

LPA Guide

This guide will provide a step by step explanation of how to ensure your LPA is completed correctly.

This comprehensive guide provided full details on the terms used within LPAs and what you need to do to ensure your LPA is registered successfully.

What is an LPA?

A lasting power of attorney (LPA) is a legal document that lets someone (the 'donor') choose one or more trusted people ('attorneys') to make decisions on their behalf.

An LPA gives the donor more control over what happens to them if they have an accident or illness that means they cannot make their own decisions (they 'lack mental capacity').

The attorneys must act in the donor's best interests, follow any instructions the donor puts in their LPA and also consider any preferences the donor puts in their LPA.

The donor can make their LPA themselves, or ask someone to help them make it, which is in fact often the case.

The two types of LPA

An LPA can be made to cover the donor's property and financial affairs or their health and welfare.

The donor can make one or both LPAs.

A health and welfare LPA can only be used after the donor has lost mental capacity.

A property and financial affairs LPA can be used either as soon as it's registered or after the donor has lost mental capacity. A person with mental capacity is able to make a specific decision at the time it needs to be made. They will have some 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 and they should be able to communicate their decision.

Information you'll need to make an LPA

You'll need the names, addresses and dates of birth of the donor, the attorneys and the replacement attorneys, if the donor decides to have any.

You'll also need the names and addresses of the certificate provider and the people to notify, if the donor decides to have any.

Registering an LPA

All LPAs must be registered by the Office of the Public Guardian (OPG) before they can come into effect.

The donor

The donor is the person who wants to make an LPA so that they can appoint other people to help them make decisions or to make decisions on their behalf. An LPA is for one person only.

A donor must be at least 18 years old and have mental capacity.

The donor should decide:

- who they want as their attorneys
- whether they want any replacement attorneys and when the replacements should step in
- how they want their attorneys to make decisions together
- if they want to give any instructions or preferences to guide their attorneys' decisions
- who will be their certificate provider
- whether anyone should be notified about the LPA

Property and financial affairs LPA

The donor does not have to own their own home or have a lot of money to make this type of LPA.

The donor chooses people they trust (attorneys) to make decisions on their behalf about money and financial matters, such as:

- opening, closing and using their bank or building society accounts
- claiming, receiving and using their benefits, pensions and allowances
- paying bills
- buying and selling their house

Health and welfare LPA

The donor chooses people they trust (attorneys) to make decisions about things such as:

- giving or refusing consent to particular types of health care, including medical treatment
- getting help and support from social services
- where the donor lives - for example, whether the donor stays in their own home or moves into a care home
- finding a care home or care provider
- day-to-day matters like the donor's diet, dress or daily routine
- consent to life-sustaining treatment on their behalf.

The attorneys cannot make a decision for the donor when the donor can make that decision themselves.

Life-sustaining treatment

With a health and welfare LPA, the donor must choose who they want to make decisions about life-sustaining treatment if they do not have the mental capacity to decide themselves.

The donor has two options:

- A. To give their attorneys authority to give or refuse consent to life-sustaining treatment on the donor's behalf. If the donor chooses this option, their attorneys can speak to doctors as if they were the donor.
- B. Not to give their attorneys authority to give or refuse consent to life-sustaining treatment on the donor's behalf. If the donor chooses this option, it means doctors will make any decisions about life-sustaining treatment instead of the donor's attorneys.

If the donor chooses to give their attorneys the power to make decisions about life-sustaining treatment, they can add preferences and instructions about treatment. For example, the donor can express preferences about treatment or give instructions about when their attorneys must or must not consent to life-sustaining treatment. This can help the attorneys make decisions that are as close as possible to those the donor would have made themselves.

The attorneys

When they make an LPA, the donor chooses one or more trusted people known as 'attorneys' to make decisions ('act') on their behalf.

The donor must choose at least one attorney. They can have as many attorneys as they want, but it is practical to have no more than three, as it may be difficult for more than that for all to work together.

When making decisions for the donor, the attorneys must always act in the donor's best interests, follow any instructions and consider any preferences the donor put in their LPA.

Who can be an attorney

The donor can ask anyone aged 18 or over who has mental capacity to be their attorney.

