

A GUIDE TO LASTING POWER OF ATTORNEY



This document is for guidance only and does not constitute advice (including financial or legal advice). Appropriate legal advice should be obtained to address specific queries you may have.

IN A NUTSHELL

A Lasting Power of Attorney (LPA) is a legal document that appoints one or more people to help you make decisions, or to make decisions on your behalf.

In this leaflet you can find more about the different types of LPA's*, the benefits, and some practical guidance to help put one in place.

* This guide explains the different types of Lasting Power of Attorney (LPA) available in England and Wales. The process and types of LPA differ slightly in Scotland and Northern Ireland. For more information sources about LPAs in these regions please see the last page.

DID YOU KNOW?

- A next of kin or spouse can't make decisions about medical care or finances unless an LPA is in place. This is regardless of how long you've been together or whether you have a joint bank account or mortgage.
- An LPA can be used on a temporary basis – maybe while you are in hospital or away on a long trip (Ordinary Power of Attorney only).
- You can't arrange an LPA once you have lost mental capacity or after an accident. It must be done beforehand.
- It's not just for the older generation. An LPA could be needed at any time, for a variety of reasons.
- If agreed, an attorney can make decisions when you have full capacity.

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POWER OF ATTORNEY

WHY SHOULD YOU GET ONE?

- 1 It will give more control over what happens if there is an accident or an illness and you can't make your own decisions.
- 2 Handing over decision making can be done just when you're struggling to keep on top of everything.
- 3 You can choose someone you trust, someone who knows and understands your wishes and lifestyle.
- 4 It'll ensure your financial affairs and personal welfare can still be dealt with in the event you're unable to act for yourself, whether it is temporary or long term.

Unfortunately incapacity can occur at anytime and at any age.

WHAT HAPPENS IF YOU DON'T HAVE AN LPA AND YOU LOSE MENTAL CAPACITY?

Someone would need to apply to the Court of Protection on your behalf for deputyship, which can take longer and is more costly.

NOT MANY OF US DRIVE ONE OF THESE



BUT WHAT ABOUT THIS?



POWER OF ATTORNEY DIFFERENT TYPES*

LASTING POWER OF ATTORNEY (LPA)

There are two types of LPA, one covers finances and the other covers health and welfare. If you get both LPAs then you're covered for every eventuality.

PROPERTY AND FINANCIAL AFFAIRS LPA

This gives someone you trust the power to make decisions about your money and property.

Examples of the decisions they can make are:

- paying bills
- managing bank accounts
- selling property, and
- organising property repairs.

HEALTH AND WELFARE LPA

This gives someone you trust the power to make decisions about your health and welfare.

Examples of the decisions they can make are:

- what you eat
- medical care
- where you live, and
- who you have contact with.

ORDINARY POWER OF ATTORNEY

If you need a Power of Attorney set up for a temporary period (for example, a hospital stay or a holiday) you can create an Ordinary Power of Attorney. This only covers decisions regarding financial affairs while you have mental capacity.

POWER OF ATTORNEY

DIFFERENT TYPES* CONTINUED

ENDURING POWER OF ATTORNEY (EPA)

The LPA replaced the Enduring Power of Attorney (EPA) in October 2007. However, existing EPAs signed before this date are still valid.

What's the difference between an EPA and an LPA?

- The EPA only covers property and financial affairs. There are two different LPAs, one which covers property and financial affairs and also one which covers health and welfare.
- An EPA can only be registered by an attorney once the donor loses mental capacity, physical capacity or both (this would need to be stipulated in the EPA). However, LPA's should be registered immediately.

*This guide explains the different types of POA available in England and Wales. The process and types of LPA differ slightly in Scotland and Northern Ireland. For more information sources about LPAs in these regions please see the last page.

HOW TO ORGANISE AN LPA

There are a few options to consider:

1 Organise it directly on Gov.uk

You can go on the gov.uk website and download the forms and fill them in yourself, or complete the forms online.

Pros: The cheapest option, you'll only pay the fee to register the LPA.

Cons: Entirely self-serve, greater margin for error.

2 Solicitor

You can go through a professional, such as a solicitor.

Pros: Solicitors will do the entire process for you, including providing legal advice should you need it.

Cons: Tends to be the most expensive option.

3 LPA Support Services

You can use one of the many LPA Support Services who will offer different levels of support.

Pros: Tends to be priced in between options 1 and 2. Depending on the company it can speed up the process as they often offer assistance to complete the forms and customers benefit from expert checks.

Cons: You can receive legal advice from some of these companies, however, you should complete your own checks on the company you choose to use.

POWER OF ATTORNEY HOW MUCH IT COSTS

Registering a Lasting Power of Attorney (LPA) may be easier and cheaper than you realise.

It usually costs £82 to register each LPA. That would be £164 for both a finance and a health and welfare LPA.

