Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

An easy guide to lasting powers of attorney

An independent voice and champion for older people across Wales

In partnership with:

Office of the Public Guardian

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales. The Commissioner and her team work to ensure that older people have a voice that is heard, that they have choice and control, that they don't feel isolated or discriminated against and that they receive the support and services that they need.

The Commissioner and her team work to ensure that Wales is a good place to grow older, not just for some but for everyone.

How to contact the Commissioner

Older People's Commissioner for Wales
Cambrian Buildings
Mount Stuart Square
Cardiff
CF10 5FL

Phone: 03442 640 670

Email: ask@olderpeoplewales.com
Website: www.olderpeoplewales.com

Twitter: @talkolderpeople

Accessible Formats

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What is a lasting power of attorney?

A lasting power of attorney (LPA) is a legal document that allows someone you trust to make decisions on your behalf and in your best interests. LPAs give you more control over what happens to you if you lack the 'mental capacity' to make decisions for yourself or you want someone to make certain decisions for you.

There are two types of LPAs: one covers property and financial decisions and the other deals with decisions about your health and welfare.

'Mental capacity' means the ability to make a decision at the time it needs to be made. People can lose mental capacity because of a condition such as a mental health problem, dementia or a learning disability.

Think about what would happen if you had a serious accident or a stroke or developed dementia or a mental illness. You might lose the ability to make some, or all, decisions. Making an LPA will help you to prepare in case this happens.

Why do I need an LPA?

There are many advantages to making an LPA:

- It's a chance to talk to family and friends about how you want to manage your finances and your health and welfare
- It will give you peace of mind and allow you to stay in control
- It's quicker and cheaper than other ways of handling your decisions – such as applying to the Court of Protection

Who's involved in an LPA?

There are two main roles involved in an LPA. The 'donor' makes the LPA and appoints one or more 'attorneys' to make decisions for them.

When you create an LPA you also need someone to act as a 'certificate provider' to state that you had mental capacity when you made the LPA. You can additionally name 'people to notify', who will be told when the LPA is registered.

Certificate providers and people to notify are extra safeguards to make sure the LPA truly represents your wishes.

Which kind of LPA?

Under a **property and financial affairs** LPA, you appoint an attorney or attorneys to take responsibility for such things as:

- paying your bills
- collecting your income and benefits
- selling your home
- providing for dependents

You needn't have lost mental capacity to use this kind of LPA; your attorneys can start acting for you straight away if you wish them to. That might be useful if you want someone to manage your finances while you're in hospital or abroad for a period of time.

A **health and welfare** LPA covers decisions such as:

- where you live
- what you wear
- your medical care
- whether to refuse life-sustaining treatment for you

Unlike a property and financial affairs LPA, your attorneys can use a health and welfare LPA only when you no longer have mental capacity to make decisions for yourself.

For both types of LPAs, you can decide the things your attorneys can and can't make decisions about.

When can an LPA be used?

Whether or not you still have mental capacity, an attorney can only use an LPA once the Office of the Public Guardian, part of the Ministry of Justice, has registered it. An unregistered LPA cannot be used.

You can make an LPA and register it later (or an attorney can register it for you) but it's a good idea to register the LPA as soon as you have created it. Sometimes LPAs contain mistakes but these can only be fixed while you still have mental capacity.

Remember: LPAs only come into effect when you have lost mental capacity or – in the case of a property and financial affairs LPA – when you decide.

It's easy to create an LPA online at www.lastingpowerofattorney.service.gov.uk

If I lose mental capacity, can someone make an LPA for me then?

No. If you don't have mental capacity, you cannot make an LPA nor can anyone else do it for you.

The only other way someone else can act on your behalf is if they apply to the Court of Protection to become your deputy.

A deputy has similar powers to an attorney. However, a deputy must send a report to the Office of the Public Guardian (OPG) and pay a fee every year. Their costs will come out of your assets. It's a lot more time-consuming and expensive than having an LPA.

Who can I have as an attorney?

