

Lasting Powers of Attorney

A Lasting Power of Attorney allows you to appoint people to make decisions on your behalf. Usually, a Lasting Power of Attorney is made to prepare for the future in case you lose the ability to make decisions for yourself. If this should occur, a Lasting Power of Attorney ensures that there is always someone who can step in to make decisions for you – and that this is someone whom you have chosen.

Having a Lasting Power of Attorney in place can give you peace of mind. You will know that your appointed people will look after your affairs if necessary, and that your loved ones will not have to try and resolve a difficult situation themselves.

This help guide looks at the key features of Lasting Powers of Attorney and explores the most important things to think about when making them.

What is a Lasting Power of Attorney (LPA)?

An LPA is a legal document which grants the people you appoint (your 'Attorneys') powers to act and make decisions on your behalf. The 'lasting' part of its name refers to the fact that your LPA remains valid even if you lose the ability to make decisions yourself.

LPAs are practical and versatile tools. Depending on the terms in the LPA document, they can give your Attorneys a wide range of decision-making powers, and some may also be used by your Attorneys while you are still able to make decisions for yourself.

The 'Donor' of an LPA

You may find that the person who makes an LPA is sometimes referred to as the Donor. This is because they are gifting the powers in the LPA to their Attorneys.

Enduring Powers of Attorney

An Enduring Power of Attorney is an older kind of Power of Attorney that was effectively replaced by the LPA in October 2007. It is no longer possible to make new Enduring Powers of Attorney.

If you have already made an Enduring Power of Attorney, it can still be used as long as it was signed before 1st October 2007. However, you should consider replacing your Enduring Power of Attorney with an LPA given the additional benefits they offer.

Our [help guide](#) on 'Replacing an Enduring Power of Attorney' provides more information on the differences between them and LPAs, and on the benefits of 'upgrading'.

Mental capacity

Mental capacity is a key concept with LPAs. It is used to describe a person's ability to make a particular decision at the given time.

The loss of mental capacity could be caused by many different things. For example, head injuries, brain damage, Dementia, or mental illnesses, could all occasion a loss of mental capacity.

If there is uncertainty over your mental capacity, your Attorneys will have to consider this each time they intend to use their powers under the LPA, as they are required to involve you in decision-making wherever possible.

For more information on mental capacity and how it is assessed, please read our [help guide](#) on 'Mental Capacity'.

What could happen if I lose mental capacity without an LPA in place?

If you lose the ability to make decisions and you haven't made an LPA, then your loved ones will face a potentially difficult situation. There will be no one who can automatically assume authority to make decisions for you. This is the case, even if you hold joint accounts with someone, such as your spouse or civil partner.

Where a crucial decision is needed, your loved ones will need to take legal action to obtain the necessary authority. This will involve the [Court of Protection](#). The court may then decide who should act for you and appoint them to be a 'Deputy'. Deputies fulfil a similar role to Attorneys, however, the process to appoint a Deputy can be expensive and take a long time. Also, when the court appoints a Deputy, it may not be someone you would have chosen to make decisions for you.

Our [help guide](#) on 'Powers of Attorney -v- Deputyship Orders' contains more information on how Deputyships compare to LPAs.

When can I make an LPA?

Anyone over the age of 18 can make an LPA.

However, you cannot make an LPA if you have already lost mental capacity. This is because you must have the mental capacity to understand the significance of making an LPA at the time in question. As such, LPAs are best made at the earliest opportunity – as far in advance of any potential loss of mental capacity as possible.

What kinds of LPA are there?

There are two types of LPA:

- **Property and Financial**
- **Health and Welfare**

Each of these types can give Attorneys different abilities. There are also some differences in how they can operate, as discussed below.

It is possible, and often recommended, to make both kinds of LPA at once, to give your Attorneys powers covering the widest range of possibilities. However, there is no need to appoint the same Attorneys for both LPAs.

Property and Financial LPAs

These LPAs allow your Attorneys to make decisions about your money and property. This can include paying bills, collecting your benefits, selling your home, and managing your bank accounts and/or investments.

With a Property and Financial LPA, it is possible to specify that your Attorneys can use the LPA even if you still have mental capacity. This makes them very useful for situations where you no longer wish, or feel able, to handle some or all of your financial affairs. Similarly, they can help you to manage situations where you are leaving the country but you still have assets there.

Health and Welfare LPAs

These LPAs allow your Attorneys to make decisions about various matters concerning your health and wellbeing. This could include aspects of your daily routine (such as what to eat and what to wear), medical treatment, and care home arrangements. It can also include decisions regarding whether to refuse life-sustaining treatment.

Health and Welfare LPAs and Advance Decisions

Making a Health and Welfare LPA is not the only way to prepare for medical treatment decisions and a loss of capacity. Advance Decisions (sometimes called 'Living Wills') can be used to record your intentions regarding potential future treatment, setting out when you would wish to refuse certain treatment.