Legal fees are likely to be incurred if a solicitor is used. These will vary. You may qualify for 50% reduction if you're on a low income or receive certain benefits.

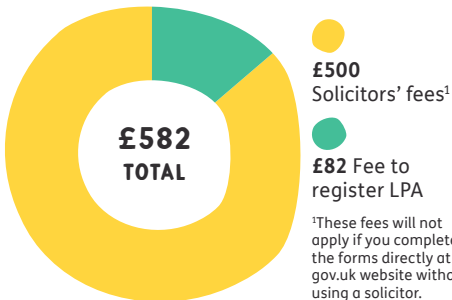
Applying for a deputyship at the Court of Protection is a lot more expensive.

COSTS COMPARED

Organising it directly

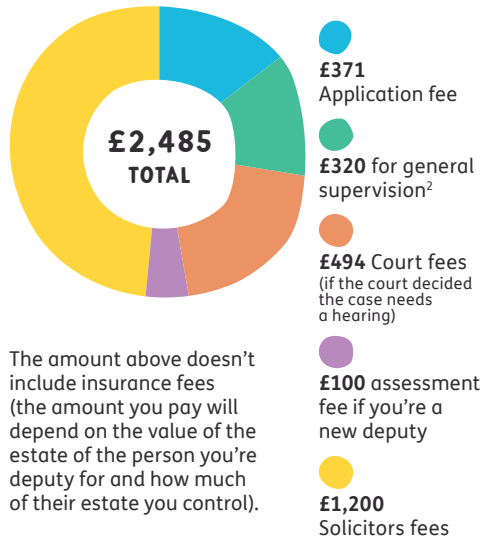


Solicitor



¹These fees will not apply if you complete the forms directly at the gov.uk website without using a solicitor.

Applying for a 'deputyship' (when an LPA is not in place)



The amount above doesn't include insurance fees (the amount you pay will depend on the value of the estate of the person you're deputy for and how much of their estate you control).

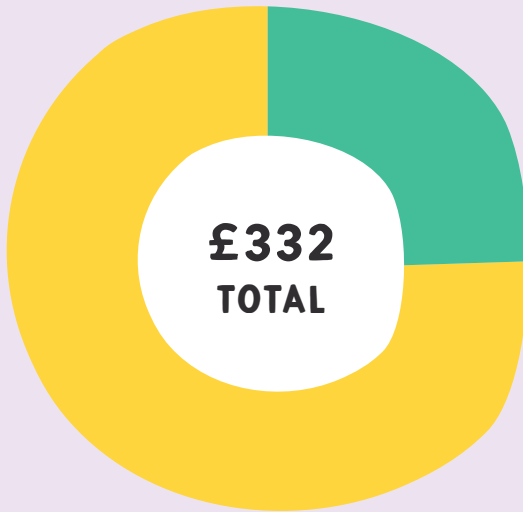
²£35 for minimal supervision. The supervision fee is paid annually.

The solicitors fees quoted are examples and the actual cost could be more or less than those shown.

HOW MUCH IT COSTS CONTINUED

COSTS COMPARED

LPA Support Services



●
£250 fees³

●
£82 Fee to register LPA

³Using APS Legal costs as an example. Other companies costs may differ.

Contact **APS Legal** to find out more.

Call: **01909 776 311**

Email: **enquiries@aps-legal.co.uk**

Or visit: **aps-legal.com/consumers/aps-legal-and-associates-and-just**

ORGANISING AN LPA USING APS LEGAL



Just have partnered with APS Legal to provide a new service and exclusive discount to new and existing Just customers. APS falls under the third category, an LPA Support Service.

APS provides you with the following:

PEACE OF MIND

A trustworthy, established organization, part of the UK's leading support services business, Simply Biz

EXPERT SUPPORT

Customers are entirely in expert hands with face to face or virtual hand holding throughout

MIDDLE GROUND ON PRICE

Likely to be a cheaper alternative to most solicitors

SPEED

Reduces the number of steps for customers

ACCURACY

Helps reduce margin for error when filling out the forms – contact APS Legal to find out more

COSTS

| | Single | Per couple |
|---------|--------|------------|
| 1 LPA* | £250 | £325 |
| 2 LPAs* | £325 | £550 |

*plus £82 Office of Public Guardian fee per LPA

Call: **01909 776 311**

Email: **enquiries@aps-legal.co.uk**

Or visit: **aps-legal.com/consumers/aps-legal-and-associates-and-just**

THINGS TO CONSIDER

So you're thinking about applying for a Lasting Power of Attorney. Here's a checklist of things to consider.

WHO SHOULD YOU APPOINT AS YOUR ATTORNEY?

