the lasting power of attorney (LPA). See the Guide, part C.

A 'person to notify' is someone a person who makes an LPA (the 'donor') chooses to inform about the registration of their LPA. They don't have to choose anyone to notify, so if that section of the LPA is blank, you don't need to fill in this form.

When you apply to register the LPA you must tell the people to notify that the LPA will be registered.

You must send a copy of this form to each of the people to notify, before you send the LPA to be registered. You can send them this form or hand it to them in person.

You can save time by filling in pages 2 and 3 and making a photocopy to send to each person.

The donor's relatives are not entitled to be notified unless they have been named in the LPA.

Detach this cover sheet before sending the form to them.

Notice of intention to register a lasting power of attorney

Person to notify

Title First names

Last name

Address

Postcode

Date

Day Month Year

You have received this notice because the person named on page 2 has made a lasting power of attorney.

A lasting power of attorney (LPA) is a legal document that lets someone (known as a 'donor') appoint people (known as 'attorneys') to make decisions on their behalf. It can apply to financial decisions or health and care decisions. An LPA can be used if the donor is unable to make their own decisions.

In other words, the person on page 2 is appointing the people on page 3 to make decisions on their behalf.

When they made the LPA, the donor decided you should be told about it before it's registered. This is so you can raise any concerns you may have. If you do have concerns, you can only object to the registration of the LPA for the reasons listed on page 4 of this form.

If you want to object, you must do so within 3 weeks of the date of this notice.

If you don't want to object you don't have to do anything.

Details of the lasting power of attorney

Helpline
0300 456 0300



About the donor – the person who made the LPA

Title	First names
<input type="text"/>	<input type="text"/>
Last name	<input type="text"/>
Address	<input type="text"/> <input type="text"/> <input type="text"/>
Postcode	<input type="text"/>

About the lasting power of attorney

Who is applying to register the LPA?

Donor
 Attorney(s)

What type of LPA is being registered?

Property and financial affairs
 Health and welfare

When did the donor sign the LPA?

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Day	Month	Year			

About the attorneys

Helpline
0300 456 0300



How are the attorneys appointed?

- There's only 1 attorney
- Jointly and severally
- Jointly
- Jointly for some decisions, jointly and severally for other decisions

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Address	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Address	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Address	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

Title	First names
<input type="text"/>	<input type="text"/>
Last name	
<input type="text"/>	
Address	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
Postcode	<input type="text"/>

If there are more than 4 attorneys, please make a copy of this page.
You don't need to list replacement attorneys appointed in the LPA (if any).



How to object

Helpline
0300 456 0300



If you wish to object, you must do so within 3 weeks of being given this notice.

You can only object to an LPA for one of the reasons below.

Factual objections:

- the donor or an attorney has died
- the donor and an attorney were married or had a civil partnership but have divorced or ended the civil partnership (unless the LPA says the attorney can still act if that happens)
- an attorney doesn't have the mental capacity to be an attorney (they must be able to understand and make decisions for themselves)
- an attorney has chosen to stop acting (known as 'disclaiming their appointment')
- the donor or an attorney is bankrupt, interim bankrupt or subject to a debt relief order (LPA for financial decisions only)
- the attorney is a trust corporation and is wound up or dissolved (LPA for financial decisions only)

To make a factual objection, complete form LPA007 and send it to the Office of the Public Guardian. Get the form from www.gov.uk/power-of-attorney/object-registration or by calling 0300 456 0300.

Prescribed objections:

- the LPA isn't legally valid – for example, you don't believe the donor had mental capacity to make an LPA
- the donor cancelled their LPA when they had mental capacity to do so
- there was fraud or the donor was pressured to make the LPA
- an attorney is acting above their authority or against the donor's best interests (or you know that they intend to do this)

To make a prescribed objection:

- complete form COP7 and send it to the Court of Protection. Get the form from www.gov.uk/object-registration or by calling 0300 456 4000 **AND**
- complete form LPA008 and send it to the Office of the Public Guardian. Get the form from www.gov.uk/object-registration or by calling 0300 456 0300

If you are objecting to a specific attorney, it may not prevent registration if other attorneys or a replacement attorney have been appointed.

You can find out more about lasting powers of attorney at www.gov.uk/power-of-attorney or by calling 0300 456 0300.



Make and register your lasting power of attorney a guide



Financial decisions

including:

- running your bank and savings accounts
- making or selling investments
- paying your bills
- buying or selling your house



Health and care decisions

including:

- what medical treatment you receive, such as life-sustaining treatment
- where you live
- day-to-day matters such as your diet, dress or daily routine

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How to use this guide

This guide gives you information about making and registering your lasting power of attorney (LPA). You don't have to read it now. You can start filling in your LPA form and look at the guide if you need more information.

Your lasting power of attorney (LPA)

An LPA is a legal document that lets you (the 'donor') choose trusted people ('attorneys') to make financial decisions or health and care decisions on your behalf.

An LPA is mainly used if you don't have the mental capacity to understand and make decisions yourself. You need mental capacity to make an LPA.

Mental capacity is the ability to make a specific decision at the time that it needs to be made.

Your LPA is only for England and Wales. It probably won't work elsewhere, so you may wish to seek legal advice if you want it to.

You don't need a lawyer to make an LPA, unless you have unusual or specific requirements.

Sections in the LPA form where you might want legal advice are marked with this lawyer symbol:



It's up to you to decide whether you want legal advice to fill in these sections.

Making your LPA: which type?

You'll have to choose what sort of decision you'll need help with. There are two kinds of LPA, covering two kinds of decision:

- money, finances and property
- health and care

Each LPA has its own form. To choose both, fill in both forms.

Financial decisions: use form LP1F

Financial decisions might be about:

- opening, closing and using your bank and building society accounts
- claiming, receiving and using your benefits, pensions and allowances
- paying your household, care and other bills
- making or selling investments
- buying or selling your home

You choose whether your attorneys can act for you as soon as the LPA is registered or only if you can no longer understand and make decisions (see part A5 of this guide).

You don't have to own your own home or have a lot of money to make an LPA for financial decisions. For example, if it's hard to manage your bank account or bills alone, you may want someone to help.

You can appoint different attorneys for your personal finances and your business affairs. To do this, fill in two LP1F forms.

Health and care decisions: use form LP1H

Health and care decisions might be about:

- giving or refusing consent to health care
- staying in your own home and getting help and support from social services
- moving into residential care and finding a good care home
- day-to-day matters such as your diet, dress or daily routine

Your attorneys can only make decisions when you don't have mental capacity.

One very important decision has its own section in a health and care LPA. You can choose whether your attorneys or your doctors should make decisions about accepting or refusing medical treatment to keep you alive, if you can't make or understand that decision yourself.

Read more about life-sustaining treatment in part A5 of this guide.

You don't have to have complex health or care problems to make an LPA. It's a way of planning for your care in case you can't make decisions for yourself in future.

People involved in your LPA

You (the donor) need to choose people for your LPA. Discuss this with them before you name them in your LPA form.

Before the official form starts, there's a page to make a note of everyone involved in the LPA – you don't have to fill it in, but you might find it useful.

People you must have to make an LPA

Donor: see part A1 of this guide.

Attorneys: see part A2 of this guide.

Certificate provider: see part A10 of this guide.

Witnesses: an impartial person must witness you and your attorneys signing your LPA. You can't witness your attorneys' signatures and they can't witness yours.

People you might want to include in your LPA

Replacement attorneys: see part A4 of this guide.

People to notify: see part A6 of this guide.

Registering your LPA

Before you can use your LPA, you must register it with the Office of the Public Guardian (OPG). It costs £110 to register your LPA so that it's ready to use. It's best to apply to register your LPA as soon as you've filled in the form.

Helping a friend to make an LPA

If you're helping a friend or relative with an LPA by filling in the form for them, that person must make all the choices when making the LPA. If they can no longer make these choices independently, you can't make an LPA for them. You can apply to the Court of Protection, who will appoint you or someone else to help them. Find out more at www.gov.uk/become-deputy

Your LPA pack

You've been sent all the documents that you need to make and register your LPA.

These are:

- form LP1F to make a financial LPA
- form LP1H to make a health and care LPA
- form LP3 if you want to notify people when your LPA is sent for registration
- continuation sheets 1 to 4 – you only use these if the LPA form says you should
- form LPA120 to apply for a reduced fee if you have low income

If we have sent you a pack and any of these are missing, please call us on 0300 456 0300 or download them from www.gov.uk/government/publications/make-a-lasting-power-of-attorney

Make your LPA online

You can also make your LPA using our digital service. It's quick and easy to do. There's more information at our website, www.gov.uk/power-of-attorney

If you need help making your LPA online

If you'd like to make your LPA online but are unsure about using computers and websites, please ring our contact centre on 0300 456 0300 and we'll try to help.

What is 'mental capacity'?

Your LPA – and this guide – mentions 'mental capacity' a lot. It's important to understand this idea before you make an LPA.

'Mental capacity' means the ability to make a specific decision at the time it needs to be

made. A person with mental capacity has at least a general understanding of:

- the decision they need to make
- why they need to make it
- any information relevant to the decision
- what is likely to happen when they make it

They should be able to communicate their decision through speech, signs, gestures or in other ways.

People can sometimes make certain decisions but don't have the mental capacity to make others. For example, someone may be able to decide what to buy for dinner but be unable to understand and arrange their home insurance.

Assessing mental capacity

To work out whether someone lacks the mental capacity to make a decision, you need to answer 'yes' to these two questions:

1. Do they have a mental or brain problem that stops their brain or mind from working properly?
2. Is that problem causing them such difficulty now that they are unable to make this particular decision at the time it needs to be made?

Being 'unable to make this particular decision' means that the person can't:

- understand relevant information about the decision that needs making
- keep that information in their mind long enough to make the decision
- weigh up the information in order to make the decision
- communicate their decision – this could be by talking, using sign language, pictures or even just squeezing a hand or blinking.

Sometimes – especially in the case of big or complex decisions – you may want to get professional advice, for example, from the person's GP, psychiatrist or psychologist.

Mental Capacity Act 2005 and Code of Practice

The Mental Capacity Act 2005 covers LPAs. The Mental Capacity Act Code of Practice explains more and has examples, including how attorneys must act. The Code of Practice also has more information about mental capacity.



You can find the Mental Capacity Act Code of Practice online at www.gov.uk/opg/mca-code

You can also buy a printed version from the Stationery Office: www.tsoshop.co.uk

Your local library may be able to help if you can't get online by yourself.

Making decisions for you

Attorneys can make some decisions on your behalf, but they can't do as they please. They always have to act in your best interests.

