

Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) allows you to appoint someone to make certain decisions on your behalf. The appointed persons can manage your finances for you in the future if you reach a point where you are no longer able to make decisions for yourself.

For information about a “Health and Welfare” LPA, please see the separate page at the end of this leaflet.

It lets you choose a person (or people) you trust to act for you. This person is referred to as your attorney.

A property and affairs LPA covers decisions about your finances and property. If there comes a time when you can't manage your finances anymore, the attorney will be able to do this for you. This can include paying your bills, collecting your income and benefits, or renting or selling your house.

It can only be used once it has been registered at the Office of the Public Guardian (OPG). It can then be used even while you have mental capacity to deal with these things yourself, but only with your consent.

There are a number of reasons you may wish to make an LPA:

- It can be reassuring to know that, if you are unable to make a decision for yourself in the future, your chosen person will make these decisions for you.
- Making an LPA ensures that the person you want to make decisions for you will be able to do so. This prevents a stranger, or someone you may not trust, from having this power.
- An LPA can reduce problems that may occur in the future. It can be more expensive and time-consuming for family or friends to try to gain a similar power in the future.
- Making an LPA can help prompt discussions with your family or others about your future wishes.
- The LPA will mean that your Attorneys can help you if you become physically unable to deal with your affairs.

To make an LPA you must have the mental capacity to make this decision. This means you are deciding for yourself that you wish to make the LPA, and you understand what this means.

You can choose anyone you wish to be your attorney, as long as they are over 18. It's important to think carefully about who you will appoint. Think about who you trust to make these decisions for you, and also whether the person is reliable and has the skills to carry out the role. You can choose to have more than one attorney.

If you choose to have more than one attorney, you must decide how your attorneys will act. They can make decisions together ('jointly'), they can act together and separately ('jointly and severally'), or a combination of the two.

When making decisions, your attorney must follow the Mental Capacity Act. This means that they:

- must act in your best interests
- must consider your past and present wishes
- cannot take advantage of you to benefit themselves
- must keep all of your money separate from their own.

If the attorney fails to comply, the LPA could be cancelled. If an attorney has taken advantage of you, this will be investigated by the OPG and the person could be prosecuted. Having an LPA in place can therefore offer you protection from potential future abuse.

Once you have completed the form, you will need to get someone to sign it to state that you have the mental capacity to make an LPA. This means you have the ability to make this decision; you understand what an LPA is and you made the decision yourself. The signed form is a 'certificate of capacity' and the person is called the certificate provider.

Each attorney must sign the form to say that they agree to act as your attorney if needed in the future. They will also sign to show that they understand the duties this involves.

The form must be registered at the OPG before it can be used. There is a fee for registering each LPA.

The Office of the Public Guardian is responsible for the registration of LPAs, including dealing with objections and maintaining the register of LPAs. The OPG will also deal with any issues (including complaints) about the way in which an attorney is exercising their powers. If there are any problems, the OPG may pass on the case to the Court of Protection, who can:

- decide whether a person has capacity to make particular decisions for themselves
- make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make these decisions, for example making a decision about where someone lives
- decide whether an LPA is valid
- remove attorneys who fail to carry out their duties
- hear cases concerning objections to register an LPA (someone may object to an LPA being registered if they feel that the person was forced into making it, or that the proposed attorney is not suitable).

You will also still be able to act and make your own decisions. It means that your attorney can help you manage your finances and you both have the power to act. Only if you lose mental capacity will they have to make decisions for you.

If you don't make an LPA and become unable to make certain decisions for yourself, there may be a time when no one can do this for you, as no one will have the legal power to act on your behalf. This can make things like paying bills, including care fees, difficult, as well as making decisions about your future care. In this case, someone may need to apply to the Court of Protection to become your Deputy. This can give them similar powers to that of an attorney. A relative or friend can apply to be your Deputy, or a professional may be appointed. The process of becoming a Deputy is a lot more time-consuming and expensive than an LPA. There are also ongoing requirements that a Deputy must fulfil such as paying an annual fee and also submitting an annual report, so it can be easier for someone to be an attorney rather than a Deputy.

We charge a standard fee for preparing an LPA of £350.00 plus VAT each, and there is a Court fee of £82.00. A second LPA for the same person done at the same time would be charged at £100.00 plus VAT and the Court Fee. If we are doing LPAs for two persons at the same time, the fees are £600.00 plus VAT and four Court Fees.

Costs for Deputyship are much higher and can be found at <https://www.gov.uk/government/publications/court-of-protection-fees-cop44>.

Health and Welfare LPAs

This covers health and care decisions and can only be used once you have lost mental capacity. An attorney can generally make decisions about things such as:

- where you should live
- your medical care
- what you should eat
- who you should have contact with
- what kind of social activities you should take part in.

You will also need to choose whether or not you want your attorney to be able to make decisions about life-sustaining treatment. If you choose not to, then all decisions about life-sustaining treatment will be made by your healthcare team, unless you've made an Advance Decision (Living Will).

Any decision your attorney makes must be made in your best interests.

There is a thought that everyone should make appropriate provisions for their future care as they approach old age. This ensures that your wishes are granted and you are looked after in the way you would like.

It can also save your family members the upset and frustration of not being able to get involved in your care.

Arranging a Lasting Power of Attorney for Health and Welfare is particularly important for anyone who has been given a diagnosis of Dementia, or other degenerative illness, that may cause them to lose mental capacity in the future.

Although these things are not nice to contemplate, putting a Lasting Power of Attorney for Health and Welfare in place now is the only way you can be sure you'll be looked after in accordance with your personal wishes.

Please email info@fairbrotherdarlow.co.uk for more information about how we can assist you with this process.