As your attorney is going to have control over some important areas of your life, you need to choose someone you completely trust. The other consideration is whether this person wants to take on the role as it is a big responsibility. They should always be able to act quickly so being local is useful.



A relative, a friend, a solicitor or your spouse/partner can be appointed. They need to be over 18 and can't be bankrupt. You need to be confident in the decisions your attorney will make about your own finances and welfare.

SHOULD MORE THAN ONE ATTORNEY BE APPOINTED?

There is no limit to the amount of attorneys someone can have. The Office of Public Guardian (OPG) suggests thinking about appointing more than one. If you choose to do this then it's important that they can work together to make decisions in your best interest. Instructions can be included on how the attorneys should come to a decision.



Replacement attorneys can be chosen in case either an attorney passes away, or decides they don't want to do it anymore. This provides extra protection.

WHEN DO YOU WANT YOUR ATTORNEY TO START ACTING ON YOUR BEHALF?

You have the choice to allow your attorney to start making decisions straight away, even when you're still able to make your own decisions. Or only when you're unable to make decisions yourself. The second option can lead to challenges for the attorney as firms may ask for proof you have fully lost capacity.



WHAT POWERS DO YOU WANT TO GIVE YOUR ATTORNEY?

Think about both the short and long term when deciding on the powers the attorneys should have. They will need to have sufficient powers to make all the decisions you'd like them to make.



APPLYING FOR AN LPA



CHOOSING ATTORNEY(S)

You need to ask someone you trust to make decisions on your behalf.

Decide whether more than one person is needed.



SIGN FORMS AND POST

Both you and your attorney(s) will need to sign the forms.

You'll need a witness to say you've signed the forms.

You'll also need a 'certificate provider' to confirm you weren't under any pressure to take out an LPA.

Post to The Office of Public Guardian (OPG) and include payment.



FILL IN FORMS

Go to gov.uk and either download forms or complete online.

They are quite long, but there's a guide to help.

Or you can go to a professional such as a solicitor or an LPA Support Service, such as APS Legal.



DECIDE ON THE DETAILS

Agree on the type of attorney:

- finance and property
- health and welfare, or
- both of the above.

And what decisions you want your attorney(s) to make.



LPA IS REGISTERED

It takes up to 20 weeks to register an LPA if there are no mistakes in the application. You should then receive the documents back from the OPG.

Your attorney(s) can start making decisions from this point. They'll probably be asked for a copy of the LPA before they can act.

CIRCUMSTANCES WHERE WE WOULDN'T ACCEPT AN LPA

- For lifetime mortgage applications:
 - if a donor has mental capacity, they will need to sign the application form. Therefore an attorney can't sign the application form for the donor in this circumstance, even if it's a registered LPA where the donor has indicated that it can be used from registration.
 - A joint lifetime mortgage applicant can't act as an attorney for another joint lifetime mortgage applicant on the application, and also act for themselves. For example, if a husband and wife applied as joint applicants, and she had an LPA for him, she could sign for him if he's lost capacity, but couldn't sign for herself. She'd need to apply to appoint her own attorney, so that her attorney could sign on her behalf.
- An incomplete or unsigned LPA document in a circumstance where we couldn't use the Office of Public Guardian's online look up service.
- Where we have received an LPA Health and Welfare only. This doesn't allow an attorney to act in property and financial matters.
- A copy of a document that wasn't certified by an acceptable professional, such as a solicitor.
- If an LPA had yet to be registered.
- If an Enduring Power of Attorney (EPA) was unregistered and the donor had lost capacity.
- If there was a restriction on the document that meant the attorney couldn't use it for the purpose they were requesting.
- If an EPA was dated after 30 September 2007 (except Northern Ireland).
- If the witness for an attorney was also the donor.
- A general POA where the client has lost capacity.

Contact **APS Legal** to find out more.

Call: **01909 776 311**

Email: **enquiries@aps-legal.co.uk**

Or visit: **aps-legal.com/consumers/aps-legal-and-associates-and-just**

FURTHER INFORMATION

Find out more about **Power of Attorney**

Gov.uk website **gov.uk/government/organisations/office-of-the-public-guardian**

Age UK website **ageuk.org.uk/information-advice/money-legal/legal-issues/power-of-attorney/**

Power of Attorneys in Scotland **publicguardian-scotland.gov.uk/power-of-attorney**

Power of Attorneys in Northern Ireland **nidirect.gov.uk/articles/managing-your-affairs-and-enduring-power-attorney**

Download forms or complete online

gov.uk/power-of-attorney/register. The application form will let you know whether you qualify for an exemption.

FOR MORE INFORMATION

Call: **01737 233 297**

Lines are open Monday to Friday, 8.30am to 5.30pm. Calls may be monitored and recorded, and call charges may apply.

Email: **support@wearejust.co.uk** Or visit: **wearejust.co.uk**

FT ADVISER