The Mental Capacity Act Code of Practice goes into this much more fully. It sets out five basic principles an attorney has to follow when working out whether and how to act on your behalf:

1. Your attorneys must assume that you can make your own decisions unless it is established that you cannot do so.
2. Your attorneys must help you to make as many of your own decisions as you

can. They must take all practical steps to help you to make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision through those steps.

3. Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.
4. Your attorneys must act and make decisions in your best interests when you are unable to make a decision.
5. Before your attorneys make a decision or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedoms but still achieves the purpose.

Attorneys always have to follow these principles.

Part A – make your LPA

Choose form LP1F to make an LPA for financial decisions or LP1H to make an LPA for health and care decisions.

Start filling in the form now.

You don't need to read this guide first. Use it while you're completing the form.

Before the official form starts, there's a page to make a note of everyone involved in the LPA – you don't have to fill it in, but you might find it useful.

When you see the word 'you' from now on, in part A of this guide, it means the donor: the person appointing other people to make decisions on their behalf.

The first proper pages of the forms look like this:

Office of the Public Guardian
Helpline 0300 456 0300

Lasting power of attorney for health and welfare

Section 1
The donor

You are appointing other people to make decisions on your behalf. You are 'the donor'.

Restrictions – you must be at least 18 years old and be able to understand and make decisions for yourself (called 'mental capacity').

Help?
For help with this section, see the Guide, part A1.

If you are filling this in for a friend or relative and they can no longer make decisions independently, they can't make an LPA. See the Guide 'Before you start' for more information.

Name (Last, first, middle)

Any other names you're known by (optional – if your married name)

Date of birth
 Day:
 Month:
 Year:

Address

Postcode

Email address (optional)

For OPG office use only

LPA registration date
 Day:
 Month:
 Year:

OPG reference number

Only valid with the official stamp here. LP1H Health and Welfare (07/18)

Office of the Public Guardian
Helpline 0300 456 0300

Lasting power of attorney for property and financial affairs

Section 1
The donor

You are appointing other people to make decisions on your behalf. You are 'the donor'.

Restrictions – you must be at least 18 years old and be able to understand and make decisions for yourself (called 'mental capacity').

Help?
For help with this section, see the Guide, part A1.

If you are filling this in for a friend or relative and they can no longer make decisions independently, they can't make an LPA. See the Guide 'Before you start' for more information.

Name (Last, first, middle)

Any other names you're known by (optional – if your married name)

Date of birth
 Day:
 Month:
 Year:

Address

Postcode

Email address (optional)

For OPG office use only

LPA registration date
 Day:
 Month:
 Year:

OPG reference number

Only valid with the official stamp here. LP1F Property and financial affairs (07/18)

If your forms don't look like this, you may be using old versions. Download the most recent ones, or call the Office of the Public Guardian's contact centre on 0300 456 0300 to request them.

Part A1 – the donor

Fill in section 1

Fill in your details in section 1 of the LPA form. You can also give an email address, but it's optional.

Give any other names that you use, such as your married name. If your LPA does not include all the names you're known by, there may be confusion or delays if your attorneys need to use it.

More information

Who can be a donor?

An LPA is for just one person. You can make an LPA if:

- you are at least 18 years old
- you have the mental capacity to do so

'Mental capacity' means the ability to make and understand a specific decision at the time it needs to be made.

Most people can make an LPA. However, there could be complications because of:

- residency – if you live or have property outside England and Wales
- bankruptcy – if you are bankrupt or subject to a debt relief order and want to make an LPA for your financial decisions

There's more on these complications on this page and page 9.

Can someone help the donor to fill in the form?

Yes. However, if anyone else is filling the form in for you, you must still choose what goes into your LPA. Only you can give others the power to make decisions with your LPA on your behalf.

Complications: residency and property

LPAs cover people who live or own assets in England and Wales. Your LPA may not work in other countries, including Scotland and Northern Ireland. You may want to get legal advice if:

- you live outside England and Wales
- you have property outside England and Wales and you're making an LPA for financial decisions
- you're planning to move away from England and Wales
- there are other reasons why where you live complicates your situation

Complications: bankruptcy and debt relief orders (LPA for financial decisions only)

There are rules about bankruptcy and debt relief orders for a property and financial affairs LPA.

If you're bankrupt or subject to a debt relief order, you can make, sign and register an LPA for financial decisions. However, your attorneys will not have power over all of your property.

If this applies to you, you should think about getting legal advice before you make your LPA.

If you become bankrupt or subject to a debt relief order after your financial LPA is made or registered, it will be cancelled.

If an attorney becomes bankrupt or subject to a debt relief order, they can no longer be your attorney under your LPA for financial decisions.

Bankruptcy does not affect a health and care LPA.

Part A2 – the attorneys

Fill in section 2

Fill in the names, addresses and dates of birth of your attorneys.

The order in which you write the attorneys' details on the form doesn't matter. Each attorney is as important as the others.

If you want more than four attorneys, mark the 'More attorneys' box on this page with an 'X'. Take a copy of Continuation sheet 1, called 'Additional people'. For each extra attorney, mark the 'Attorney' box on the sheet and add their details. You must sign and date Continuation sheet 1 before you sign the LPA form in section 9.

If you need more than one continuation sheet, you can make copies.

If you want to choose a trust corporation as an attorney for your LPA for financial decisions, fill in the details here and mark the 'trust corporation' box with an 'X'. Make sure that you write the exact name that the trust corporation uses.

The trust corporation representatives must fill in and sign Continuation sheet 4.

More information

The people you choose to act for you are called your attorneys.

You must have at least one attorney. There's no upper limit but too many attorneys could make things difficult, as they'll need to work together.

Make sure that each person agrees to be your attorney before you name them in your LPA.

When selecting attorneys, think about:

- how many you want to appoint and if they'll be able to work together
- whether you trust them to act in your best interests
- how well you know each other and how well they understand you

- how willing they'll be to make decisions for you
- how well they organise their own affairs, such as how well they look after their own money

Don't feel you have to choose someone just because you don't want to offend them. If you want them to feel involved, you could make them a 'person to notify' instead. (See part A6 of this guide.)

Who can be an attorney?

In legal terms, an 'attorney' is a person who's allowed to act on behalf of someone.

Attorneys don't need to be solicitors. Most people choose family members,

friends and other people they trust with no legal background. If an attorney is not a professional, the important thing is that you know each other well and they respect your views and will act in your best interests.

You can ask anyone with mental capacity aged 18 or over to be your attorney, including:

- your wife, husband, civil partner or partner
- a family member
- a close friend
- a professional, such as a solicitor

Attorneys must sign your LPA after you have signed section 9 and the certificate provider has signed section 10. They have to sign as soon as reasonably possible after the certificate provider – ideally on the same day.

What attorneys must do

Attorneys can make some decisions on your behalf, but they can't do as they please. They always have to act in your best interests.

The Mental Capacity Act Code of Practice goes into this much more fully. It sets out five basic principles an attorney has to follow when working out whether and how to act on your behalf:

- Your attorneys must assume that you can make your own decisions unless it is established that you cannot do so.
- Your attorneys must help you to make as many of your own decisions as you can.

They must take all practical steps to help you to make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision through those steps.

- Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.
- Your attorneys must act and make decisions in your best interests when you are unable to make a decision.
- Before your attorneys make a decision or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedoms but still achieves the purpose.

Attorneys always have to follow these principles.

You can find the Mental Capacity Act Code of Practice at www.gov.uk/opg/mca-code

Property and financial affairs LPA attorneys

Some people choose a professional attorney, such as a solicitor, for their financial LPA.

If you appoint a professional attorney for a property and financial affairs LPA, such as a solicitor, you must name an individual. You can't just give a job title or the name of a firm.

Professional attorneys usually charge fees. Ask what fees they will charge you. You must add instructions in section 7 about what you've agreed to pay them. (See part A7 of this guide.)

An undischarged bankrupt or a person subject to a debt relief order can't be an attorney for a property and financial affairs LPA.

Bankruptcy and debt relief orders don't affect health and welfare LPAs.

Trust corporation – property and financial affairs LPA only (form LP1F)

People with complex finances or who don't have anyone to manage their finances may choose a trust corporation as their attorney. This is usually a commercial bank or firm of solicitors.

You should ask what fees they will charge you. You may want to get legal advice if you are thinking of choosing a trust corporation as an attorney.

Health and welfare LPA attorneys

An attorney for a health and welfare LPA must be a person, not a company. You can have as many attorneys as you need.

Who can't be an attorney

A person who is currently bankrupt or has a debt relief order can't be an attorney on an LPA for financial decisions.

Bankruptcy and debt relief orders don't affect health and welfare LPAs.

A person who is on the Disclosure and Barring Service's barred list cannot act as an attorney – unless they're a family member and they're **not** getting a fee to be your attorney. They will break the law if they do. Find out more at www.gov.uk/dbs

What attorneys can do

Your attorneys can only make decisions that you've allowed them to make in your LPA. For example, if your LPA is for your financial decisions, your attorneys can't make decisions about your care or daily routine. If your LPA is for your health and care, they can't make decisions about your money.

When attorneys can no longer act

An attorney can't act for you if they:

- lose mental capacity
- decide they no longer want to act as your attorney (known as 'disclaiming their appointment')
- become bankrupt or subject to a debt relief order and were an attorney for a financial LPA
- were your wife, husband or civil partner but your relationship has legally ended – unless you write instructions in section 7 of the LPA form that they can continue to be your attorney if your relationship legally ends

Sometimes, if an attorney dies or has to stop acting for one of the reasons above, it can cause serious problems:

- if you appointed only one attorney, your LPA would stop working altogether
- if you've said your attorneys have to act 'jointly' for some or all decisions (see part A3 of this guide) then they won't be able to make those decisions

If either of these apply to you, consider appointing replacement attorneys to protect your LPA. Read more about replacement attorneys in part A4 of this guide.

If you cancel your LPA, your attorneys can no longer act on your behalf.

Part A3 – how should your attorneys make decisions?

Fill in section 3

Mark **only one** box on this page with an 'X'.

If you've chosen just one attorney, tick the box: 'I only appointed one attorney' and go to section 4.

If you've chosen two or more attorneys, you must state how they should make decisions on your behalf. Choose one of three options by marking only one box with an 'X':

- jointly and severally
- jointly
- jointly for some decisions, jointly and severally for other decisions

Each choice is explained in section 3 of the LPA form and below. If you are not sure which option is best for your circumstances, you may want to get legal advice.