A person who is on the Disclosure and Barring Service barred list cannot act as an attorney. They're breaking the law if they do.

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

Choosing attorneys

The donor should choose people they trust and know well. Many donors choose family members or close friends to be their attorneys.

Attorneys do not need to be solicitors.

It's important that the attorneys understand the donor's beliefs and preferences well enough to make decisions for the donor, and that the donor trusts their attorneys to act in their best interests.

The donor must decide:

- who they want to appoint as their attorney or attorneys

- whether they want any replacement attorneys - people who step in if one of the original attorneys can no longer act
- how they want their attorneys to work together

Appointing a spouse or partner as an attorney

The donor can appoint their wife, husband or civil partner as an attorney.

This person will usually have to stop being an attorney if the marriage or civil partnership is later ended through divorce, dissolution or annulment.

If they're the only attorney and there are no replacements, this means the LPA can no longer be used.

Professional attorneys

Some donors ask a professional, such as a solicitor to be their attorney. Professional attorneys usually charge fees.

If an attorney on a property and financial affairs LPA becomes bankrupt or subject to a debt relief order after the LPA is registered, they'll no longer be able to act. If they're the only attorney and there are no replacements, this means the LPA can no longer be used.

People who are bankrupt or subject to a debt relief order can still be attorneys on a health and welfare LPA.

Trust corporations

A trust corporation can be the attorney or one of the attorneys on a property and financial affairs LPA.

If the donor's finances are complex or they do not have anyone they want to appoint as an attorney, they might choose a trust corporation.

How multiple attorneys make decisions

If the donor has more than one attorney or replacement attorney, they must decide how they want their attorneys to make decisions.

The options are:

- jointly and severally - the attorneys can make decisions on their own or together
- jointly - the attorneys must all agree on every decision
- jointly for some decisions, jointly and severally for others - the attorneys must all agree on certain decisions, but other decisions can be made by one or some of the attorneys

Jointly and severally

The attorneys can make decisions on their own or together.

Most donors choose this option because:

- attorneys can make day-to-day or urgent decisions quickly, without having to involve all the attorneys
- decisions will not be delayed, or not made, because the attorneys cannot meet or agree
- if one attorney can no longer act, the LPA will not be cancelled
- attorneys can share tasks and responsibilities between them
- documents or cheques do not need to be signed by every attorney

The donor can add preferences to say how they would prefer their attorneys to make a particular decision. However, the attorneys do not have to follow these requests.

Jointly

The attorneys must make all decisions together, however big or small. The attorneys must all agree on every decision.

With this option:

- if the attorneys cannot all agree on a decision, it cannot be made
- if the attorneys cannot work together, the LPA will not work
- if a cheque needs to be signed, all the attorneys must sign it
- the attorneys may not be able to use internet or telephone banking to manage the donor's bank accounts

If the attorneys live far apart, they may find acting jointly difficult – for example, it may be difficult to all go to the bank together.

The law treats attorneys who act jointly as a single unit. This means that if an attorney dies or is unable or unwilling to act, the LPA will stop working. However, the donor can change this by adding instructions that if one of the joint attorneys can no longer act, the remaining joint attorneys can continue to make all decisions.

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

The donor specifies certain decisions that the attorneys must all make together and agree on. Any other decisions can be made individually.

Some donors choose this option because they do not mind their attorneys making everyday decisions alone, but want them to make certain important decisions together. For example, selling the donor's house. The donor must clearly say which decisions the attorneys must make together.

With this option, if the attorneys cannot all agree on a joint decision, it cannot be made.

The donor should consider whether anything could stop the attorneys working together to make joint decisions.

If an attorney dies or is unable or unwilling to act, the remaining attorneys will not be able to make any of the joint decisions, unless the donor either said otherwise in their instructions.

Replacement attorneys

Replacement attorneys are people the donor chooses to step in if one of their original attorneys can no longer act.

Replacement attorneys need to sign the LPA before it can be registered.

The donor does not have to appoint replacement attorneys, but having them helps to protect the LPA meaning that the LPA should still work if an original attorney can no longer act.

