

## What is the Lasting Powers of Attorney service?

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Wrigleys Lasting Powers of Attorney Service is dedicated to helping people put powers of attorney in place that suit their personal circumstances.

Wrigleys Solicitors LLP is a market leader in 'asset protection' services for private individuals. Amongst other things, this includes dealing with complex Wills, trusts, Court of Protection cases, inheritance tax planning, administration of deceased's estates, disability planning, elder care and property related issues.

Wrigleys is highly rated for its ability to meet the needs of its clients in the independent 'Chambers' and 'Legal 500' guides to the legal profession.

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*'the whole team works well to service the client'*

*'very efficient team'*

**Legal 500**



# Lasting Powers of Attorney

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## 1. What is a 'Lasting Power of Attorney' or 'LPA'?

In an LPA you are appointing somebody you trust to look after your affairs if you lose the ability to deal with things yourself in the future. The person that you appoint is called an attorney. An LPA takes effect during your lifetime. It is not the same as a Will, which deals with what happens to your assets after your death.

## 2. Why should I put a Lasting Power of Attorney in place?

With an LPA you are choosing the person or people that you would like to act on your behalf. If you do not put a Power of Attorney in place and lose the ability to look after your financial affairs yourself then it may be necessary for the Court of Protection to appoint somebody to deal with things for you. This might be somebody who you wouldn't have chosen. An application to Court can be a long and expensive process.

## 3. What types of Lasting Power of Attorney are there?

There are two different types:

- **LPAs dealing with decisions affecting your health and welfare.** This covers such things as life support, where you live, diet, dress and complaints about your care or treatment. It does *not* legitimise euthanasia.
- **LPAs dealing with decisions affecting your property and financial affairs.** This covers such things as your cash, investments and pensions. It would also allow your attorneys to sell your home if this is in your best interests.

## 4. Is drawing up a Lasting Power of Attorney complicated?

Yes.

They are important legal documents which should not to be entered into lightly.

Despite some publicity to the contrary the forms can be confusing. Furthermore the signing, witnessing and certification process is complex.

Failure to follow the procedures properly will invalidate the document and it will not be possible to use it.

## 5. Who can put a Lasting Power of Attorney in place?

Anyone over the age of 18 years who:

- Understands the purpose of the LPA.
- Is not making an appointment due to fraud or undue pressure.
- Is not limited in making an LPA for any other reason.

## 6. I have heard it said that I will need someone to certify my Lasting Power of Attorney. What does that mean?

In summary, a Certificate Provider is someone who countersigns the LPA to confirm that you have the capacity to put a Lasting Power of Attorney in place, that you understand the legal and practical effect of signing the LPA and are not being pressurised in any way.

The Certificate Provider can only complete the form after you have signed it. There are two different types of Certificate Provider. These are:

- Skills based providers – for example, your GP or a solicitor.
- Knowledge based providers – these are people who have known you personally for at least 2 years. They have to be more than a mere acquaintance. They have to be willing to stand up in Court if necessary to confirm that you understood the paperwork and were not put under any pressure to sign it.

The following people cannot act as your Certificate Provider:

- One of your attorneys.
- Anybody under the age of 18 years.
- A member of your family.
- A member of your attorney's family.
- An unmarried partner, boyfriend or girlfriend of you or one of your attorneys.
- One of your business partners or a business partner of your attorney.
- An employee of yours or your attorney.
- The manager, director or employee of a Care Home where you live.

All Certificate Providers must be able to demonstrate that:

- You understand what is involved in making an LPA.
- You understand the effect of making an LPA.
- They have the skills to assess that you understand what an LPA is and what powers you are giving to your attorneys.
- They can assess that you understand the contents of *your* LPA and what powers you are giving to your attorneys.

- They can verify you are not under any undue pressure to make the LPA.
- They have sufficient knowledge to be satisfied that no fraud is involved in creating the LPA.

If you don't know anybody who can act as your Certificate Provider then don't worry. Wrigleys can help you with this. We have contacts with a nationwide group of assessors. They can meet with you at your convenience to carry out the assessment.

The role of the Certificate Provider is important. If the LPA is completed by the wrong person it will be invalid. This means it will not be possible to use your LPA. We usually recommend that the Certificate Provider signs the LPA as soon as reasonably practical after you have signed it.