Most people choose 'jointly and severally' because it is the most flexible and practical way for attorneys to make decisions.

If you choose a different option from 'jointly and severally' and your attorneys can't unanimously agree a joint decision, it can't be made. Your LPA might become unworkable.

If you choose 'jointly for some decisions, jointly and severally for other decisions', you must use Continuation sheet 2. On Continuation sheet 2:

- mark the box 'Decisions attorneys should make jointly'
- write in the space which decisions your attorneys must make jointly (see More information below for examples of what you might write)

If you use Continuation sheet 2, you must sign and date it (and any extra copies that you use) before you sign section 9 of your LPA.

The image shows a portion of the LPA form, specifically Section 3 titled 'How should your attorneys make decisions?'. It contains three main options, each with a checkbox and a corresponding text box for further details. The first option is 'I only appointed one attorney'. The second option is 'Decisions attorneys should make jointly and severally'. The third option is 'Decisions attorneys should make jointly'. There are also checkboxes for 'I have appointed two or more attorneys' and 'I have appointed more than two attorneys'. The form includes a 'Page 13 of 13' indicator and a barcode.

More information

You must state how your attorneys should act – whether they can make decisions separately, or whether they have to agree some or all decisions unanimously. You need to choose one of three options. The details are below.

Jointly and severally (attorneys act either together or individually)

Your attorneys can make decisions on your behalf on their own or together.

Any action taken by any attorney alone is as valid as if they were the only attorney. It's up to your attorneys to choose how they make decisions but they must always act in your best interests.

Most people choose this option because:

- attorneys can make simple or urgent decisions quickly and easily, without asking your other attorneys
- if an attorney can no longer act, the LPA won't be cancelled

If you choose this option, you must not say anywhere else in the LPA that certain decisions must be made by:

- one particular attorney
- some or all of your attorneys
- a minimum number of attorneys

Instructions like this contradict your choice here, so your LPA may be rejected.

There is a section later in the LPA that lets you give more specific instructions to your attorneys. Most people don't do this, and it can be more complicated than it seems. Read part A7 of this guide before deciding whether to add anything there.

Jointly (attorneys agree every decision unanimously)

Your attorneys must always make all decisions together. They must agree unanimously and they must all sign any relevant documents.

Choose this option if you want your attorneys to agree on every decision, whether it's big or small.

If your attorneys can't all agree on a decision, it can't be made.

With this option:

- if your attorneys can't work together, your LPA won't work
- if one attorney can no longer act or dies, your LPA will stop working – unless you've appointed replacements

If your attorneys live far apart, they may find acting jointly difficult – for example, going to the bank together.

If one of your original joint attorneys can no longer act, all your original attorneys stop acting for you. This is because the law treats attorneys who act jointly as a single unit. If you've appointed replacement attorneys, they will all take over.

Jointly for some decisions, and jointly and severally for other decisions

Your attorneys must make certain decisions together and agree them unanimously – but they can make other decisions individually.

If you choose this option you must clearly state which decisions your attorneys should make together and agree unanimously: that is, when they should act jointly.

If your attorneys can't all agree on a decision, it can't be made.

Some people pick this option because they don't mind their attorneys taking everyday decisions alone but want them to make important decisions together, such as selling a house.

If your attorneys live far apart, they may find acting jointly difficult.

With this option:

- you must write on Continuation sheet 2 which decisions must be made jointly and which must be made jointly and severally – if you don't, your LPA won't work
- if your attorneys can't agree on a joint decision, it can't be made
- if one attorney can no longer act or dies, your remaining attorneys won't be able to make any of the joint decisions, unless you've appointed replacements

With this option, if one attorney stops acting for you but you do have replacement attorneys:

- the replacement attorneys will take over, making all joint decisions instead of your original attorneys
- both the replacement and remaining original attorneys can make any decisions they're allowed to make individually

Examples of working jointly for some decisions, and jointly and severally for others

Property and financial affairs LPA examples:

If you choose 'jointly for some decisions, jointly and severally for other decisions', you should make a statement like one of these on Continuation sheet 2:

.....
"My attorneys must act jointly for decisions about selling or letting my house and may act jointly and severally for everything else."
.....

.....
"My attorneys must act jointly for decisions about investments in stocks and shares and may act jointly and severally for everything else."
.....

In the first example, 'everything else' means all financial decisions apart from selling or letting your house. In the second example, 'everything else' means all money matters apart from investing in stocks and shares.

Don't use these examples unless they're exactly what you want – you need to state what is right for you.

Health and care LPA examples:

If you choose 'jointly for some decisions, jointly and severally for other decisions', you should make a statement like one of these on Continuation sheet 2:

.....
"My attorneys must act jointly for decisions about where I live and may act jointly and severally for everything else."
.....

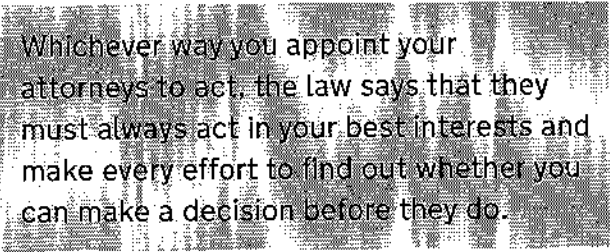
“My attorneys must act jointly for decisions I have authorised them to make about life-sustaining treatment and may act jointly and severally for everything else.”

In the first example, ‘everything else’ means all decisions about your day-to-day care and medical treatment. In the second example, ‘everything else’ also means day-to-day care and medical treatment and larger decisions about where you should live. It only excludes decisions about treatments needed to keep you alive.

You can only use something like the second example if you give your attorneys the authority to give or refuse consent to life-sustaining treatment by choosing option A in section 5 of your LPA form. See part A5 on page 24 of this guide for more on life-sustaining treatment.

Don’t use these examples unless they’re exactly what you want – you need to state what is right for you.

Protecting your interests



Whichever way you appoint your attorneys to act, the law says that they must always act in your best interests and make every effort to find out whether you can make a decision before they do.

Attorneys must also follow any instructions and bear in mind any preferences that you write in section 7 of your LPA form.

The Mental Capacity Act Code of Practice explains attorneys’ duties. You can find it online at www.gov.uk/opg/mca-code

Questions to ask yourself

- Do you want to pick ‘jointly and severally’, the most flexible and practical option?
- What might stop your attorneys working together? Do they get on? What could happen if they were to fall out?
- Are you happy for your attorneys to choose whether they make decisions together or individually? Choose ‘jointly and severally’, which is the most straightforward option.
- Even if your attorneys can make most decisions on their own, are there some big decisions that you want them to agree on? Choose ‘jointly for some decisions, jointly and severally for others’.
- Do you want your attorneys or replacement attorneys to make all their decisions together and agree every decision unanimously, whether big or small? Choose ‘jointly’.
- Do your attorneys understand how you would like them to make decisions? Make sure you discuss your choice with them.
- Do you know what will happen if one attorney can’t act any more? Read this section again if you’re not sure.
- Do you want replacement attorneys as a back-up if your attorneys have to make some or all decisions together? If you don’t choose replacements, your LPA may be at risk if an attorney stops acting on your behalf.

Part A4 – replacement attorneys

Fill in section 4 (optional)

If you want one or more replacement attorneys, write their details in section 4 of the LPA form.

If you want more than two replacements, mark the 'More replacements' box on this page. Take a copy of Continuation sheet 1, called 'Additional people'. For each extra replacement attorney, mark the 'Replacement attorney' box on the sheet and add their details.

You **must** sign and date Continuation sheet 1 **before** you sign the LPA in section 9.

If you need more than one continuation sheet, you can make copies.

Changing when and how your replacement attorneys can act

Mark this box with an 'X' if you have appointed more than one replacement attorney and you want to change how or when they act.

Marking this box can create complications for your LPA. There's more guidance below – please read it. You may also want to get legal advice.

More information

Replacement attorneys are people you choose to step in if one of your original attorneys can no longer make decisions on your behalf.

A replacement attorney will step in if one of your attorneys:

- dies
- loses mental capacity
- decides they no longer want to act on your behalf (known as 'disclaiming their appointment')
- was your wife, husband or civil partner but your relationship has legally ended (unless you've added an instruction for them to continue)

- becomes bankrupt or subject to a debt relief order – this only applies to financial affairs LPAs

A replacement attorney can only act if the original attorney they're replacing is permanently unable to make decisions for one of the reasons above.

A replacement attorney:

- cannot temporarily stand in for an attorney who is still able to act (for example, while the first attorney is on holiday)
- cannot replace a replacement attorney

You can't add any instructions telling replacement attorneys to start acting in specific circumstances.

If your original attorneys have to make all or some decisions jointly and one can no longer act, your replacement attorneys will make those joint decisions instead. Both your remaining original attorneys and your replacements can make any decisions that don't have to be made jointly.

Replacement attorneys usually step in as soon as one of your original attorneys stops acting for you.

Protecting your LPA

Having replacement attorneys means that your LPA should still work if an original attorney can no longer act on your behalf.

Without replacements:

- if you have only one attorney and that attorney can no longer act for you, your LPA will no longer work
- if you have attorneys who must make all or some decisions together ('jointly') and one attorney can no longer act, the rest will not be able to make those joint decisions

If your LPA can't be used and you don't have mental capacity, someone you know will have to apply to the Court of Protection to get the power to act on your behalf – this can be expensive and will usually take a long time.

Who can be a replacement attorney

A replacement attorney must meet the same requirements as an original attorney. This includes having mental capacity and being 18 or over when you sign your LPA.

One of your original attorneys cannot also be a replacement attorney in the same LPA.

A person who is on the Disclosure and Barring Service's barred list cannot act as an attorney – unless they're a family member and they're **not** getting a fee to be your attorney. They will break the law if they do.

When replacement attorneys step in

If you include more than one replacement attorney in your LPA, they all start at the same time, unless you've:

- appointed your attorneys to act jointly and severally
- **and** stated the order in which your original attorneys will be replaced

Replacing an attorney who acts 'jointly and severally'

If you appoint your attorneys to act jointly and severally, replacement attorneys usually step in if one original attorney can't act for you any more. The replacement attorneys and any remaining original attorneys can then make decisions 'jointly and severally'.

Replacing attorneys who act 'jointly' or 'jointly for some decisions, jointly and severally for other decisions'

If you appoint your attorneys either 'jointly' or 'jointly for some decisions, jointly and severally for other decisions', it is important to have replacement attorneys.

If one original attorney can't act for you any more, all your other attorneys must stop making any joint decisions. If this happens, any replacement attorneys step in to make the joint decisions. If you don't have any replacements, your LPA will stop working for joint decisions. This is because the law sees a group appointed 'jointly' as a single unit.