Without replacements:

- if there's only one attorney and that attorney can no longer act, the LPA will stop working
- if the donor appointed their attorneys to act jointly and one attorney can no longer act, the LPA will stop working, unless the donor has stated otherwise in their instructions
- if the donor appointed their attorneys to act jointly for some decisions, and one attorney can no longer act, the joint decisions can no longer be made, unless the donor has stated otherwise in their instructions

When replacement attorneys step in

Replacement attorneys step in if one of the attorneys can no longer act. This may be because the attorney:

- dies
- loses mental capacity
- decides they no longer want to act as an attorney
- was the donor's wife, husband or civil partner, but the relationship has legally ended

Replacing attorneys who act jointly and severally

When there are replacement attorneys, if an original attorney dies or can no longer act:

- all the replacement attorneys will step in together, unless the donor has stated otherwise in their instructions
- the replacement attorneys and any remaining original attorneys can then make decisions 'jointly and severally'

Replacing attorneys who act jointly

Replacement attorneys are an important backup when attorneys are appointed to act jointly.

When there are replacement attorneys, if an original attorney dies or can no longer act:

- all the replacement attorneys will replace all the original attorneys
- the remaining original attorneys will not be able to make any decisions on the donor's behalf anymore

Replacing attorneys who act jointly for some decisions

Replacement attorneys are an important backup when attorneys are appointed to act jointly for some decisions, and jointly and severally for others.

When there are replacement attorneys, if an original attorney dies or can no longer act:

- all the replacement attorneys step in and take over making the joint decisions
- the remaining original attorneys will not be able to make the joint decisions anymore
- the replacement and remaining original attorneys can make all other decisions individually

Certificate provider

An LPA must have a certificate provider.

The certificate provider is an impartial person who helps protect the donor's interests by checking that the donor understands the LPA and is making it of their own free will.

The certificate provider signs the LPA to certify that they have discussed the LPA with the donor and that:

- the donor understands the significance of their LPA
- no one is putting the donor under pressure to make the LPA
- there has been no fraud involved in making the LPA
- there is no other reason for concern

The donor must sign the LPA before the certificate provider. The certificate provider can witness the donor's signature.

Who can be the certificate provider

The certificate provider must be 18 years old or over and have mental capacity.

They can be either:

- someone who has known the donor personally for at least 2 years, such as a friend, a work colleague or neighbour (but not a relative)
- someone with relevant professional skills, such as the donor's GP

The certificate provider must be more than an acquaintance. They have to know the donor well enough to have an honest conversation with them about the LPA and the power the donor is giving to their attorneys.

Who cannot be the certificate provider

The certificate provider cannot be:

- any attorney or replacement attorney for this or any other LPA or enduring power of attorney that the donor has made
- a member of the donor's family or of any of the attorneys' families – including husbands, wives, civil partners, in-laws and step-relations
- an unmarried partner, boyfriend or girlfriend of the donor or any of the attorneys
- the donor's business partner or any attorney's business partner
- the donor's employee or any attorney's employee
- anyone running or working for a care home where the donor lives, or a member of their family
- anyone running or working for a trust corporation appointed as an attorney in this LPA

Preferences and instructions

The donor can give preferences and instructions to guide and direct the way their attorneys make decisions.

Adding preferences and instructions is optional, and most donors do not add any. Many donors prefer to talk to their attorneys about their wishes in advance, rather than leaving written directions.

When attorneys want to make a decision on the donor's behalf, they may need to show the registered LPA to organisations, such as banks or care homes. These organisations will check the LPA to see if the donor made any relevant preferences or instructions.

When instructions must be added

The donor must add instructions if:

- they appointed their attorneys jointly, and want the remaining attorneys to be able to continue to make decisions if one of the attorneys dies or is unable to act
- they appointed their attorneys to act jointly for some decisions and jointly and severally for others, and want the remaining attorneys to be able to continue making the joint decisions if one of the attorneys dies or is unable to act

The difference between preferences and instructions

Instructions are what the donor says their attorneys must or must not do when making decisions on their behalf.

Preferences are what the donor would like their attorneys to think about when making decisions.

If the donor chooses to give their attorneys the power to make decisions about life-sustaining treatment, they can add preferences about this. This can help attorneys make decisions that are as close as possible to the decisions the donor would have made.

If the donor chooses to give their attorneys the power to make decisions about life-sustaining treatment, they can add instructions to specify medical conditions where their attorneys must or must not consent to life-sustaining treatment on the donor's behalf.

