



Making a Lasting Power of Attorney

Information Questionnaire

Our Private Client team

Franklins Solicitors LLP is a dynamic and growing legal practice driven by a dedication to exceed its clients' expectations. With more than 30 years' experience as a provider of legal services to both private and business sectors, the firm is committed to constantly improving and widening the range of support services it offers. With a wealth of experience Franklins delivers both quality service and the highest levels of productivity for its clients.

With one of the strongest legal teams in the Midlands, and offices in Northampton and Milton Keynes, Franklins Solicitors LLP is well placed to handle any and every legal issue you need resolved. You can also take comfort from the fact that Franklins is one of the most accredited legal practices in the region and is proud to have achieved accreditation to ISO 9001 and the Law Society's quality accreditation, Lexcel.



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Making a Lasting Power of Attorney

These notes are for general guidance only and are not intended to replace our meetings where a full discussion of your needs can take place and tailored advice can be given.

A Lasting Power of Attorney (LPA) gives another person or persons (known as your "attorney(s)") the authority to act for you if you are unable to do so yourself. That authority continues even if you lose the mental capacity to make decisions for yourself. If you do not have an LPA in place and you lose mental capacity, it will be necessary for someone to make an expensive and time consuming application to the court in order to act on your behalf. This can take several months and cost several thousand pounds.

There are two types of LPA:

- Financial.
 - Health and care.
- You can have either or both types of LPA.

What are the differences between the two types of LPA?

LPA for financial decisions

This type of LPA allows your attorney(s) to deal with your financial affairs, for example to pay your bills, sell your property or investments and operate your bank accounts. Unless you specify otherwise in your LPA, your attorney(s) can use your LPA while you still have capacity to make financial decisions yourself. If you allow your attorney(s) to make decisions before you have lost mental capacity, it does not mean that they automatically make all financial decisions for you, it just means that they can make these decisions if you allow them to at the time. This can be helpful if you are unwell or on holiday for an extended period of time.

LPA for health and care

This type of LPA allows your attorney(s) to make decisions about matters such as your medical treatment, your diet, where you live and how you spend your time. Unlike the LPA for property and financial affairs, your attorney(s) can only use it when you have lost the mental capacity to make decisions yourself.

Your attorney(s) cannot make decisions about life-sustaining treatment unless you specifically allow this in the LPA. Life-sustaining treatment includes ventilation to help with breathing, feeding through a tube and resuscitation.

How do I make an LPA?

An LPA must be made using a specific form. There is a different form for each of the two types of LPA.

The form is simple to complete but before completing it you should make sure that you have thought carefully about the three categories of people who will perform different roles in relation to your LPA:

Who can make an LPA?

Anybody who is over 18 and understands what they are signing, when making an LPA.

- Attorneys.
- People that will be notified before your LPA is registered.
- Certificate providers.

You will also need to consider the decisions that you would like the attorney(s) to make on your behalf, including how they will make those decisions and whether there should be any limits on what they can do. More information on each of these is provided below.

You must read everything very carefully before signing the document. It is a legal requirement that everyone signing your LPA must read "your legal rights and responsibilities" section. This provides you with information about how your attorney(s) can use the LPA.

Once the form has been completed, it must be signed in the right order. You must sign first, then the certificate provider and then your attorney(s).

The LPA must be registered before your attorney(s) can use it.

Who will act as my attorney(s)?

You must only appoint people that you can trust to act as your attorney(s). You should consider the following categories of people when deciding who to appoint:

- Family members.
- Friends.
- Professional advisors such as your solicitor or accountant. This category is generally only appropriate for LPAs for financial decisions.

You should also consider practical issues such as whether it would be better to have an attorney who is geographically close to you (this might be less relevant, for example, for an LPA for financial decisions if you deal with all of your finances online). You should also consider the time, skills and expertise that each attorney has in relation to your assets and circumstances. You should consider whether there are persistent family conflicts which could cause

problems for a chosen attorney. If you choose to appoint professional attorneys you will need to pay them for acting as attorney but you can also pay other attorneys if you wish.

Can I have more than one attorney?

It is possible to appoint more than one person to act as your attorney(s).