Read the section on 'Complications', below, to see examples of how this might work in practice.

Changing when and how your replacement attorneys can act

Mark this box with an 'X' if you have appointed more than one replacement attorney and you want to change how or when they act.

There are two main situations where this is useful. You have more than one replacement attorney and:

- you've appointed your original attorneys jointly and severally. You want your replacements to step in a particular order. Read 'Stating an order for replacement attorneys' below
- you have only one original attorney. You don't want your replacement attorneys to act jointly. Read through the guidance on page 20, especially the part about complications called '1. A sole attorney plus two or more replacements'

There are some other situations where you may want to mark this box. You'll find examples under 'Complications: replacement attorneys' on this page.

Stating an order for replacement attorneys

If you mark the box and you appointed your original attorneys to act 'jointly and severally' in section 3 of the LPA form, you can state the order in which your replacement attorneys step in.

Use Continuation sheet 2. Mark the box: 'How replacement attorneys step in.' Use the space to write how you want your replacements to step in. You might write something like:

"If one of my attorneys (my mother and father) can no longer act, I would like that attorney to be replaced by my sister. If, later on, my other parent can no longer act, I would like my brother to replace that person as my attorney."

"If my attorney John Smith becomes unable to act under this LPA, I want replacement attorney Anne Hall to step in and act in his place."

Do **not** state an order to replace attorneys if your original attorneys act 'jointly' or 'jointly for some decisions, jointly and severally for others.' You will stop your LPA from working. If you still want to do this, you should seek legal advice.

Complications: replacement attorneys

Appointing replacement attorneys is a sensible way to protect an LPA, especially if there's only one original attorney, or your attorneys have to make some or all decisions jointly.

Usually, replacing attorneys will work as you expect. For example, you could name one original attorney and one replacement attorney. Then, if the original attorney stops acting, the replacement attorney will take their place.

However, if your attorneys have to make some or all decisions jointly or you have more than one replacement attorney, unexpected things can happen.

Look at the examples on the next two pages: they cover some fairly common situations.

1. A sole attorney plus two or more replacements

What will happen

Unless you say otherwise, the replacements will have to act jointly.

Example

You've appointed your spouse or partner as your only attorney. You appoint your son and daughter as replacement attorneys. You don't say anything about how they should act.

As soon as your spouse or partner can't act any more, your children step in. They're now joint attorneys, and have to agree unanimously on every decision, no matter how small.

Alternatives

This might be what you want – however, a lot of people prefer their attorneys to act 'jointly and severally', giving them more freedom and flexibility.

To make this happen:

- at the bottom of section 4 of the LPA, mark the box called 'I want to change when or how my attorneys can act'
- take a copy of Continuation sheet 2 and mark the box 'How replacement attorneys step in and act'
- write this on the sheet: "I want my replacement attorneys to act jointly and severally"
- sign and date the sheet before you sign section 9 of the LPA

2. Joint attorneys plus one or more replacements

What will happen

The original attorneys will not be able to act at all as soon as one stops acting. The replacements will take over all decisions.

Example

You appoint your two brothers and your sister as attorneys, acting jointly, and appoint your daughter as a replacement attorney.

Something happens to one of your siblings that means they can no longer act. Now your daughter steps in. She is the sole attorney, and your two remaining siblings no longer have any say in decisions made under this LPA – they can't act at all on your behalf.

Alternatives

If you've appointed your original attorneys 'jointly', it isn't straightforward to arrange things so that the others can carry on acting after one of them has to stop – it's part of what 'jointly' means.

You could think about appointing the original attorneys 'jointly and severally' instead. If there are some big decisions you want them to agree on, you could appoint them 'jointly for some decisions, jointly and severally for other decisions' – however, as the example on the next page shows, the same problem would occur again.

There is one way around the problem.

You can make a second LPA in case your first one stops working. In this second LPA, you can appoint as attorneys the joint attorneys from your first LPA.

If you appoint your attorneys jointly and severally in your second LPA, you'll avoid the problem you had with your first LPA.

If you make a second LPA, you must write an instruction in section 7 of your second LPA saying that it comes into force if your first LPA stops working. You might write something like:

'If my original LPA for financial decisions stops working, this LPA comes into force.'

'If my health and welfare LPA fails, this LPA replaces it.'

If you want to do this, you may want to seek legal advice or call our helpline.

3. Attorneys appointed jointly for some decisions and jointly and severally for other decisions plus one or more replacements

What will happen

The original attorneys will have no say in the joint decisions as soon as one stops acting. The replacements will take over the joint decisions.

Example

You've appointed your daughter and her husband as attorneys. They have to act jointly for any decision about selling your house, but can act jointly and severally for all other decisions. You appoint your two grandchildren (who are over 18) as replacement attorneys.

Your son-in-law stops acting as an attorney. Now, your daughter and your grandchildren are your attorneys. However, your daughter no longer has a say in selling your house. Your grandchildren can make that decision without consulting her – they are the only attorneys for joint decisions.

Alternatives

This has the same problem as '2. Joint attorneys plus one or more replacements' on page 20.

If you're sure you don't want to appoint your original attorneys jointly and severally, then you can make two LPAs.

To do this, follow the instructions in '2. Joint attorneys plus one or more replacements' on page 20.

Part A5 – when can your attorneys make decisions? (LPA for financial decisions only)

Fill in section 5

You **must** choose when you want your attorneys to be able to make decisions. Mark only **one box** with an 'X'.

You have two options:

- As soon as my LPA has been registered (and also when I don't have mental capacity)
- Only when I don't have mental capacity

The image shows a portion of a legal form, specifically Section 5 titled "When can your attorneys make decisions?". It contains two options for the donor to mark with an 'X'. The first option is "As soon as my LPA has been registered (and also when I don't have mental capacity)" and the second is "Only when I don't have mental capacity". A handwritten 'X' is visible in the first option's box. The form also includes a signature line and a date field.

More information

A financial LPA can usually be used as soon as it's registered. If you have mental capacity, you can tell your attorneys to start using the LPA straight away. If you then lose mental capacity, they can carry on using the LPA.

Alternatively, you can choose that your financial LPA will take effect – and your attorneys will be able to act for you – **only** when you don't have mental capacity.

As soon as my LPA has been registered (and also when I don't have mental capacity)

Mark this box with an 'X' if you want your attorneys to help you with your finances while you have mental capacity.

For example, if you can't leave the house or it's hard to talk to your electricity supplier, you might ask your attorneys to deal with the bank or pay bills. You could ask your attorneys to act for you if you are away – for example, on holiday.

You can give instructions in LPA section 7 (see part A7 of this guide) about decisions your attorneys can't make – for example, about selling your house. You might write instructions like:

"While I have mental capacity, my attorneys must not make any decisions about selling my house."

As long as you have mental capacity, you control your finances.

Only when I don't have mental capacity

Mark this box with an 'X' if you don't want your attorneys to make decisions or act for you while you have mental capacity. This means you'll look after your finances while you still have mental capacity. Then, if you ever lose that capacity, your LPA will be ready for your attorneys to use.

Banks and other financial institutions sometimes want written confirmation that a donor does not have mental capacity before they'll recognise an attorney's authority to act under an LPA.

Ask the donor's GP, care co-ordinator, social worker or care home staff about a mental capacity assessment.

When you reach section 7 of the LPA form, you can add instructions. Some people explain how their mental capacity should be assessed, such as:

.....
"My attorneys shall only act under this power if they have obtained a written medical opinion stating that I am no longer mentally capable of managing and administering my property and financial affairs."
.....

However, if you trust your attorneys to assess your mental capacity, you do not need to add instructions like these.

Part A5 – life-sustaining treatment (health and care LPA only)

Fill in section 5

You have two options:

- option A – I give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf
- option B – I do not give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf

Sign only **one** option.

You **must** sign and date this page. Your signature must be witnessed. The witness must be aged 18 or over and can't be an attorney or replacement attorney under this LPA.

Sign this section before you sign your LPA in section 9. You **can** sign both sections on the same day.

If you are unable to sign or make a mark and someone else is signing your LPA for you, that person must sign this page and date their signature. Their signature **must** be witnessed.

The image shows a thumbnail of the LPA form section 5. The title is 'Section 5 Life-sustaining treatment'. It contains two options, A and B, with checkboxes. Option A is 'I give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf'. Option B is 'I do not give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf'. There is a 'Help' section with a question mark icon and some text. At the bottom, there are fields for 'Name of the person signing' and 'Date'.

More information

You **must** choose what you'd want to happen if you needed medical help to keep you alive and you no longer had mental capacity.

If you sign option A and ever need life-sustaining treatment but can't make decisions, your attorneys can speak to doctors on your behalf as if they were you. You can write instructions or preferences for your attorneys in section 7 of the LPA form. See the next page for some examples.

If you choose option B, doctors will make decisions about life-sustaining treatment.

If you make a mistake in this section – for instance, forgetting to have your signature witnessed, or missing off the signing date – then it defaults to option B. Your doctors will make decisions about life-sustaining treatment if you lack capacity.

Life-sustaining treatment: definition

'Life-sustaining treatment' means care, surgery, medicine or other help from doctors that's needed to keep someone alive.

Life-sustaining treatment can include:

- a serious operation, such as heart bypass surgery
- chemotherapy, radiotherapy or another cancer treatment
- an organ transplant
- artificial nutrition or hydration (food or water given other than by mouth)

Whether some treatments are life-sustaining depends on the situation. For example, if someone had pneumonia, a course of antibiotics could be life-sustaining.

Decisions about life-sustaining treatment can be needed in unexpected circumstances. One example is a routine operation that didn't go as planned.

Option A: attorneys

Choose option A if you want your attorneys to decide about life-sustaining treatment in case you ever can't make the decisions yourself.

Life-sustaining treatment: preferences (optional)

You can use section 7 of the LPA form to let your attorneys know your preferences, so that any decisions they make are as close as possible to the decisions you would have made.

For example, you might write something like:

.....
"If I were in the last days of a terminal illness, I would only want treatments to make me comfortable. I wouldn't want treatments to prolong my life or that meant I couldn't die at home."
.....

Attorneys should pay attention to your preferences, although they don't have to follow them.

You don't have to give any preferences for life-sustaining treatment – your attorneys can act without them.

Life-sustaining treatment: instructions (optional)

You can write instructions in section 7 of the LPA form to specify medical conditions where your attorneys must or must not consent to life-sustaining treatment on your behalf. For example, you might write something like:

.....
"My attorneys must not agree to life-sustaining treatment if I am in a persistent vegetative state."
.....