Avoiding problems with instructions

The donor must not appoint attorneys to make decisions in one way, then include an instruction that requires the attorneys to make decisions in a different way.

If the donor has chosen to appoint their attorneys to act jointly and severally (the attorneys can make any decision on their own or together), the donor must not add these sort of instructions:

- that one attorney has to do what another attorney says
- that one attorney must deal with the donor's business and another with their private affairs
- that if the attorneys disagree, the majority should decide
- that attorneys must make some decisions together - if this is what the donor wants, they should appoint their attorneys to act 'jointly for some decisions and jointly and severally for other decisions' instead.

Any preferences or instructions must apply to all the attorneys. The donor must not say, for example, that only their son is allowed to sell their house.

There are strict limits on the size and kind of gifts attorneys can give on the donor's behalf. Attorneys can only:

- give gifts on 'customary occasions', such as weddings, birthdays and religious holidays
- donate to charities the donor has previously given to
- make gifts that are 'reasonable' and take into account how much money the donor has

The donor cannot instruct their attorneys to do things such as:

- giving gifts intended to reduce inheritance tax liability
- creating or contributing to trust funds for grandchildren
- paying school fees for grandchildren
- making interest-free loans to family
- paying maintenance for any family member other than the donor's wife, husband, civil partner or child under 18

In their instructions, the donor:

- cannot tell their attorneys to do anything against the law – this includes anything to do with euthanasia and assisted suicide
- cannot say that attorneys should act in the best interests of the donor's wife, husband, partner or children - attorneys act for the donor, not anyone else
- cannot say a replacement attorney can only start acting in specific circumstances
- should not add instructions about their health and welfare to a property and financial affairs LPA
- should not add instructions about their property and finances to a health and welfare LPA
- cannot tell an attorney to change the donor's Will – that is something that is outside an attorney's powers

People to notify

The donor can choose people to be told when the applicant applies to register the LPA.

Why notify people?

Letting people know about the LPA when it's about to be registered provides extra security. It gives people who know the donor well a chance to raise concerns.

The donor can choose up to five people to notify. They cannot be the attorneys or replacement attorneys.

The donor should talk to each person they want to choose to make sure they're happy to be named on the LPA. The donor should explain that they will only be notified when the donor or the attorneys apply to register the LPA and that they do not have to do anything when they are contacted, unless they have concerns.

How to notify people

Just before the applicant sends the LPA for registration with the OPG, they must give or send a 'people to notify form (LP3)' to each of the people they wish to notify.

The LP3 form explains on what grounds someone can object to an LPA being registered and how to raise a concern.

Signing the LPA

The different sections of the LPA **must** be signed in the right order. If they're not, the donor may have to pay the application fee again.

Sections must be signed in this order:

1. The donor signs and dates:
 - continuation sheets 1 and 2, if used
 - section 5, if it's a health and welfare LPA
 - section 9, followed by their witness
2. The certificate provider signs and dates section 10
3. The attorneys and any replacement attorneys sign and date section 11, followed by their witnesses
4. The person applying to register the LPA (either the donor or attorney) signs and dates section 15

If the attorneys are appointed jointly and they are applying to register the LPA, they all need to sign section 15.

If the attorneys are appointed jointly and severally, or jointly for some decisions, only one attorney needs to sign section 15.

People can sign the LPA on different days, as long as the LPA is signed in the right order.

If you send the LPA to the OPG and it's signed in the wrong order, the OPG cannot register it. You'll have to complete some or all of it again and the donor may have to pay another application fee.

Who can be a witness?

Witnesses are impartial adults who watch the donor, attorneys and any replacement attorneys sign the LPA. The witnesses must also sign the LPA to say they've seen the donor and attorneys sign.

Attorneys or replacement attorneys can witness each other's signature but not the donor's.

How to register the LPA

Once you've made the LPA and everything has been signed correctly, you need to send it to the Office of the Public Guardian (OPG) to be registered. An LPA can only be used after it's been registered.

Post (a) the signed LPA, including any continuation sheets, (b) the 'fee remissions and exemption form' and any proof needed, if you're applying to pay a reduced or no fee and (c) a cheque for the appropriate fee to the OPG, all in one envelope.