You can appoint more than one attorney in the following ways:

- **Jointly.** If you appoint attorneys to make decisions jointly, then they can only act together. This may prove inconvenient, particularly for day-to-day decisions. Your LPA will be terminated if one of the attorneys can no longer act unless you have appointed a replacement for joint attorneys.
- **Jointly and severally.** If you appoint attorneys to make decisions jointly and severally, they may act either together or independently. This provides more flexibility than appointing attorneys to act jointly and means that the remaining attorney(s) can continue to act even if one of them becomes incapable of doing so. The downside of this flexibility is that one attorney may act in a way that the other attorney(s) would not endorse. Arguably, however, you should not appoint an attorney to act at all if you don't trust that person to act alone.
- **Jointly when making some decisions and jointly and severally when making other decisions.** This option may provide a compromise between allowing sufficient flexibility for attorneys to act independently in relation to day-to-day matters and jointly in relation to more important decisions. You will need to decide which decisions the attorneys have to take jointly.

You can also appoint replacement attorneys. This is useful as a backup in case one of your attorneys cannot act. You can specify how and in what order you want the replacement attorneys to replace the original attorneys.

How can I control what my attorneys can and cannot do?

Restrictions imposed by law:

- The law limits what your attorney(s) can do and how they must act. The most important rule is that an attorney is only allowed to act in your best interests. Another important rule for an attorney for financial decisions is that they must keep accounts and submit them to the Office of the Public Guardian (OPG) - but only if they are asked to do so.
- Strict limits on the kinds of gifts that an attorney for financial decisions can make on your behalf. For example, they can give birthday, Christmas and wedding presents, but they can't make gifts for

inheritance tax planning or pay school fees for grandchildren without making an application to court.

- The law against euthanasia and assisted suicide. Your attorney(s) cannot break the law even if you try to allow them to do so in your LPA for health and care decisions.

Instructions imposed by you:

You can also place additional restrictions on the authority of your attorney(s) in the LPA by specifying instructions that the attorney(s) must follow in section 7 of the LPA form.

Common instructions in an LPA for financial decisions include:

- Requiring your attorney(s) to submit annual accounts to a person of your choice.
- Allowing your attorneys to appoint an investment manager to make decisions about your investments.

Common instructions in an LPA for health and care include:

- Specifying that you would like your attorney(s) to ensure that you have a particular diet, for example a vegetarian diet.
- Allowing your attorney(s) to agree to residential care only if your doctor confirms that you are unable to live independently.

Preferences:

You can also provide your attorney(s) with advice in your LPA about how you would like them to manage your affairs. This is guidance for your attorneys, rather than something which your attorney(s) must do. For example, you might say that you would prefer your attorney(s) not to invest in tobacco companies or that you would like to live in a particular geographical area.

Who checks that my attorney(s) are acting properly?

You shouldn't appoint anyone that you don't trust to act as your attorney. The OPG deals with any complaints that arise about the way that attorneys are exercising their powers, but this could be after the event or issues may not come to the attention of the OPG.

You should consider building safeguards into your LPA under "Instructions".

People to notify

When you make your LPA you can, but don't have to, nominate up to five people to be told when you or your attorney(s) apply to the OPG for the LPA to be registered. The notification acts as a safeguard because it allows those people to raise any concerns that they may have at the point of registration.

Certificate providers

You need a certificate provider. A certificate provider is an impartial person who is qualified to act in one of two ways:

- They are a professional (for example, a GP or your solicitor). We will act in this role.
- They have known you for at least two years but amongst others, cannot be a member of your family, an attorney or member of their family.

When completing and signing the form, the certificate provider will be certifying that:

- You understand the meaning of the LPA.
- You have not been put under pressure to make the LPA.
- There has been no fraud involved in making the LPA (that is that there is no dishonesty or scam involved).
- There is no other reason for concern.

The certificate provider is a safeguard for you because it is confirmation from a qualified third party that you understand what you are signing and that you have decided to make it yourself, without pressure from others.

If we have concerns about your capacity to make an LPA we will seek the advice of a medical practitioner and will discuss this with you when we meet.

Registration

We advise that you register your LPA immediately. You will need to pay the OPG registration fee currently £82 per LPA.

If you choose not to register your LPA immediately, you or your attorneys can register your LPA with the OPG at any time. However, your attorney(s) can only use your LPA to make decisions on your behalf after it has been registered.

The advantages of immediate registration:

- The OPG checks the LPA when it is about to register it so any problems will be found immediately. If the LPA is not registered until you have lost capacity, you won't be able to rectify any errors and the LPA may be invalid. That is, your attorney(s) will not be able to use it.
- The LPA is ready to use if it is needed in the future. As the registration process can take eight to ten weeks, delaying registration until you lose mental capacity can cause an inconvenient delay when the LPA is required.

The disadvantages of immediate registration:

The disadvantages are that the registration fee of £82 per LPA must be paid straight away and, in the future, if you decide that you want to revoke your LPA and make a new one, you will need to start afresh.

