



LASTING POWERS OF ATTORNEY

WHAT IS A LASTING POWER OF ATTORNEY?

It allows you to appoint people you trust to look after your affairs. There are two areas that you will need to consider:

1. Property and Financial Affairs

Where you appoint people you trust to look after all your finances (bank accounts, investments, property etc)

2. Health and Personal Welfare

Where you appoint people you trust to look after your welfare requirements (daily care, medical treatment etc)

You can have a Lasting Power of Attorney to deal with just one of the above areas or both.

WHO CAN YOU CHOOSE AS AN ATTORNEY?

Your Attorney should be someone you know well and trust. They should have the appropriate skills and be strong enough to make difficult decisions. They must be at least 18 years old and must not be a bankrupt. You can choose more than one person to be your Attorney.

CHOOSING MORE THAN ONE ATTORNEY

If you choose more than one Attorney, you need to decide if you want them to act together or independently if they wish.

REPLACEMENT ATTORNEY

You can choose a replacement Attorney in case your Attorney cannot or does not want to act for you.

WHEN CAN THE ATTORNEY ACT?

The Attorney will only be able to act when:

1. the LPA has been signed by you and your Attorney;
2. certified by a person who states that you understand the nature and scope of the LPA and have not been unduly pressured into making the power;

3. The certificate will also need to confirm there has not been any fraud or another reason why you cannot make the power;
4. It must then be registered with the Office of Public Guardian and their fee paid before it can be used;
5. The Property and Affairs LPA can be used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision;
6. The Personal Welfare LPA can only be used if you lack mental capacity to make a welfare or medical decision.

DECISIONS YOUR ATTORNEY CAN MAKE FOR YOU

If you have a **Property and Financial Affairs Attorney**, they can only make financial decisions such as: buy or sell property, manage investments, carry on a business and may access your personal information. See Annex for a more extensive list of powers.

If you have a **Health and Personal Welfare Attorney**, they can make any decision about your personal welfare such as: where you live, who you live with, access your personal information such as medical records, they can decide what you eat, what you wear and how you spend your day. They will also be able to give and refuse consent to medical treatment according to your best interests. Your Attorney will only be able to make these decisions where you lack capacity to do this yourself. See Annex for a more extensive list of powers.

If you do not say that your Attorney can make decisions about life-sustaining treatment, the doctor in charge of your treatment will make the decision in your best interests.

RESTRICTING THE POWERS OF YOUR ATTORNEY

You can put legally binding restrictions and conditions on your Attorney's powers and the scope of their authority.

GIVING GUIDANCE TO YOUR ATTORNEY

You can also give guidance to your Attorneys in the LPA. This will not be legally binding, but may be useful when they have to make decisions on your behalf.

NOTIFYING OTHER PEOPLE BEFORE REGISTRATION (NAMED PERSON)

You can name up to 5 people who have to be notified when an application to register your LPA is made. This is an important safeguard, because if you lack capacity at the time of registration, you will be relying on these people to raise any concerns they may have about the registration of the LPA. If you do not name anyone, you will need to have two Certificate Providers (see below). Please note an Attorney cannot also be a Named Person.

CERTIFICATE TO CONFIRM UNDERSTANDING (CERTIFICATE PROVIDER)

When you complete a LPA form, an independent person must complete a certificate to confirm that you are making the LPA of your own free will and that you understand its purpose and the powers you are giving the Attorney. This is an important safeguard and your LPA cannot be registered without this being completed.

PAYING THE ATTORNEY

Attorneys are entitled to 'out of pocket' expenses incurred as a result of carrying out their duties. Solicitors and accountants will charge for their services. You should record any decision you make about this on your LPA.

REGISTERING THE LPA

The document cannot be used until it is registered. Either you or your chosen Attorneys can register it

CHANGING YOUR MIND

You can cancel your LPA even after it has been registered providing you have the mental capacity to do so. You must advise your Attorneys if you do and, if it is registered, you must ask the OPG to remove it from their register.