You may feel that your attorneys understand you well enough and you don't need to write instructions. Talk to them about what you want.

If you write instructions, your attorneys must follow them. You must be careful not to write anything that contradicts what you have said elsewhere in your LPA or requires your attorneys to break the law. If you do, it could make your LPA unworkable. If you want to write instructions but are uncertain, you may want to seek legal advice.

You don't have to give instructions about life-sustaining treatment.

Option B: doctors

Choose option B if you want your doctors to decide about life-sustaining treatment in case you can't. If the situation arises, they must:

- assess what's in your best interests
- take into account, where possible, the views of your attorneys and other people involved in your welfare
- take into account what you've said or written about life-sustaining treatment, including any guidance you've given in your LPA

Other ways to make your treatment preferences clear

There are other ways to explain what you want to happen if you need medical treatment and you can no longer make decisions for yourself.

An advance decision is a legally binding document in which you write which specific treatments you don't want, in case you can't decide or make your wishes known. Some people call it a 'living will' or 'advance directive'.

If you've made an advance decision that your doctors or attorneys should take into account, refer to it in your instructions in section 7 of the LPA form. You'll also need to include a copy of the advance decision when you send your LPA to the Office of the Public Guardian (OPG) to be registered.

You can find information about advance decisions on NHS Choices website at www.nhs.uk

If you give your attorneys the power to decide about life-sustaining treatment and have made an advance decision, your LPA might override your advance decision.

You may want to get legal advice, particularly if the advance decision and the LPA say very different things.

You can also let people know your views on treatments and care in:

- statements of preference
- care plans

There's more about life-sustaining treatment, advance decisions and how health professionals must respond to your written wishes in chapter 9 of the Mental Capacity Act Code of Practice, which you can find online at www.gov.uk/opg/mca-code

Part A6 – people to notify when the LPA is registered

Fill in section 6 (optional)

You can choose up to five people to notify about your LPA when it's about to be registered.

These should be people who know you well and would be willing to raise concerns about your LPA. They can object to the LPA if they think you were under pressure to make it or if they think fraud was involved.

However, you don't have to choose people to notify.

If you want to appoint people to notify, you can write the names and addresses of up to four in section 6. If you want to appoint five people to notify, tick the box that says 'I want to appoint another person to notify'. Fill in the person's name and address on Continuation sheet 1 and mark the 'Person to notify' box on that sheet.

You **must** sign and date Continuation sheet 1 **before** you sign the LPA in section 9.

If you need more than one continuation sheet, you can make copies.

The person applying to register the LPA – either you or your attorneys – **must** tell any people to notify that the LPA is being sent for registration. They must use form LP3 to do this, **just before** sending the LPA form to the Office of the Public Guardian. Part C of this guide explains how to notify these people.

More information

Letting people know about your LPA just before it's registered protects you. It's especially important if there's a long time between making your LPA and registering it.

Choose people to notify

You can choose up to five people to notify but they can't be your attorneys or replacement attorneys. Many donors choose family members or close friends.

Check with the people you're planning to notify that they're happy to be named in your LPA. Explain that:

- they don't have to do anything right away
- they will only be told when you or your attorneys apply to register your LPA
- their names and addresses will be sent to OPG
- they do not have to do anything when they are contacted, unless they have concerns

Part A7 – Preferences and instructions

Fill in section 7 (optional)

If you fill in this page and need more space, tick the box at the bottom of section 7 and use Continuation sheet 2. Mark with an 'X' either the 'Preferences' box or the 'Instructions' box on Continuation sheet 2. If you still need more space, you can make copies of Continuation sheet 2.

You **must** sign Continuation sheet 2 before you sign section 9 of your LPA.

More information

You can give your attorneys instructions or tell them your preferences in this LPA section – but you don't usually have to.

Most people leave this page blank.

The only circumstances in which you **must** write an instruction is in a financial LPA if you have investments managed by a bank and you want that to continue. Contact the Office of the Public Guardian (OPG) or a legal adviser if you want advice on the wording.

You can just talk to your attorneys and explain how you'd like them to act for you. Your attorneys will then be free to make decisions they think are right, and they will know how you'd want them made.

If you're not sure about what you can put in this section of your LPA, you might want to get legal advice.

Complicated or badly worded instructions or preferences can make an LPA unworkable.

Preferences and instructions: definitions

Preferences are what you'd like all your attorneys to think about when they make decisions for you. Your attorneys don't have to follow them but should bear them in mind.

If you write any preferences, avoid words such as 'must' and 'shall'. Instead use words such as 'prefer' and 'would like', so it's clear that you're giving your attorneys advice. If your attorneys **must** do something, include it in your instructions.

Instructions tell your attorneys what they **must** do when acting on your behalf.

If you write any instructions, use words such as 'must', 'shall' and 'have to'.

Instructions cause more problems than preferences. If you want to give instructions, read through the information below to find out about common problems and mistakes. It may be better to phrase them as preferences.

If you want to pay fees to your attorneys, explain this in the instructions. See 'Instructions to pay fees' on page 32 of this guide.

There are some examples below of common preferences and instructions for both types of LPA. They may not be right for you – they are just to give you an idea of what you might write. Your preferences and instructions should be about what matters to you.

Examples of preferences

Health and care LPA

Here are some examples of preferences you might write in a health and care LPA:

“I prefer to live within five miles of my sister.”

“I’d like to be prescribed generic medicines where they are available.”

“I would like to take exercise at least three times a week whenever I am physically able to do so. Whether or not I am mobile, I would like to spend time outdoors at least once a day.”

“I’d like my pets to live with me for as long as possible – if I go into a care home, I’d like to take them with me.”

“I’d like to have regular haircuts, manicures and pedicures.”

Property and financial affairs LPA

Here are some examples of preferences you might write in a financial LPA:

“I like to reinvest all interest from each year’s investments into next year’s ISA allowance.”

“I would like to maintain a minimum balance of £1,000 in my current account.”

“I prefer to invest in ethical funds.”

“I’d like my attorneys to consult my doctor if they think I don’t have the mental capacity to make decisions about my house.”

“I would like to donate £100 each year to Age UK.”

Examples of instructions

Health and care LPA

Here are some examples of instructions you might write in a health and care LPA:

“My attorneys must not decide I am to move into residential care unless, in my doctor’s opinion, I can no longer live independently.”

“My attorneys must not consent to any medical treatment involving blood products, as this is against my religion.”

“My attorneys must ensure I am given only vegetarian food.”

Property and financial affairs LPA

Here are some examples of instructions you might write in a financial LPA:

“My attorneys must consult a financial adviser before making investments over £10,000.”

“My attorneys must not sell my home unless, in my doctor’s opinion, I can no longer live independently.”

“My attorneys must not make any gifts.”

“My attorneys must continue to donate to charities that I have supported or for which I have set up standing order payments.”

“My attorneys must send annual accounts to my brothers and sisters.”

“My attorneys must instruct a tax accountant to prepare my annual tax return.”

If you have opted (in section 5 of the LPA form) for your attorneys to act under your financial LPA only if you've lost mental capacity, you might add instructions about how your mental capacity should be assessed. For example, you might write:

“This lasting power of attorney only applies if a doctor confirms in writing that I don't have the capacity to make decisions about my finances.”

If you trust your attorneys to judge your level of mental capacity, you don't need to add instructions like these.

Special case: making two LPAs for financial decisions

You may want to make two LPAs for financial decisions, one for your personal finances, and another for your business affairs, so that different attorneys can look after different things. If this is the case, you should explain what you want to happen in the instructions for each one.

For instance, in one LPA you could say:

“My attorneys only have the authority to use my personal bank account. They are not permitted to access my business account or make any decisions relating to my business.”

In the other LPA you'd say:

“My attorneys only have the authority to use my business accounts and make decisions relating to my business. They are not permitted to use my personal account or make decisions about my personal finances.”

Avoiding problems

Instructions and preferences can create problems. It's easy to ask for something that the law won't allow.

If you'd like to add instructions and preferences, here are some common mistakes to avoid.

You can't change the way attorneys are appointed to act

Don't appoint attorneys to make decisions in one way, then include instructions to make them act differently.

If you've said in section 3 that your attorneys must act 'jointly' – so they must agree every decision unanimously – you must not add here that if one stops being an attorney, the others can continue to act.

If you said your attorneys should act 'jointly and severally' – so they can make any decision on their own or together – you must not add these sorts of instructions:

- that one attorney has to do what another attorney says

- that one attorney must deal with your business and another with your private affairs
- that where attorneys disagree, the majority should decide
- that they must make some decisions together – if this is what you want, you should appoint them in LPA section 3 to act ‘jointly for some decisions, jointly and severally for other decisions’ instead.

Your LPA won't work if you include instructions like these.

The preferences or instructions are for all attorneys

Any preferences or instructions must apply to all your attorneys. You must not write, for example, that only your daughter is allowed to sell your house, or that one attorney can't make decisions about giving gifts.

Be careful with gifts

Instructions about gifts often cause problems. There are strict limits on the kinds of gifts that attorneys can give on your behalf. They can give presents on ‘customary occasions’, including weddings, birthdays and religious holidays. They can donate to charities you've previously given to. Any gifts should be reasonable and take into account how much money you have.



Here are some types of gifts you can't authorise:

- trust funds for grandchildren
- payment of school fees for grandchildren
- interest-free loans to family

- maintenance for any family member other than your wife, husband, civil partner or child under 18

Your attorneys must apply to the Court of Protection if they want to make gifts like this on your behalf.

The Office of the Public Guardian provides guidance on gifts for attorneys. You can find this at www.gov.uk/government/publications/public-guardian-practice-note-gifts

Other mistakes

You should avoid these common mistakes:

- You can't tell your attorneys to do anything against the law – this includes anything to do with euthanasia and assisted suicide
- You can't say that attorneys should act in the best interests of anyone else, including your wife, husband, partner or children. Your attorneys act for you alone
- You can't say a replacement attorney can only start acting in specific circumstances. For instance, you can't use restrictions to add special circumstances – such as an original attorney being on holiday – in which your replacement attorney can step in
- Don't add health and care restrictions to a financial LPA. Don't add financial restrictions to a health and care LPA. You should make a separate LPA for each instead
- You can't tell an attorney to change your will – it's outside their powers
- You can't give an attorney power to appoint a replacement attorney

Instructions to pay fees

Professional attorneys

Professional attorneys, such as solicitors or accountants, charge for their services. They may also claim fees and reasonable expenses.