How is the LPA used after registration?

Your attorney(s) can use a registered LPA for financial decisions either before you lose mental capacity (with your agreement) or afterwards. Your attorney(s) can only use a registered LPA for health and care after you have lost mental capacity.

When your attorney(s) start using the LPA, they may need to provide evidence of their authority to act for you to; banks, utility companies, the local authority, your doctor, care homes and other third parties. The requirements of each individual or organisation will vary. For example, some may need to see the original registered LPA while others may only want a photocopy. Your attorney(s) should avoid sending the original registered LPA by post to a third party and offer to supply an office or certified copy instead. Your attorneys can get office copies from the OPG at a cost of £35 per document. Alternatively, a solicitor or accountant can certify a copy of the LPA, confirming that it is a true copy of the original registered LPA.

Trusteeships

Please let us know if you are the trustee of any trusts as it is important that you understand the effect of your LPA on those.

Advanced Decisions / Living Wills

An Advanced Decision allows you whilst you have capacity now, to refuse specified medical treatment at a point in the future when you might lack the capacity to consent to that particular treatment. If the Advanced Decision is valid and applicable in those circumstances, it has the same effect as a contemporaneous refusal of treatment by you. It means the treatment cannot lawfully be given by anyone.

Unlike an Advance Decision, an LPA for health and care allows you to give general authority to your attorney to consent to or refuse life sustaining treatment and it is not necessary to specify a particular treatment. However, attorneys have to make decisions in your best interests and they must follow the principles of the Mental Capacity Act such as consulting with others, like doctors. Attorneys might find themselves in the position where they think it is in your best interests to undergo treatment even if it is something that you do not want.

You can make both an LPA for health and care and an Advance Decision, but care needs to be taken about the terms of each and the timing is critical. The Advance Decision could be invalidated if made before the LPA.

Lasting Power of Attorney – Questionnaire

Please note that these are initial details only and we will fully discuss when we meet.

Please complete a separate questionnaire if you and your partner are choosing different attorneys or replacement attorneys

Please complete this form after reading through the Guidance Notes in this booklet.

Some things for you to think about before our meeting:

- Do you want to impose conditions on or give guidance to your Attorneys?
- Do you want to pay your Attorneys?
- Do you want to give your Attorneys authority to give or refuse consent to life sustaining treatment? (Health and Care LPA)

Which LPA? (please tick correct box)

Property and Financial Affairs

☐

Health and Care

☐

Both LPA

☐

You	Your Partner
Title (Mr, Mrs, Ms etc.)	
Full Name (include all middle names)	
Are you known by any other name and are there any assets in this name?	
Address	
Date of birth	
Email address	
Are you happy for us to correspond and send drafts by email address	
<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO
Contact Numbers	
Home:	Home:
Mobile:	Mobile:
Work:	Work:
Do you want appoint your partner as one of the primary attorneys for your LPA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
If so	
Sole primary attorney	<input type="checkbox"/> YES <input type="checkbox"/> NO
Jointly with another (complete details below)	<input type="checkbox"/> YES <input type="checkbox"/> NO

Primary Attorneys:	Attorney	Further Attorney
Title (Mr, Mrs, Ms etc.)		
Full Name (include all middle names)		
Address		
Date of birth		
Email address		
Contact Numbers		
Home:	Home:	
Mobile:	Mobile:	
Work:	Work:	
Relationship to Donor		
Occupation		

Replacement Attorneys:	Replacement Attorney	Further Replacement Attorney (if required)
Title (Mr, Mrs, Ms etc.)		
Full Name (include all middle names)		
Address		
Date of birth		
Email address		
Contact Numbers	Home: Mobile: Work:	Home: Mobile: Work:
Relationship to Donor		
Occupation		

Do you both want to use the same attorneys for your Health and Welfare LPA?
If not please provide details on a separate questionnaire.

☐

YES

☐

NO

Person to be Notified (only required if advised or if not registering LPA immediately)

Title (Mr, Mrs, Ms etc.)		Address
Full Name (include all middle names)		
Date of birth		
Email address		
Contact Numbers	Home: Mobile:	

Guidance and Conditions

Guidance for Attorneys, known as preferences <i>Please provide information on a separate sheet if applicable)</i>	
Conditions for Attorneys use, known as instructions <i>Please provide information on a separate sheet if applicable)</i>	

Do you want to disclose Will to attorneys? *(Please see 'Your Will' section)*

☐

YES

☐

NO

Please sign and date

Signature:

Signature:

Print Name:

Print Name:

Date:

Date:

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