## 7. Who can I (or should I) appoint as my Attorney?

You can appoint anyone (or several people) aged over 18 at the time **you** sign the document who:

- Is/are willing to sign that they accept their appointment. We strongly suggest you ask them before instructing us to draw up any paperwork.
- Confirms that they understand their legal duties and obligations as an attorney. If they do not behave properly in accordance with law they can be held to account by the Court.
- Is not bankrupt or under any form of similar arrangement.

But you should always consider the following:

- Do you trust your chosen attorney to always act in your best interest?
- What about the possibility of family conflicts? It would be inadvisable to appoint two attorneys who might struggle to reach agreement
- Are your attorneys fair minded?
- How are they at dealing with money matters?
- How are they at dealing with large amounts of paperwork and making important decisions?

You should also remember that:

- You may want to choose an entirely neutral attorney to work with your family.

Please note we do not recommend the appointment of a sole attorney. We have concerns that this may increase the risk of financial abuse or create other legal difficulties.

## **8. Can Wrigleys help by acting as my attorney?**

We have a Trust company called Wrigleys Trustees Limited. Wrigleys Trustees Limited can be appointed as a sole or one of your attorneys in a Property & Financial Affairs LPA. If we are appointed as your attorney then Wrigleys Trustees Limited would be responsible for handling your financial affairs. Whilst ever you are able to make certain decisions you could continue to do so. If you appoint Wrigleys Trustees Limited and another attorney we can act together as a team. Please note that Wrigleys Trustees Limited would charge for their services in dealing with the administration of your affairs. These fees would have to be reasonable and would be agreed with you, or with your attorneys, in advance. If Wrigleys Trustees Limited are going to act as an attorney for you then no member of Wrigleys staff can witness your signature on the LPA or act as your Certificate Provider. We do not usually act as attorney in a Health & Welfare LPA.

## **9. Will Wrigleys be able to help me and my appointed attorneys handle my property and other financial affairs if I need assistance?**

Yes.

If you become incapable of dealing with your affairs and your attorneys ask us to assist (or if we are appointed as an attorney) then we shall be pleased to help. You will remain our client and securing your best interests will remain our objective.

We have long experience of dealing with the financial affairs of vulnerable or elderly people who need assistance. We also have a good working relationship with the Court of Protection and the Office of the Public Guardian who are also sometimes involved in these type of matters.

## **10. Do I need to register my Lasting Power of Attorney?**

LPAs cannot be used until they have been registered with a separate organisation called the Office of the Public Guardian.

## **11. Should I get my LPA registered now?**

***There are two main 'pros'.***

1. As soon as the LPA is needed it can be used without any delays.
2. If there are any mistakes, and it is not registered until you lose capacity, then it would too late to fix any errors.

***There are a number of 'cons'.***

1. You will need to pay the Registration fee and our fees if you use Wrigleys to apply for registration now.
2. If you change your mind and want to change or cancel your LPA at a later date then there will be more fees. Whilst ever your LPA isn't registered you can cancel it at any

time provided you have capacity

3. You will need to keep the Office of the Public Guardian informed of any changes of names or addresses.
4. Your LPA might be used by your attorneys after Registration.

## **12. Does anyone need to be told about the application to register?**

You can decide if you would like somebody to be notified of registration. This is extra safeguarding. A person of your choice is told that you or your attorneys are applying for your LPA to be registered. You don't have to choose anybody if you don't want to. The choice is yours.

## **13. When can a Property & Financial LPA be used?**

As mentioned above, the LPA cannot be used until it has been registered. On the LPA form itself you can decide if you would like your attorneys to be able to use it only after you lose mental capacity. The Office of the Public Guardian has produced some guidance. They have suggested that if you say it is only to be used if you lose capacity then that could cause some difficulties for your attorney in the future. Financial institutions such as Banks or Building Societies may require proof of lack of capacity every time your attorney tries to use the LPA. This could slow down the administration of your financial affairs and be frustrating for an attorney who is trying to help you.

## **14. When can a Health & Welfare LPA be used?**

The Health & Welfare LPA can only be used after registration and after you have lost the capacity to deal with matters yourself.