If the donor is applying to register the LPA, the OPG will write to the attorneys to let them know about the application. If an attorney is applying to register the LPA, the OPG will write to the donor and any other attorneys.

The OPG will then hold the LPA for at least 4 weeks, a period set by law which gives people time to raise concerns about the LPA.

If there is something that must be corrected before the LPA can be registered, you may have to complete the LPA again. You can only do that if the donor still has mental capacity. If the donor no longer has mental capacity, their attorneys can apply to register the LPA, however it will not be possible to correct any errors. If there are mistakes, the LPA cannot be registered and it cannot be used. The attorneys will have to apply to the Court of Protection to get the power to make decisions on the donor's behalf. This can be a long process and can cost a lot more than the LPA.

It takes 8 to 10 weeks in total to register the LPA if there are no mistakes in the application and there are no objections.

Once the OPG has registered the LPA, they will stamp the LPA form and return it to the correspondent by post. The correspondent can be the donor or one of their attorneys, or someone else such as a legal professional.

Fees, reductions and exemptions

It currently costs £82 to apply to register an LPA, which covers the cost of processing the application, and registering the LPA.

Reductions and exemptions

If the donor has a low income or gets certain means-tested benefits, you can apply for them to pay a lower fee or no fee.

1. If the donor receives certain means-tested benefits, they will not have to pay a fee - this is called an 'exemption'.
2. If the donor's income before tax is less than £12,000 a year, they only have to pay half the fee.
3. If the donor gets Universal Credit, they may be entitled to a reduction.

To apply for a reduction, you'll need to download a 'fee remissions and exemption form' (LPA120) which you must sign and date.

Means-tested benefits: no fee

If the donor gets any of these means-tested benefits, they do not have to pay a fee:

- Income Support
- Income-based Employment and Support Allowance
- Income-based Jobseeker's Allowance
- Guarantee Credit element of State Pension Credit
- both Working Tax Credit and at least one of:
 - Child Tax Credit
 - Disability Element of Working Tax Credit
 - Severe Disability Element of Working Tax Credit
- Housing Benefit
- Local Housing Allowance

You have to prove that the donor gets one of the relevant benefits. Your proof of these benefits should be a recent letter from either the Department for Work and Pensions (DWP) or another relevant benefit provider and the letter must confirm that the donor is getting the benefit at the time the LPA is sent to OPG for registration.

Low income: reduced fee

If the donor has a gross annual income of less than £12,000, they are eligible to pay only half the fee.

Gross annual income is income before tax. It's not just salary or wages – income may come from different sources, such as:

- non-means-tested benefits (e.g. Disability Living Allowance)
- pensions
- interest from investments
- rental income from property

Proof of low income

You have to send OPG documents that prove the donor has a low income.

For example, you could send photocopies of:

- 3 months' consecutive wage slips or a P60
- statements from a pension provider
- a recent tax return if the donor is self-employed

You can also send an official letter or notice from the payer of non-means-tested benefits.

The documents you send must:

- include the donor's title and full name
- include the donor's address including postcode
- be from, or cover, the current tax year

If the donor does not have any income, you have to send OPG a signed statement from the donor explaining how the donor supports themselves.

Universal Credit: reduced fee

If the donor receives Universal Credit, they may be able to pay a reduced fee.

If you state that the donor gets Universal Credit, you will not be asked to pay until the OPG has received the LPA and the proof of Universal Credit. The OPG will then then contact you to let you know how much the donor has to pay and to arrange payment.

You have to send OPG a copy of the donor's most recent benefit award letter, to prove they are receiving Universal Credit.

Applicant

The applicant is the person who applies to register the LPA.

Either the donor or one or more of their attorneys, can apply to register the LPA. A donor and attorney cannot apply to register the LPA together.

If there's more than one attorney, and the attorneys want to register the LPA, the rules about who can be an applicant depend on how the donor appointed their attorneys to make decisions.

If the attorneys are appointed jointly:
all attorneys must apply to register the LPA together
all attorneys must sign section 15

If the attorneys are appointed jointly and severally, or jointly for some decisions and severally for others:
any of the attorneys can apply to register the LPA
those who apply must sign section 15