EXISTING ENDURING POWERS OF ATTORNEY

Any Enduring Power of Attorney, validly made before 1st October 2007, will continue to be valid and able to be used but only in respect of your property and affairs. If you wish to give authority over your health or welfare you will need to make a Personal Welfare LPA.

WHAT HAPPENS IF YOU HAVE NOT MADE AN LPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes, you can give a person(s) authority to make those decisions on your behalf by making a Personal Welfare LPA.

HOW WE CAN HELP YOU

As with any Power of Attorney it is an important document and you should take care who you appoint, as they should be:

- trustworthy
- have your best interests at heart
- have a good understanding of your needs and values, and
- have appropriate skills to make the proposed decisions.

At Stone Rowe Brewer we will be pleased to advise you on making an LPA and prepare the document for you if you wish.

Please also see our leaflet: Powers of Attorney – What are my options?

WHAT IS THE COST?

The legal costs involved in dealing with Lasting Powers of Attorney depend on the time spent and the amount of work involved.

However, as a guide, we set out below the likely cost:

Lasting Power of Attorney (per person per document) **£400 + VAT**

Payment to the Office of the Public Guardian to register the document before it can be used. This payment is for each LPA registered **£120 (No VAT)**

Our fee includes being the Certificate Provider.

If you wish us to be the Attorney then our Trustee Company – *The SRB Trustee Company Limited* - will take on that role. If we are the Attorney, we cannot also be the Certificate Provider and there would therefore be an additional cost for a Certificate Provider unless you had a friend or acquaintance who could undertake this role who had known you for at least two years. The cost of a professional Certificate Provider is approximately **£150+VAT**.

If one person requires two Lasting Powers of Attorney (one for *Property and Affairs* and one for *Personal Welfare*) then we would charge **£400+VAT** for the first one and **£250+VAT** for the second one. If we prepare two Lasting Powers of Attorney of the same type for a couple, then again we would charge **£400+VAT** for the first one and **£250+VAT** for the second one.

We will confirm our costs in writing to you when we know exactly what is required.

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LASTING POWERS OF ATTORNEY - ANNEX

MORE EXTENSIVE LIST OF POWERS

PROPERTY AND FINANCIAL AFFAIRS

The standard form does not have any restrictions or conditions. If the donor makes no restrictions the Attorneys can do anything that the donor can do including:

1. Managing bank accounts including opening and closing accounts;
2. Claiming and receiving benefits and other payments like pensions, rebates etc on behalf of the donor;
3. Paying bills, household expenses, care fees etc;
4. Buying, selling and renting the property of the donor;
5. Making gifts on the donors behalf – however this is restricted to making gifts to people who are related or connected to the donor for special occasions i.e. birthdays, weddings etc;
6. Make decisions concerning any investments held by the donor;
7. Making all tax returns and adjusting and settling any claims for tax;
8. Paying for private medical care;
9. Purchasing a vehicle or any other equipment which may be required for you benefit paid from the donor's income or capital;
10. Implementing tax planning or similar arrangements; however an application to the Court of Protection may be required in certain circumstances.

Please note these are only examples and it is not a complete list of powers.

HEALTH AND PERSONAL WELFARE

The standard form does not have any restrictions or conditions. If the donor makes no restrictions the Attorneys can do anything that the donor could do including:

1. Making decisions about the donor's permanent residence;
2. Make decisions on any care that is required and the level of care;
3. Consent or refuse medical treatment including medical procedures, therapy etc;
4. Make decisions on the donor's diet, dress and personal appearance;
5. Take the donor on holiday, choosing the donor's social and cultural activities;
6. Organising work, education or training for the donor;
7. Assessments for and provision of community care services;
8. Rights of access to personal information about the donor;
9. Consenting to the donor being involved in certain areas of research that meets the strict rules set out by the Act.

Please note these are only examples and it is not a complete list of powers.