## **15. What does registration involve?**

We will lodge the application to register the LPA with the Office of the Public Guardian. If you have chosen to notify people then we will deal with that notification process. The Office of the Public Guardian will acknowledge receipt of your application and will notify your attorney/s. There is then a waiting period during which people can object to the registration. Valid objections would be if you had revoked your LPA, if the LPA hadn't been drawn up/witnessed or certified properly, people were worried that you had been pressurised into signing the LPA or that there were concerns that your chosen attorneys had misbehaved or were likely to misbehave in a way that is contrary to your best interests.

If the waiting period passes and there are no objections then we receive your stamped LPA back from the Office of the Public Guardian. We can store the original document here for you free of charge. We will ask you to confirm in what circumstances you are happy for a copy or the original document to be released to your attorney.

## **16. What if I don't register it now?**

We can still store the document for you free of charge. However, the LPA cannot be used by your attorneys until they have gone through the registration process. There could therefore be a frustrating period of time when the attorneys want to help you but can't.

## **17. If I register my Lasting Power of Attorney who will get to know about it?**

Apart from your attorneys and such persons as you state you want to know as part of the registration process, the Office of the Public Guardian has a register of basic information on all registered LPAs.

For a fee anyone can search the register. It contains details of:

- Your name and date of birth.
- The fact that you have an LPA.
- The date of its creation.
- Details of your attorneys.
- Certain other relevant details.

Some clients consider this to be an invasion of their privacy. It is often considered to be an unattractive feature of the system.

## **18. If I appoint my spouse or Civil Partner as an attorney what happens if our legal relationship ends?**

Dissolution or annulment of marriage or a civil partnership will terminate the appointment of a spouse or Civil Partner unless you state otherwise in your LPA.

An appointment would also be terminated if the attorney refuses to act, dies or becomes bankrupt.

In normal circumstances if there is another attorney entitled to act without your spouse or Civil Partner acting as well then their appointment will not be affected.

## **19. Can I change my attorneys?**

Yes.

So long as you retain sufficient mental capacity you can do this at any time. However, you will need to cancel the existing LPA and make a new one.

## **20. What are the possible drawbacks of Lasting Powers of Attorney?**

- The procedure is complex and there is a fee for it.
- It may never be needed, so the cost of making, certifying and registering it may be wasted.
- Your attorneys may try to abuse their powers. You need to be very careful about your choice of attorneys and be sure that they will only act in your best interests.

## **21. Can my attorney under a Lasting Power of Attorney change my Will?**

Not alone.

They can only do it with the Court's agreement. A formal application would be required for a 'Statutory Will.'

## **22. Do you recommend I restrict the powers of my attorneys under a Lasting Power of Attorney?**

Not usually.

If you trust your attorneys to act in your best interests this should not be a problem unless you have particular concerns. If you do, then please let us know.

So in most cases we would draft the documentation to give your attorneys general authority over all your property and financial affairs.

Sometimes people are worried about excessive gifts being made. Gifts are restricted to modest gifts under the law. Larger gifts require Court consent.

## **23. Who can witness my signature?**

Just about anyone aged over 18 except your attorneys can be your witness so long as they see you sign and then they sign as witnesses whilst you are still present.

But remember, witnessing your signature is not the same as certifying your capacity to execute the LPA. That role is for your Certificate provider. In most cases, your Certificate Provider can also act as your witness.

## **24. Some issues that are specific to the Health & Welfare LPA**

In the Health & Welfare LPA you are giving your chosen attorneys the legal authority to make decisions on your behalf. This will help to avoid third parties (e.g. health care professionals) making decisions for you instead. It can also help to avoid family arguments as it is clear who has the authority to make certain decisions.

An LPA can help to avoid the involvement of the Court of Protection. Health care providers know who has the legal authority to make decisions on your behalf. Your attorneys could

make decisions such as where you were going to live, what clothes should be bought for you, your diet etc.

There is a critical decision that you need to make in relation to your Health & Welfare LPA. You need to decide if you are going to give your attorneys the authority to give or refuse consent to life sustaining treatment. If you choose this option your attorneys can speak to Doctors on your behalf just as if they were you. This is an important decision for you to make. Life sustaining treatment can mean care, surgery, medicine or other things that would keep you alive. Life sustaining treatment varies between people. What if a routine operation didn't go as planned? Would you want your attorneys to have the authority to make the decision about refusing consent to life sustaining treatment on your behalf? It may be that you decide you don't want to give your attorneys the authority to make this decision. Your Doctors will then work with your attorneys and other family members who are interested in your welfare. It is unlikely that your attorney will be completely cut out of the decision making process.