Write what you've agreed to pay in section 7 instructions or set their fee by referring to standard rates and writing something like:

.....
"I wish my professional attorneys to be paid the standard solicitor rate as set by [state the name of a relevant professional organisation here]."
.....

Fees and expenses are paid out of your funds.

Non-professional attorneys

Many attorneys don't get fees. For example, if you appoint a non-professional attorney – such as your husband, wife, partner, a family member or a friend – they'll probably be happy to act for you without being paid. However, they can still claim reasonable expenses, such as postage, travel costs and the cost of an accountant preparing annual accounts.

If you don't want to pay your attorneys fees, don't write anything. They can still claim expenses.

If you agree to pay a fee, you must write this in your instructions. If you **don't**, your attorney **can't** be paid. You can set different fees for different attorneys.

For non-professional attorneys, fees are often set as a payment each year.

Here are examples of the sort of instructions you might write to pay a fee to your attorneys:

.....
"Each attorney must be paid a single fee of £1,000 each year, the payment to be made on 20 December each year. The fees will stop when my estate drops to £[fill in amount]."
.....

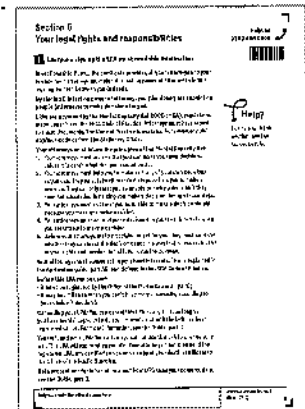
.....
"I wish each of my attorneys to be paid £[fill in the amount] per year for their services under this LPA. My attorneys will stop being paid when my money drops to £[fill in amount]."
.....

Fees and expenses will be paid out of your funds.

Part A8 – your legal rights and responsibilities

Read section 8

Everyone involved in this lasting power of attorney must read this section before signing.



More information

An LPA is a legal agreement (also called a 'deed') between you and your attorneys.

Section 8 contains important information that you, your attorneys and certificate provider must read, as it is part of the legal agreement that you and they are making. The principles of the Mental Capacity Act 2005 and the rules in the Mental Capacity Act Code of Practice, which your attorneys must follow, are set out in this section of the LPA.

You can see the complete Mental Capacity Act Code of Practice at www.gov.uk/opg/mca-code.

If you need help to look at websites, visit your local library.

Your best interests

The law says that your attorneys must always act in your best interests when making decisions and acting for you.

They must:

- do everything they can to help you make all or part of a decision
- identify what you would take into account if you were making a decision

- be guided by your personal, political, cultural, moral or religious beliefs and values when making any decisions for you

To do this, they should:

- find out your preferences and views from you or from how you've behaved and what you've said or written in your LPA and elsewhere
- assess whether the decision can be left for another time, when you might find it easier to make
- avoid restricting your rights
- consult family and friends and anyone else who knew or understood your wishes, feelings and views
- not make assumptions about your quality of life or about what you need just because of your age, appearance, condition or behaviour

Before you sign

Check that you have completed all the sections that you must fill in and any optional sections you want to use.

Once you've signed, you cannot change your LPA – you will need to make a new LPA if you want to make changes.

The table below summarises everything you should have done before you sign. The grey rows show sections you must fill in; the others are optional.

Section name		Information needed	
1	The donor	Your name, date of birth and address. Give an email address if you have one	
2	The attorneys (at least one)	The names, addresses and dates of birth of your attorneys	<p>More than four attorneys?</p> <p>Use Continuation sheet 1 and sign it before you sign the LPA</p>
3	How should your attorneys make decisions?	Mark one box to show how your attorneys make decisions	
4	Replacement attorneys	The names, addresses and dates of birth of any replacement attorneys	<p>More than two replacement attorneys?</p> <p>Use Continuation sheet 1 and sign it before you sign the LPA</p> <p>Changing the way your replacement attorneys act or step in?</p> <p>Use Continuation sheet 2 and sign it before you sign the LPA</p>
5	LPA for property and financial affairs only: When can your attorneys make decisions?	Tick one box to choose when your attorney(s) can make decisions	
	LPA for health and welfare only: life-sustaining treatment	Tick one box to give either your attorneys (option A) or your doctors (option B) the power to decide about life-sustaining treatment	
6	People to notify when the LPA is registered	The names and addresses of any people to notify	<p>Five people to be told?</p> <p>Use Continuation sheet 1 and sign it before you sign the LPA</p>
7	Preferences and instructions	Any preferences or instructions you want your attorneys to follow or keep in mind	<p>More preferences and instructions?</p> <p>Use Continuation sheet 2 and sign it before you sign the LPA</p>

Part A9 – signature: donor

Section 9: sign your LPA

The people involved in the LPA must sign it in the correct order. If they don't, the Office of the Public Guardian (OPG) won't register it and your attorneys will not be able to use it.

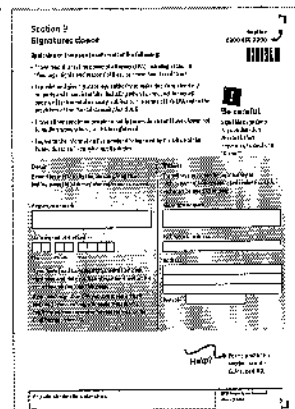


You must sign your LPA **before** anyone else does.

If you've used Continuation sheets 1 or 2, make sure you've signed them before you sign this section.

If you're making a health and welfare LPA, also sign section 5 – life-sustaining treatment – before you sign this section.

When you sign LPA section 9, you are forming a legal agreement with your attorneys. You are legally bound by everything written in the form up to this point, including LPA section 8 ('Your legal rights and responsibilities') and the declaration on this page.



More information

Order of signing

The LPA must be signed in this order:

1. You (the donor) sign

You (the donor) must sign your LPA before anyone else.

You (the donor) must sign:

- section 5 of the LPA, about life-sustaining treatment if it is an LPA for health and care decisions
- Continuation sheet(s) 1, if used
- Continuation sheet(s) 2, if used
- section 9 of the LPA

It's better to sign everything on the same day – though you don't have to – but section 9 must be signed last.

If you can't sign, you can make a mark.

If you can't sign or make a mark, look at 'Donors who cannot sign or mark', below. The person you've chosen will be able to sign for you.

There must be an independent witness to watch you signing your LPA. The witness must sign straight after you.

If it is an LPA for health and care decisions they must also witness you signing section 5, about life-sustaining treatment.

Your witness can't be:

- under 18
- one of your attorneys
- one of your replacement attorneys
- an employee of a trust corporation that is your attorney or replacement attorney (financial LPA only)

2. The certificate provider signs LPA section 10

See part A10 of this guide, called 'Signature: certificate provider.'

3. All the attorneys and replacement attorneys sign LPA section 11

See part A11 of this guide, called 'Signature: attorney or replacement attorney.'

Donors who cannot sign or mark: Continuation sheet 3

If you can't sign or make a mark, someone can sign for you using Continuation sheet 3.

You must be present and must tell the person to sign.

That person's signature must be witnessed by two people. The two witnesses can't be:

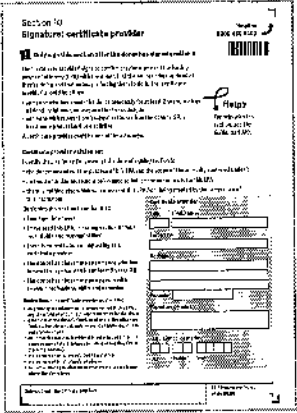
- under 18
- your attorneys
- your replacement attorneys
- employees of a trust corporation that that is your attorney or replacement attorney (LPA for financial decisions only)

Part A10 – signature: certificate provider

Fill in section 10

The certificate provider must sign **after** the donor but **before** the attorneys.

The certificate provider must read LPA sections 8 and 10 before they sign your LPA. They can then fill in their name and address, and sign and date section 10.



More information

A certificate provider is an impartial person who confirms that you understand what you're doing and that nobody is forcing you to make an LPA. They must confirm that:

- you understand the significance of the LPA
- you have not been put under pressure to make it
- there has been no fraud involved in making the LPA
- there is no other reason for concern

If possible, they should discuss your LPA with you in private, without attorneys or other people present, before they sign to 'certify' their part of the LPA.

Your certificate provider can witness your and your attorneys' signatures.

Who can be a certificate provider?

A certificate provider must be at least 18 years old and either:

- a friend, colleague or someone you've known well for at least two years – they must be more than just an acquaintance

- your doctor or lawyer or someone with the professional skills to judge whether you understand what you're doing and are not being forced to make an LPA

'People to notify' can be certificate providers.

There are quite a lot of people who can't be a certificate provider – for example, members of your family or your attorneys' families. There's a fuller list below.

The certificate provider must sign after you and can sign on the same day as you (the donor) or as soon as possible afterwards.

Someone who has known you well for at least two years

You should ask a friend or neighbour, someone from your social or sports club, a work colleague, or similar. They must have known you well for at least two years. They must know you well enough to have an honest conversation with you about making your LPA and the things they have to confirm when they sign the LPA.

If possible, they should discuss your LPA with you in private, without attorneys or other people present, before they sign to 'certify' their part of the LPA.

Someone with relevant professional skills

Usually, someone with relevant professional skills would be one of the following:

- a registered healthcare professional, such as your GP
- a solicitor, barrister or advocate
- a registered social worker
- an independent mental capacity advocate (IMCA)

Other professionals may have skills suited to judging whether you can make an LPA – contact the Office of the Public Guardian if you're unsure about your choice of certificate provider.

You may have to pay a professional to act as your certificate provider.

People who can't be a certificate provider

The certificate provider must not be:

- an attorney or replacement attorney for the LPA
- an attorney or replacement attorney in any other LPA or enduring power of attorney (EPA) that you've already made
- a member of your or your attorneys' families – including wives, husbands, civil partners, in-laws and step-relatives
- an unmarried partner, boyfriend or girlfriend of yours or of any of your attorneys – whether or not they live at the same address
- your business partner or one of your attorneys' business partners
- your employee or one of your attorneys' employees

- an owner, manager, director or employee of a care home where you live, or a member of their family
- anyone running or working for a trust corporation appointed as an attorney in a financial decisions LPA

If you're not sure if someone's allowed to be your certificate provider, email the Office of the Public Guardian (OPG) at customerservices@publicguardian.gsi.gov.uk or call OPG's contact centre on 0300 456 0300.

Part A11 – signature: attorney or replacement attorney

Fill in section 11

Your attorneys and replacement attorneys must write their names and sign and date your LPA.