For more information, have a look at our [help guide](#) on 'Advance Decisions and Advance Statements'.

It is important to remember that Health and Welfare LPAs can only be used if you lose mental capacity and are unable to make your own decisions. Unlike some Property and Financial LPAs, your Attorneys cannot make these decisions for you if you still have the mental capacity to do so.

What terms can I put in my LPA?

Making an LPA is different for everyone and what you want it to achieve will depend on your own personal circumstances and concerns.

The terms you include in your LPA document will determine exactly what your Attorneys can and can't do on your behalf. You may wish to restrict the powers of your Attorneys to certain limits. For example, you might want your Attorneys to deal with only part of your finances, or you might prefer that your Attorneys under a Health and Care LPA are not able to decide to refuse life-sustaining treatment for you.

It is important to take full legal advice on the terms you wish to put in your LPA. You will want to make sure that you are giving the powers you intend to give but not undermining the utility of your LPA by restricting your Attorneys more than is necessary. Expert legal advice can help you to get this balance right.

In addition, there are some powers which cannot be granted in an LPA and any terms which try to do so will be invalid. Some examples include:

- Matters concerning family relationships, e.g. consenting to a marriage or civil partnership, putting a child up for adoption, or agreeing to certain divorce proceedings.
- Voting in elections on your behalf
- Requesting assisted dying or anything relating to murder, manslaughter or unlawful killing. It is possible to allow your Attorneys to refuse life-sustaining treatment but not to assist in suicide. If you would like to know more about this, please read our blog post on [Lasting Powers of Attorney and assisted dying](#).

Choosing your Attorneys

You can appoint as many Attorneys as you wish in your LPA. However, we would recommend you appoint at least two. This can help to ensure that, if an Attorney becomes unfit or unable to carry out their duties, there will still be an Attorney who can act.

We would also suggest appointing no more than four Attorneys, as the more Attorneys there are, the more difficult it can be to make decisions.

Choosing the right people to be your Attorneys is essential. When deciding on whom to appoint, you should consider:

- Do you trust them to act in your best interests?
- Are they capable (physically and mentally) of carrying out the role of an Attorney?
- Will they be able to cooperate with the other Attorneys? We wrote a blog illustrating just [how important it is to choose Attorneys who can work together](#).

Professional Attorneys

It is possible to appoint a professional (such as a solicitor) as an Attorney in your LPA. This can be helpful as a way of supporting other Attorneys, or where you believe none of your friends or family would be suitable. In some cases, appointing a professional makes sense.

Roche Legal can offer professional Attorney services. Please [contact us](#) if you would like to discuss this further.

When you appoint multiple Attorneys, you can choose to have them act in one of two ways:

- **Jointly** – where all Attorneys must take actions or decisions together; or
- **Jointly and severally** – where the Attorneys can take actions or decisions independently or together.

We usually recommend appointing Attorneys to act jointly and severally so that, if one of the Attorneys is unavailable for a period of time, decisions can still be taken, but this will depend on your overall circumstances.

To find out more detail on an Attorney's role, please read our [help guide](#): 'Acting as an Attorney'.

Registration of your LPA

An LPA can only be used if it has been registered with the Office of the Public Guardian.

We recommend registering your LPAs as soon as they have been created. It can take up to 8 weeks for registration to be completed so registering your LPAs straightaway can avoid delays at the time when they are needed most.

There is a fee payable to the Office of the Public Guardian for registering an LPA.

Changes to your address after registration

The Office of the Public Guardian must be able to contact you and your Attorneys about

your LPA if necessary. Therefore, if you and/or your Attorneys change address, the Office of the Public Guardian must be informed. Contact details for the Office of the Public Guardian can be found [here](#).

Can I end an LPA?

You can cancel or revoke all or part of your LPA at any time, even if the LPA has been registered. The only requirement is that you must have the mental capacity to take this decision at the time.

There is no need for your Attorneys to consent to the cancellation or approve it in any way. You granted the LPA in the first place so you can revoke it when you choose.

Ending an LPA involves submitting a 'Deed of Revocation' to the Office of the Public Guardian. Please contact us if you would like our help with this process.

When will an LPA expire?

Provided you do not cancel your LPA during your lifetime, an LPA will come to an end upon your death.

Your Attorneys will no longer be able to use the powers granted by the LPA. Dealing with your property will now become the responsibility of the Executors you have appointed in your Will. If you have not made a Will, the Administrators of your estate will take control.

Whilst your Attorneys may be the same people as your Executors or Administrators, this will not necessarily be the case and, either way, the legal authority to deal with your property after your death will come from a different source. The LPA will no longer provide any such authority.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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