



Comisiynydd Pobl Hŷn Cymru

Older People's Commissioner for Wales

Lasting Power of Attorney

An easy guide for older people

**An independent voice and
champion for older people**

In partnership with:



Office of the
Public Guardian

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people throughout Wales.

The Commissioner wants Wales to lead the way in empowering older people, tackling inequality and enabling everyone to live and age well.

How to contact the Commissioner

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For further information about applying for a Lasting Power of Attorney

The **Office of the Public Guardian** helps people in England and Wales to stay in control of decisions about their health and finance and make important decisions for others who cannot decide for themselves.

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Accessible Formats

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Mae'r ddogfen hon ar gael yn Gymraeg // This document is available in Welsh

What is a Lasting Power of Attorney?

A lasting power of attorney (LPA) is a legal document that allows someone you trust to make decisions on your behalf and in your best interests. LPAs give you more control over what happens to you if you lack the 'mental capacity' to make decisions for yourself or you want someone to make certain decisions for you.

There are two types of LPAs: one covers property and financial decisions and the other deals with decisions about your health and welfare.

'Mental capacity' means the ability to make a decision at the time it needs to be made. People can lose mental capacity because of a condition such as a mental health problem, dementia or a learning disability.

A person lacks capacity if a problem with their mind or brain stops them making decisions when they need to be made.

The law says that someone who lacks capacity cannot do one or more of these four things:

- understand the information needed to make a particular decision
- hold on to that information long enough to make the decision
- use or weigh up the information to make the decision
- communicate their decision

Think about what would happen if you had a serious accident or a stroke or developed dementia or a mental illness. You might lose the ability to make some, or all, decisions. Making an LPA will help you to prepare in case this happens.

What is the difference between an Enduring Power of Attorney (EPA) and a LPA?

LPAs were introduced in 2007 and replaced enduring powers of attorney (EPA).

EPAs give someone legal authorisation to act on your behalf in a legal or business matter.

If you have an EPA and do not want to change it, you don't need to apply for an LPA. However, you will need to apply for an LPA if you want to change an existing EPA.

Why do I need an LPA?

There are many advantages to making an LPA:

- It's a chance to talk to family and friends about how you want to manage your finances and your health and welfare
- It will give you peace of mind and allow you to stay in control
- It's quicker and cheaper than other ways of handling your decisions – such as applying to the Court of Protection

Who's involved in an LPA?

There are two main roles involved in an LPA. The 'donor' makes the LPA and appoints one or more attorneys to make decisions for them.

When you create an LPA you also need someone to act as a 'certificate provider'.

The role of the certificate provider is to:

- Confirm that the donor understands the LPA at the time that it was created
- Confirm that there is no fraud or undue pressure on the donor to make an LPA and
- Confirm that there is no other reason that a LPA cannot be executed

The certificate provider can be either:

- Someone who has known the donor personally for at least 2 years, such as a friend, neighbour, colleague or former colleague

OR

- Someone with relevant professional skills, such as the donor's GP, a health care professional or a solicitor

The following people cannot be your certificate provider:

- An attorney or replacement attorney named in this LPA or any other LPA or Enduring Power of Attorney (EPA) made by the donor
- A family member of the donor or attorney(s). 'Family members' include husband or wife or civil partner, partner, son or daughter, father or mother, brother or sister, grandparent, grandchild, uncle or aunt and nephew or niece.
- An unmarried partner 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 or an attorney's employee
- An owner, manager, director or employee of a care home where the donor lives.

You can also name 'people to notify', who will be told when the LPA is registered.

People to notify are extra safeguards to ensure that the LPA has been executed without any pressure or fraud. They can raise any concerns they have about the LPA.

Who can I have as an attorney?

Your attorney needs to be 18 or over. They could be:

- a relative
- a friend
- a professional, for example a solicitor
- your husband, wife or partner

You must appoint someone who has the mental capacity to make their own decisions.

Your attorney does not need to live in the UK or be a British citizen.

When choosing an attorney, think about:

- how well they look after their own affairs, for example their finances
- how well you know them
- if you trust them to make decisions in your best interests
- how happy they will be to make decisions for you

For a financial-decisions LPA, your attorney also cannot be bankrupt.

It's important to make sure that your attorneys fully understand their role and that they are willing to act on your behalf.

Can I have more than one attorney?

Yes. If you choose more than one attorney, you must decide how they will make decisions. The choices are:

- Jointly and severally – this means that your attorneys can make decisions on their own or together.
- Jointly – this means that your attorneys will have to agree on every decision made.
- Jointly for some decisions, jointly and severally for other decisions – this means your attorneys must agree 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 on Continuation sheet 2 of the LPA. More detail is provided below.

If you choose 'Jointly for some decisions, jointly and severally for other decisions', it is important that you clearly state the decisions you want to be made jointly within your application form. Such decisions might include the sale of your home.

If you choose either 'Jointly and severally' or 'Jointly', you do not need to state what decisions need to be made jointly, as this may cause complications and you may not be able to use your LPA.

For a more detailed explanation of the choices and how they work, you can read 'Section 3- how should your attorneys make decisions?' within the Office of the Public Guardian's own guidance – 'LP12 Make and register your lasting power of attorney: a guide'. This is available to view online:

<https://www.gov.uk/government/publications/make-a-lasting-power-of-attorney/lp12-make-and-register-your-lasting-power-of-attorney-a-guide-web-version>

A paper copy can also be requested directly from the Office of the Public Guardian.

What happens if my attorney is no longer able to carry out their duties?

It's a good idea to choose some replacement attorneys in your LPA. Replacement attorneys are a backup in case one of your original attorneys can no longer make decisions for you.