## **25. If I am appointing more than one attorney – how should they act?**

If you appoint attorneys to work together they can do this in three different ways:

- 1. Jointly and severally.** Here your attorneys can make decisions on their own or together. This is the most practical option, so is the most popular one. It gives your attorneys flexibility. If there is a straightforward decision one of them could make this on their own but if there is a more complex or fundamental decision, they could act together. The attorneys decide whether they are going to act together or alone. If one of your attorneys dies the LPA will still work.
- 2. Jointly.** Here your attorneys have to agree in relation to every decision that is made. It could cause delays in the running of your financial affairs if it is difficult for the attorneys to contact each other to make those decisions. There is another key point which you need to bear in mind. If one of the attorneys dies or can no longer act for any reason then all of your attorneys are unable to act. This means that the LPA no longer works. If you have lost capacity to put a new LPA in place then your family members may have to go to the Court of Protection and ask for a deputy to be appointed. There is the cost in doing this and also the delay.
- 3. Jointly for some decisions, jointly and severally for others.** Here you can decide which decisions your attorneys have to make jointly and which decisions you are happy for the attorneys to make on their own. Again you need to be careful. The tendency is to say that attorneys have to act together in relation to important decisions but this would mean if one of the attorneys died or couldn't act then your remaining attorney couldn't make these important decisions. Your LPA would only work in relation to the less important, everyday, decisions that have to be made. This might mean that your attorneys have to apply to the Court of Protection for a specific Order. Again there is the expense and inconvenience of doing this.

## **26. What are replacement attorneys?**

Replacements are "back up" attorneys. Let's say you appoint an attorney who can't act anymore. The replacement attorney can step in and help. If there is more than one replacement attorney then they usually all step in together, unless you specify otherwise. You might decide that when one attorney can no longer act then you just want one replacement to step in and take their place.

## **27. If I lose capacity how will my attorneys look after my affairs?**

This area of law is covered by the Mental Capacity Act. It is very complicated and we usually recommend that attorneys take legal advice which we would be happy to provide. In brief;

- Your attorneys cannot make any decisions until your LPA has been registered.
- You are still treated as having the capacity to make decisions unless it has been established that you now lack the capacity to make that decision.
- You cannot be treated as being unable to make a particular decision unless all practical steps have been taken to help you do this yourself, without success.
- You cannot be treated as being incapable of doing something merely because you want to make an unwise decision.
- When your attorneys are acting for you they must act in your best interests.
- Before your attorneys take action on your behalf they must see if they can achieve this in a less restrictive way. That is, can they achieve the end goal in a way that doesn't impact so much on your rights and freedom?
- You should be kept in the picture and consulted as much as possible.
- If your capacity varies on a day to day basis then your attorneys need to take this into account.

You might have given thought as to how you would like your affairs to be run in an ideal world. If you have put these ideas in writing please let us have a copy of this for our file.

## **28. What powers do my Attorneys have to charge for their services?**

1. Most professional attorneys will charge for their services. Our charges are at our usual hourly rate and our terms of engagement apply.
2. You should let us know if you want someone to have power to ask for an independent review of professional fees if the fees exceed a certain amount.
3. Other attorneys can only claim their out of pocket expenses in handling your affairs eg reasonable travel expenses. Without Court approval, they cannot pay themselves a "wage" for acting as your attorneys.

## **29. Are there any things that my attorneys can't do?**

The LPA itself may limit the authority of your attorneys. But there are also some things that the law says they cannot do.

Your attorneys cannot sign a Will on your behalf unless they have the specific authority from the Court of Protection to do this.

They cannot make significant gifts or set up trusts on your behalf unless the Court has approved this.

There are other specific things that attorneys cannot do. These often do not relate to day to day things but may relate to acting as a Trustee or other decisions in relation to the running of a Trust. If in doubt it is best to get legal advice.

If the Court of Protection becomes concerned that your attorneys are not acting in your best interests then they can take charge. The Court can say that your attorneys should no longer be involved in looking after your affairs.

The information in this document is necessarily of a general nature. Specific advice should be sought for specific situations.

If you have any queries or need any legal advice please feel free to contact Wrigleys Solicitors

Please respect that this guide is strictly for the use of clients and prospective clients only. Thank you.

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# Notes

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