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# **Lasting Power of Attorney Client Guide**



## What Is A Lasting Power Of Attorney?

A Lasting Power of Attorney (**LPA**) is a legal document by which you (the **Donor**) choose someone you trust to make decisions or manage your affairs on your behalf if you are no longer able. The person you appoint becomes your **Attorney**. You may appoint a single Attorney or several Attorneys. You are able to appoint a replacement Attorney should one of your appointed Attorneys be unable permanently to fulfil that role.

An LPA is particularly useful to ensure that your affairs can continue to be managed in circumstances where you have lost the physical or mental capacity to do this yourself, or to make decisions about your welfare when you are not able to: for example, should you have an accident.

An LPA is a powerful legal document, and it is extremely important that you trust your Attorney to make decisions in your best interests. An Attorney must be aged over 18 and can be a family member, friend or professional. The appointment of your spouse or civil partner as your Attorney will cease if your marriage or civil partnership is dissolved or annulled unless you have provided otherwise in your LPA.

There are two different types of LPA:



The first covers your **Property and Financial Affairs** and the second your **Health and Welfare**.

## Property and Financial Affairs LPA

This allows your Attorney to make decisions on your behalf about your property and financial affairs. Examples of the way such an LPA might be used include:

- signing cheques and paying your bills.
- collecting your income or benefits.
- making decisions about your financial arrangements or investments.
- selling your house.

You can impose restrictions or conditions on the ways in which your Attorney acts.

A Property and Financial Affairs LPA must be registered with the Office of the Public Guardian before it can be used. When registration has been completed your Attorney may manage your finances and property and will have the same control as you have over your money, savings, and investment. The Attorney can act on your behalf whether you have mental capacity to make decisions or not.



If you prefer, you can restrict your Attorney to act only if you lack capacity, or you can register the LPA and keep the document under your control.

## Health and Welfare LPA

A Health and Welfare LPA must be registered with the Office of the Public Guardian before it can be used. It allows your Attorney to make decisions on your behalf about your health and personal welfare but **only if you lack the capacity to make the specific decision yourself.**

You can place restrictions or conditions on the decisions your Attorney can make on your behalf but examples of decisions an Attorney can otherwise take include:

- giving or refusing consent to types of health care.
- having the authority to give or refuse consent to life sustaining treatment.
- deciding if you should be assisted to stay in your own home or if you should move into residential housing.
- choosing the right care home for you.
- day-to-day issues such as your diet, dress, or your daily routine.



It is a common assumption that family members have these rights automatically but legally they do not. Providing you give guidance in advance to your Attorney, a Health and Welfare LPA can give you more certainty about how you will be cared for should the need arise.

## Safeguards

Both types of LPAs include inbuilt safeguards designed to protect you. As well as the requirement to register an LPA before it can be used, you can optionally notify at least one person of your intention to register an LPA and they can object to the registration if they believe that you lack the mental capacity to understand the nature of the document or that you are being pressured into making it.

Additionally, someone (the **Certificate Provider**) must confirm that you understand the purpose of the LPA and the scope of the powers that you are giving to your Attorney. Finally, your signature and the signature of your Attorney must be witnessed, and your Attorney must always act in your best interests and have regard to the Code of Practice (associated with the Mental Capacity Act 2005).

## Certificate Provider

The Certificate Provider is the person who confirms that you understand the LPA and are not placed under any pressure to make it.

There are two types of Certificate Provider:

- a **knowledge**-based Certificate Provider is someone that you know personally and have done so for at least two years.
- a **skills**-based Certificate Provider is someone who considers that they have the relevant professional skills and expertise: such as a registered healthcare professional (including a GP), a solicitor or a registered social worker.

A Certificate Provider **cannot** be:

- a member of your family or of the family of an Attorney.
  - a business partner or paid employee of yours or of your Attorney.
  - an Attorney appointed in this form or another LPA or in any Enduring Power of Attorney made by you.
  - the owner, director, manager, or employee of a care home in which you currently live or their family member.
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## How Joint Attorneys Make Decisions

If you appoint more than one Attorney, you must specify whether they should act:

- jointly, or
- jointly and severally; or
- jointly for some decisions and jointly and severally for other decisions.

Attorneys who are appointed to act **jointly** must always act together and if one Attorney does not agree with a proposed action, that decision cannot be made. Where Attorneys are appointed to act jointly the LPA will be cancelled if one Attorney dies or lacks capacity to make decisions on your behalf.

Attorneys who are appointed to act **jointly and severally** can act individually or they can act together. If one Attorney becomes ill or dies, the remaining Attorney or Attorneys can continue to act.

Alternatively, Attorneys can be appointed to act jointly for some decisions (for example when deciding to sell your house) and jointly and severally for other decisions (for example paying care fees).



The most appropriate way to appoint your Attorneys will vary according to your individual needs and circumstances.

## Registering Your LPA

A fee of £82 is charged by the Office of the Public Guardian for each application to register an LPA. A fee exemption or remission may be available depending on your income.

## Cancelling an LPA

If for any reason you wish to cancel an LPA in the future, you are able to providing you still have mental capacity. An LPA will automatically come to an end when the Donor dies. A Property and Financial Affairs LPA will also come to an end if either the Donor or an Attorney becomes bankrupt.

## Who Are Bookers & Bolton?



We have been in our current offices at **6 High Street** in Alton since 1956 and the history of Bookers & Bolton dates to 1893 so you can rely on us to be there for you and your family in the future. There is a security in our history, and we act for many clients whose grandparents were advised by us. We have built a reputation for quality and reliability in Hampshire and the South and we are committed to maintaining and building on that reputation.

Whilst other firms come and go and may offer the promise of low-cost legal services, we remain committed to providing you with the best. We recognise that you only come to us when faced with the most important decisions in life and we treat you, and those issues, with the respect and legal diligence that they call for.



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## HOW CAN WE HELP?

With skill and experience, our Private Client team are here to help you prepare for the future, whatever it may bring. We can advise you on how to set up the LPA that best suits you and can visit you if you are unable to make it to the office.

## CONTACT US

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