Replacement attorneys only start acting for you if one of the main attorneys can no longer fulfil the role or want to step down. Again, it is important that you state how you want any replacement attorneys to act when completing your application form. Your replacement attorneys do not have to act in exactly the same ways as your main attorneys. It is up to you to decide.

If you've lost capacity, and your attorneys can no longer act for you and there are no replacement attorneys, the Office of the Public Guardian will have to cancel your LPA. This might mean that someone would have to apply to the Court of Protection to become your deputy.

Which kind of LPA?

Under a **property and financial affairs** LPA, you appoint an attorney or attorneys to take responsibility for such things as:

- managing a bank or building society account
- paying bills
- collecting benefits or a pension
- selling your home

You needn't have lost mental capacity to use this kind of LPA. It can be used as soon as it's registered, with your permission.

A **health and welfare** LPA covers decisions such as:

- your daily routine, for example washing, dressing, eating
- medical care
- moving into a care home
- life-sustaining treatment

Unlike a property and financial affairs LPA, your attorneys can use a health and welfare LPA only when you no longer have mental capacity to make decisions for yourself.

For both types of LPAs, you can decide the things about which your attorneys can and can't make decisions. It is important to clearly state any preferences and / or restrictions on decision-making.

When can an LPA be used?

Whether or not you still have mental capacity, an attorney can only use an LPA once the Office of the Public Guardian (OPG), part of the Ministry of Justice, has registered it. An unregistered LPA cannot be used.

You can make an LPA and register it later (or an attorney can register it for you) but it's a good idea to register the LPA as soon as you have created.

Registering a LPA straight away means that the Office of the Public Guardian can pick up on and notify you of any minor errors within your application. If the OPG notice any minor errors, you will be given the chance to make corrections. Sometimes people do not register their LPA straight away.

There is a risk that if registration is delayed, mistakes are found by the OPG at a much later point in time, which may mean the OPG will not be able to register the LPA.

Remember: LPAs only come into effect when you have lost mental capacity or – in the case of a property and financial affairs LPA – when you decide.

If I lose mental capacity, can someone make an LPA for me then?

No. If you don't have mental capacity, you cannot make an LPA nor can anyone else do it for you.

The only other way someone else can act on your behalf is if they apply to the Court of Protection to become your deputy.

A deputy has similar powers to an attorney. However, a deputy must send a report to the Office of the Public Guardian and pay a fee every year. Their costs will come out of your assets. It's a lot more time-consuming and expensive than having an LPA.

Do I need to instruct a solicitor?

Many people don't need any legal help to fill in the LPA application form. Read the forms and guidance first to decide if you or your attorney is able to fill them in and apply to register the LPA.

However, an LPA is an important legal document. You might want to get legal advice from someone who has experience of dealing with LPAs and working with older people, their families and carers. There are likely to be costs involved.

How much does it cost to make an LPA?

The full fee is £92 for each type of LPA.

How to pay fees:

Online payment – 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 (Section 14- Application fee) and you will be contacted.

Cheque payment – please make your cheque payable to ‘Office of the Public Guardian’ and write the donor’s full name on the back.

You may be able to pay a reduced fee (remission) or not pay a fee at all (exemption). You (or the person applying on your behalf) will need to send proof of your income.

Reduced fee (remission)

If your total yearly (gross annual) income before tax is less than £12,000, you may be able to get a 50% reduction of the fee.

Your income includes:

- Your salary
- Non-means tested benefits
- Pensions
- Pensions Savings Credit
- Interest from savings and investments
- Property rental
- Universal Credit

You will need to send proof of your gross annual income. This might be:

- a P60 or three months’ consecutive wage slips from your current job
- an official letter or notice from the payer for non-means-tested benefits and pensions
- statements or vouchers showing gross income for interest from capital, stocks, shares or bonds

Are you self-employed? You will need to send either

- your most recent self-assessment tax return and HMRC tax calculation
- an audited account certified by a qualified accountant

If you get Universal Credit, you will need to send copies of letters showing you got it at the time you applied to register your LPA.

OPG will not accept bank statements as evidence.

If you don't receive any income, you must send a signed statement explaining how you support yourself.

No fee (exemption)

You may not have to pay a fee at all if you get any of these benefits:

- Guarantee Credit Element of State Pension Credit
- Income Support
- Income-based Employment and Support Allowance
- Jobseeker's Allowance
- Housing Benefit
- Local Housing Allowance
- Council Tax Reduction/Support (also known by other names, not the 25% single person discount or the Class U exemption)
- Working Tax Credit and at least one of: Child Tax Credit, Disability Element of Working Tax Credit, Severe Disability Element of Working Tax Credit

You will have to send copies of letters from your benefit provider showing you got these benefits at the time you applied to register.

You will have to pay the full fee if you:

- get these benefits: Disability Living Allowance, Invalidity Benefit, Personal Independence Payment
- have been awarded personal injury damages of more than £16,000, which was ignored when you were assessed for benefits

Get help with application forms and fees: call the OPG helpline on 0300 456 0300.

How do I apply for an LPA?

The donor, their attorney or solicitor can apply online:

www.lastingpowerofattorney.service.gov.uk/

If the donor or their attorney doesn't want to apply online, they can fill in the forms by hand and send them by post.

Ask OPG to send the LPA forms to you: 0300 456 0300

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

What happens after the online application or posted forms have been submitted?

It currently takes OPG around 8-10 weeks to register an LPA if there are no mistakes in the application.

OPG will confirm registration with you by post or email (depending on which you prefer). OPG will also contact your attorneys to let them know the LPA has been registered.

You should keep a copy of the registered LPA.

Want to know more?

LPAs are covered by a piece of law called the Mental Capacity Act. The Act's Code of Practice (available at www.gov.uk/opg/mca-code) explains the law clearly.

For more background information, also visit www.scie.org.uk/mca-directory