Attorneys and replacement attorneys must sign **after** the certificate provider.

Their signature(s) must be witnessed. The witness(es) must write their full name and address as well as signing. The witness can't be the donor.

There are four copies of this page in the form. If you need more, make photocopies. **All** attorneys and replacement attorneys must sign section 11 (trust corporations are the only exception: they complete and sign Continuation sheet 4 instead).

More information

When your attorneys sign section 11, they are forming a legal agreement with you (the donor). They are bound by everything written in the form up to this point, including LPA section 8 ('Your legal rights and responsibilities') and the declaration in section 11.

They must read the LPA (including section 8) or it must be read to them. They must then sign section 11 in the presence of an impartial witness.

The attorneys and replacement attorneys can witness each others' signatures. You (the donor) can't be the witness.

Attorneys and replacements should sign as soon as possible after the certificate provider – it's preferable if they all sign on the same day.

Part B1 – register your lasting power of attorney (LPA)

You must register

The LPA can't be used until it's registered by the Office of the Public Guardian (OPG).

Only the donor or one of the attorneys can apply to register it.

An attorney can apply to register the LPA on their own if they are:

- the only attorney
- appointed 'jointly and severally'
- appointed 'jointly for some decisions, jointly and severally for other decisions' – unless the donor has stated in the LPA document that all the attorneys must apply together

If you have been appointed to act jointly, you must apply to register the LPA with all the other attorneys.

Check how the attorneys have been appointed by looking at section 3 of the LPA form.

Before OPG registers an LPA, it must make sure that:

- the LPA is legally correct
- the LPA has no errors
- people have had the opportunity to object if they have concerns

You have to tell any 'people to notify' before you register. You must do this using form LP3. There are more details in part C of this guide. There is a legal four-week wait before OPG can register an LPA. This gives any people to notify a chance to object.

If there are no good reasons for objections and no problems with the LPA, OPG will register it and post it back. OPG stamps the original form to show that it's valid and ready to use. This is the official LPA document.

Register now

If you apply to register the LPA as soon as it is signed, OPG can spot mistakes while they can still be changed. Mistakes can only be corrected if the donor has mental capacity.

If you delay registration and the donor loses mental capacity, the attorneys can still apply to register the LPA. However, it won't be possible to correct any mistakes. If there are mistakes, OPG can't register the LPA and the LPA can't be used. Someone will have to apply to the Court of Protection to get the power to make decisions on the donor's behalf or get a declaration that the LPA can be treated as valid. This can be a long process and can cost a lot more than an LPA.

However, you don't have to register the LPA straight away. If you want to delay registration, then complete sections 12 to 15 and form LP3 when you're ready to register the LPA.

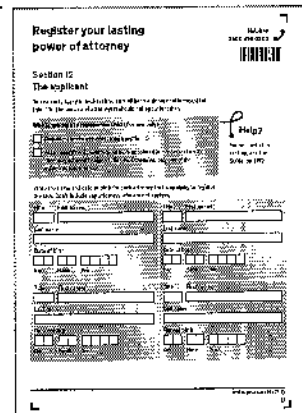
When you see the word 'you' from now on, in part B of this guide, it means the person applying to register the LPA – either the donor or attorney(s).

Part B2 – register your lasting power of attorney

Fill in section 12

Mark only one box with an 'X' to state whether you are the donor or attorney(s) and are applying to register the LPA.

If you are an attorney or group of attorneys, fill in your name(s) and date(s) of birth. Otherwise, leave those boxes blank.



Part B3 – who do you want to receive the LPA?

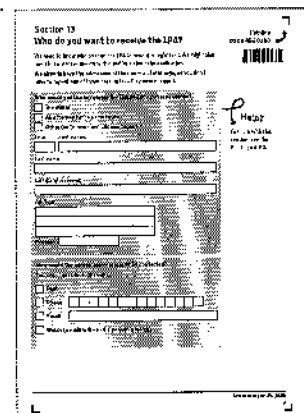
Fill in section 13

You need to choose one person we can contact if we have any questions. This person will also receive the registered LPA document.

You must mark one of three options with an 'X':

- the donor
- an attorney
- other

If it's the donor or attorney, check that the address they gave in section 1 or 2 of the LPA form is correct. If they've moved, give their new address here.



Part B4 – application fee

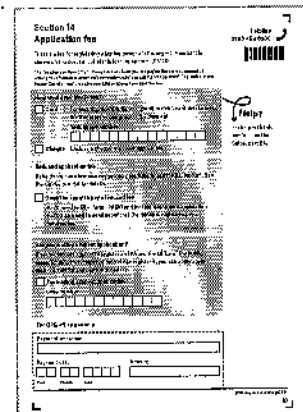
Fill in section 14

How would you like to pay?

Choose a way of paying and mark the 'Cheque' or 'Card' box with an 'X'.

If you choose 'Card', do not send your debit or credit card details. Write your phone number and the Office of the Public Guardian (OPG) will call you to take the payment.

If you choose 'Cheque', send a cheque for £110 made payable to 'Office of the Public Guardian' with this form. Write the donor's name on the back of the cheque.



Reduced application fee

If you have a low income, you may not have to pay the full amount.

Write an 'X' in the box and fill in form LPA120. This form is in the application pack.

Are you making a repeat application?

If your LPA form was returned to you because it couldn't be registered, you can apply again with your new LPA form within three months for £55.

Mark the box in this section with an 'X' and give your case number. You'll find this in the letter that came with your returned application.

More information

OPG cannot register your LPA until you've paid the fee.

Registering one LPA cost £110 when you were sent this guidance. Fees can change. You can check that you're paying the right amount at www.gov.uk/power-of-attorney/how-much-it-costs or call OPG's contact centre on 0300 456 0300.

Reduced fees: form LPA120

If the donor has a low income, they may be eligible for a reduced fee or may not have to pay a fee at all.

The form to apply for this is the LPA120. If you don't have it, you can call OPG's contact centre on 0300 456 0300 to ask for a copy or download it from www.gov.uk/opg/power-of-attorney-forms

Form LPA120 has its own guidance, which explains much more fully:

- who qualifies for a reduced fee or no fee
- what evidence you'll need to send OPG

Complete this form and send it to us with the LPA form and evidence of the donor's low income.

If you're in a hurry to register the LPA and don't have the evidence for a fee reduction, pay the full fee. You then have three months to apply for a refund or partial refund, again using the LPA120.

Things to remember

While the form has its own guidance, there are a few things that you should check before you sign it and send it to OPG. Reduced fees are often delayed or refused because people make mistakes:

- no matter who's applying to register the LPA, reductions are based on the donor's income
- send evidence – if you don't, the application for a reduced fee will be turned down
- make sure the evidence of the donor's income or benefits covers the right period. It should include the date you're applying to register
- bank statements aren't proof of income on their own

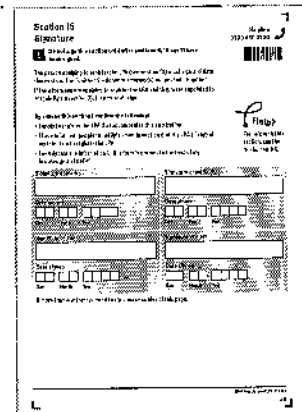
Part B5 – signature

Fill in section 15

Whoever is applying to register the LPA must read section 15 and sign it.

You are signing to say that you are applying to register the LPA and that you have already informed any people to notify listed in section 6 of the LPA form. You do this by sending form LP3 to the people to notify. See Part C of this guide.

If attorneys who are appointed to act jointly in section 3 of the LPA form are applying to register the LPA, they must all sign. If there are more than four joint attorneys, make copies of this page for the other attorneys to sign.

The image shows a portion of a form titled 'Station 15 Signature'. It includes a 'Signature' field with a line for writing and a 'Date' field. Below this, there are several rows of checkboxes and text boxes, likely for listing attorneys or other relevant parties. The form is partially filled out with a signature and a date.

Check your lasting power of attorney

Use the checklist that follows section 15 to make sure that the LPA has been made correctly. Send all your documents to:

Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH

Part C: people to notify

Fill in form LP3

Each person to notify must receive their own LP3 form.

For each person, fill in their details on page 1 of the form, called 'Notice of intention to register a lasting power of attorney'.

The rest of the form – the pages about the donor and attorneys – will be the same for all the people to notify. You can fill them in once, then photocopy the completed version of those pages for each person to notify.

On page 2 of the form, fill in the donor's details. Then tick one box for each of the next two questions:

- Who is applying to register the LPA?
- What type of LPA is being registered?

You then need to enter the date that the donor signed the LPA.

You should add the details of the attorneys.

Finally, mark one box with an 'X' to show how they were appointed.

More information

If you're applying to register two LPAs – one for financial decisions and one for health and care – and the people to notify are the same on each form, you'll still have to notify each of them twice.

You don't need to tell the people to notify about replacement attorneys.

Objections

Form LP3 also explains why and how the people to notify can object to the LPA being registered.

Where there are no concerns

If a person to notify has no concerns, they don't have to do anything.

Where there are reasons to object to the LPA

If a person to notify wants to raise concerns about your LPA, they have three weeks to object to the Office of the Public Guardian (OPG) from the date they were notified.

There are rules about the sort of concerns people can raise. They can't object to your LPA simply because they don't like it. The LP3 explains these 'factual' and 'prescribed' grounds.

Form LP3: the details you need

If you didn't make the LPA, you may not know where to find all the information you need to fill in an LP3. This table explains.

What you need to know	Where to find it
Names and addresses of the people to notify	Section 6 of the LPA form. Up to four are listed here. If the box at the bottom is marked, there's a fifth person to notify
A fifth person to notify?	Look for a copy of Continuation sheet 1, where 'person to notify' is marked with an 'X'
Attorney details	Section 2 of the LPA has the details you need. This has room for four attorneys. If the box at the bottom of the second page is marked with an 'X', there are more than four attorneys
More than four attorneys?	Look for any copies of Continuation sheet 1, where 'attorney' is marked with an 'X'
How are the attorneys appointed?	Look at section 3 of the LPA. One box on that page will be ticked
What type of LPA is being registered?	The front page of the LPA shows this
When did the donor sign the LPA?	Section 9 of the LPA. The date you need is in the grey box below the donor's signature

Part D – Cancelling your LPA, concerns about attorneys, privacy policy and contacting OPG

Cancelling your LPA

You can cancel your LPA at any time, as long as you have mental capacity. It doesn't matter if the LPA is registered.

If your LPA isn't registered, you can just destroy the document. It's best to tell all the people involved, such as the attorneys.

If it's registered, you must write a 'deed of revocation' to cancel it. You must sign and date the deed while watched by a witness, who must also sign and date it. You must then send it to the Office of the Public Guardian with the original, registered LPA document. You must also tell all your attorneys that you're cancelling your LPA.

This is an example of a deed of revocation that you can use:

.....
This deed of revocation is made by [donor's name] of [donor's address].

1. I granted a lasting power of attorney for financial decisions/health and care [delete as appropriate] on [date you signed the LPA] appointing [name of first attorney] of [address of first attorney] and [name of second attorney] of [address of second attorney] to act as my attorney(s).

2. I revoke the lasting power of attorney and the authority granted by it.

Signed and delivered as a deed

[donor's signature]

Date signed [date]

Witnessed by [signature of witness]

Full name of witness [name of witness]

Address of witness [address of witness]
.....

Your witnesses don't have to be the same people you used on your original LPA.

You can find out more at www.gov.uk/power-of-attorney/end

If you don't have access to the internet at home, your local library can help you.

Concerns about attorneys

The Office of the Public Guardian (OPG) protects people who don't have the mental capacity to make decisions for themselves. If anyone believes that attorneys are not acting in a donor's best interests, they can raise concerns with OPG, the police or social services.

Privacy and your personal information

This privacy notice sets out the standards that you can expect when we ask for, use, and share your personal information. It tells you how to get access to the information we hold on you.

The Office of the Public Guardian is an executive agency of the Ministry of Justice. The Ministry of Justice is the 'data controller' for the purposes of the Data Protection Act 1998, and is responsible for the personal information that we hold.

We use your information to help us carry out the duties of the Public Guardian, in line with the Mental Capacity Act 2005.

We collect your personal information when:

- you apply to register a power of attorney
- you apply to register a lasting power of attorney using the digital service at www.gov.uk/power-of-attorney
- you pay a fee using a credit card, debit card or by direct debit
- you agree to take part in our customer research
- you contact us with a question
- you make a complaint

We will use your personal information to:

- register your power of attorney
- process your fee payment

- keep a register of powers of attorney
- process customer research
- carry out administration

When we ask for your personal information we promise to:

- only ask for the information we need
- make sure your information is safe, that no unauthorised person has access to it
- make sure we do not keep your information any longer than we have to
- give you the chance to ask us to change your information if you believe it is wrong

In return we ask you to:

- make sure the information you give us is accurate
- tell us about any relevant changes to your personal situation (such as a change of name, title or address) as soon as possible

Contact us

Office of the Public Guardian,
PO Box 16185, Birmingham B2 2WH

Email:
customerservices@publicguardian.gsi.gov.uk

Telephone: 0300 456 0300

Textphone: 0115 934 2778

Calling from abroad: +44 300 456 0300

Monday to Friday: 9am to 5pm (except Wednesday)

Wednesday: 10am to 5pm

Website: www.gov.uk/opg

LPA and EPA fees

with effect from 1 October 2013

	Full fee	Exemption or remission available
Lasting power of attorney (LPA) application fee	£110	If the donor qualifies, exemption or remission may be available (see details below)
Enduring power of attorney (EPA) application fee	£110	
Repeat LPA application fee	£55	
Office copy/certified copy of an LPA	£35	No exemption or remission available
Office copy/certified copy of an EPA	£25	

Exemption – when a donor doesn't have to pay because they get certain means-tested benefits

Remission – a 50% fee reduction based on a donor's financial circumstances or a reduction based on the donor receiving Universal Credit

Office copy/certified copy – official copies that are only supplied in exceptional cases

- You must pay an application fee when you apply to register a power of attorney. Fees are non-refundable, even if the power of attorney isn't registered.
- Application fees are paid by or on behalf of the donor – the person making the power of attorney. If they make both types of LPA they need to pay 2 fees.
- Office copy fees are paid by the person requesting the document.

Make a payment

Online payment – if you make your LPA using the digital LPA tool, you can make a secure online payment by credit or debit card.

On the phone by credit or debit card – if you want to pay this way, please say so in your application form (LPA002) or covering letter and we will contact you.

Cheque payment – please make your cheque payable to 'Office of the Public Guardian' and write the donor's full name on the back.

Make your LPA online

If you haven't already made your LPA you could **use the digital LPA tool**. It will:

- help you make your LPA
- guide you through to registration
- let you pay online or by cheque

www.gov.uk/lasting-power-of-attorney

Exemption and remission of application fees

A donor may be entitled to an exemption or remission of application fees based on their financial circumstances. It's only the donor whose benefits and income matter.

To apply you must:

- fill in form LPA120A (which follows this information sheet) and sign the declaration
- gather supporting evidence – **without evidence we can't consider a claim** so make sure you read the sections on page 2 about acceptable supporting evidence
- send us form LPA120A and your evidence along with your LPA or EPA forms when you apply to register.

If you're registering 2 powers of attorney at the same time you only need to fill in 1 form LPA120A.

Exemption

If the donor receives any of the following **means-tested benefits** when an application to register is made, they can apply for an exemption, or their attorney or solicitor can do so on their behalf:

- Income Support
- Income-based Employment and Support Allowance
- Income-based Jobseeker's Allowance
- **Guarantee Credit element** of State Pension Credit
- Housing Benefit
- Council Tax Reduction/Support – also known by other names (not the 25% single person discount or the Class U exemption)
- Local Housing Allowance
- A combination of Working Tax Credit **and at least one of:**
 - Child Tax Credit
 - Disability Element of Working Tax Credit
 - Severe Disability Element of Working Tax Credit

Not included: Disability Living Allowance, Invalidation Benefit, Personal Independence Payment

Exception

If the donor has been awarded **personal injury damages of more than £16,000** which were ignored when they were assessed for one of the above benefits, they won't qualify for exemption.

Supporting evidence for exemption

You need to **send copies of letters from a benefit provider** showing the donor received at least 1 of the listed benefits at the time you applied to register. Letters must confirm that the benefit was being paid to the donor and include their printed details (title, full name, address and postcode).

Contact OPG

Office of the Public Guardian
PO Box 16185
Birmingham B2 2WH

DX: 744240 Birmingham 79

Telephone: 0300 456 0300
(+44 300 456 0300 outside the UK)

Textphone: 0115 934 2778

Fax: 0870 739 5780

Phone line open - Monday to Friday 9am to 5pm
(Wednesday 10am to 5pm)

Email: customerservices@publicguardian.gsi.gov.uk
Online: www.gov.uk/power-of-attorney

Remission based on income

If the donor's gross annual income is less than £12,000, they may be eligible for a 50% reduction of the fee. Gross annual income is income **before** tax. It may come from employment, non-means-tested benefits (such as Attendance Allowance, Disability Living Allowance or Personal Independence Payment), pensions, Pensions Savings Credit, interest from savings and investments, or the rent of property.

Supporting evidence for remission

You need to **send proof of the donor's gross annual income**. Evidence must relate to the time you sent the application to register. We can't accept bank statements. Evidence can be:

Paid employment – A P60 or 3 months' consecutive wage slips from current employment.

Non-means-tested benefits and pensions – an official letter or notice from the payer.

Interest from capital, stocks, shares or bonds – statements or vouchers showing gross income.

Self-employment – most recent self-assessment tax return and HMRC tax calculation, or audited account certified by a qualified accountant.

If the donor receives no income, they must send a signed statement explaining how they support themselves. If they don't have mental capacity their attorney or solicitor can supply and sign this statement.

Remission based on Universal Credit

A donor may qualify for remission if they receive Universal Credit.

Supporting evidence of Universal Credit

You need to send copies of letters showing the donor received Universal Credit at the time you applied to register. Letters must confirm that the benefit was being paid to the donor and include their printed details (title, full name, address and postcode).

Review

If an application for exemption or remission is unsuccessful, you can appeal within 4 weeks of the decision by writing to the Head of Corporate Services. If the original decision is upheld, it will be referred to the Public Guardian for confirmation.

Hardship

If the donor doesn't qualify for remission or exemption, but paying fees would cause hardship – for example, paying would mean they couldn't meet normal living costs – you can apply to have fees waived. To claim write to OPG explaining why payment would cause hardship, enclosing bank statements and other documents showing all savings, income and outgoings.

Application for exemption or remission of LPA/EPA application fees

LPA120A

Section 1 – About the case

Donor's full name

Donor's address

Case number/ref, (if known)

You will find this on our letters

Which fee does this application relate to?

- LPA application fee
 EPA application fee
 Repeat LPA application fee

Which powers of attorney have you enclosed for registration?

- LPA for health and welfare
 LPA for property and financial affairs
 EPA

Section 2 – About you

What is your relationship to the case?

- Donor Attorney Other (Please specify)

Title

- Mr Ms Miss Mrs Other

First name

Last name

Address (including postcode)

Telephone number

Daytime Mobile

Email address

If you have already paid the fee, who do you want the money paid to if your application for exemption/remission is successful?

continued overleaf

Section 3 – Fee exemption based on permitted benefits

3a Does the donor receive any of the benefits listed?

- Income Support
 - Income-based Employment and Support Allowance
 - Income-based Jobseeker's Allowance
 - **Guarantee Credit** element of State Pension Credit
 - Housing Benefit
 - Council Tax Reduction/Support – also known by other names (not the 25% single person discount or the Class U exemption)
 - Local Housing Allowance
 - A combination of Working Tax Credit and **at least one of:**
 - Child Tax Credit
 - Disability Element of Working Tax Credit
 - Severe Disability Element of Working Tax Credit
- Not included:** Disability Living Allowance, Invalidity Benefit, Personal Independence Payment

Yes → **Go to question 3b**

No → **Go to Section 4**

3b Has the donor been awarded personal injury damages of more than £16,000 which were ignored when the donor was assessed for the benefit listed at question 3a?

Yes → **Go to Section 4**

No. The donor is eligible for exemption.

Section 4 – Fee remission based on gross annual income or Universal Credit

Is the donor's gross annual income less than £12,000?

Yes, I want to apply for a remission of 50% of the fee based on the donor's gross annual income.

Evidence must be enclosed.

No

Does the donor receive Universal Credit?

Yes, I want to apply for a remission based on the donor receiving Universal Credit.

Evidence must be enclosed.

No

Section 5 – Declaration

I declare that the information I have given is true to the best of my knowledge, and I enclose the required evidence to support the claim for a fee exemption or remission.

I understand that this application will be refused if I fail to provide evidence.

Signature

Date

Send your completed application to:

Office of the Public Guardian, PO Box 16185, Birmingham B2 2WH

or

DX 744240 Birmingham 79