You can choose anyone over 18. For a financial-decisions LPA, your attorney also cannot be bankrupt. You should be sure you trust the person and that they know you well enough to make decisions for you. You could choose a relative, friend or solicitor (who is likely to be paid for the role). It is up to you to decide.

It's important to make sure that your attorneys fully understand their role and that they are willing to act on your behalf.

Can I have more than one attorney?

Yes. If you choose more than one attorney, you must decide how they will make decisions. The choices are:

- separately or together – they can make decisions on their own or with the other attorneys (jointly and severally)
- together – they all have to agree on every decision (jointly)

You can specify how your attorneys should make different types of decisions in your LPA.

What happens if my attorney is no longer able to carry out their duties?

It's a good idea to choose some replacement attorneys in your LPA.

Replacement attorneys only start acting for you if the main attorneys can no longer fulfil the role or want to step down.

If you've lost capacity, and your attorneys can no longer act for you and there are no replacement attorneys, OPG will have to cancel your LPA. This might mean that someone would have to apply to the Court of Protection to become your deputy.

How do you tell if someone has mental capacity?

A person lacks capacity if a problem with their mind or brain stops them making decisions when they need to be made.

The law says that someone who lacks capacity cannot do one or more of these four things:

- understand the information needed to make a particular decision
- hold on to that information long enough to make the decision
- use or weigh up the information to make the decision
- communicate their decision

Do I need proof that I have mental capacity now?

Yes. A 'certificate provider' signs the LPA to prove that you understand what it means. This should be someone you have known for at least two years, such as a:

- friend
- doctor
- lawyer or accountant
- social worker
- priest, vicar or imam

A family member cannot be a certificate provider.

How much does it cost to make an LPA?

The full fee is £82 for each type of LPA (as of April 2017).

You may be able to pay a reduced fee (remission) or not pay a fee at all (exemption). You (or the person applying on your behalf) will need to send proof of your income.

Reduced fee (remission)

If your total yearly (gross annual) income before tax is less than £12,000, you may be able to get a 50% reduction of the fee.

Your income includes:

- your salary
- non-means tested benefits
- pensions
- Pensions Savings Credit
- interest from savings and investments

- property rental
- Universal Credit

You will need to send proof of your gross annual income. This might be:

- a P60 or three months' consecutive wage slips from your current job
- an official letter or notice from the payer for non-means-tested benefits and pensions
- statements or vouchers showing gross income for interest from capital, stocks, shares or bonds

Are you self-employed? You will need to send either

- your most recent self-assessment tax return and HMRC tax calculation
- an audited account certified by a qualified accountant

If you get Universal Credit, you will need to send copies of letters showing you got it at the time you applied to register your LPA.

OPG will not accept bank statements as evidence.

If you don't receive any income, you must send a signed statement explaining how you support yourself.

No fee (exemption)

You may not have to pay a fee at all if you get any of these benefits:

- Guarantee Credit Element of State Pension Credit
- Income Support
- Income-based Employment and Support Allowance
- Jobseeker's Allowance
- Housing Benefit
- Local Housing Allowance
- Council Tax Reduction/Support (also known by other names, not the 25% single person discount or the Class U exemption)
- Working Tax Credit and at least one of: Child Tax Credit, Disability Element of Working Tax Credit, Severe Disability Element of Working Tax Credit

You will have to send copies of letters from your benefit provider showing you got these benefits at the time you applied to register.

You will have to pay the full fee if you:

- get these benefits: Disability Living Allowance, Invalidity Benefit, Personal Independence Payment

- have been awarded personal injury damages of more than £16,000, which was ignored when you were assessed for benefits

Get help with application forms and fees: call the OPG helpline on 0300 456 0300.

Do I need to instruct a solicitor?

Many people don't need any legal help to fill in the LPA application form. Read the forms and guidance first to decide if you or your attorney is able to fill them in and apply to register the LPA.

However, an LPA is an important legal document. You might want to get legal advice from someone who has experience of dealing with LPAs and working with older people, their families and carers. There are likely to be costs involved.

How do I apply for an LPA?

The donor, their attorney or solicitor can apply online: www.lastingpowerofattorney.service.gov.uk/

If the donor or their attorney doesn't want to apply online, they can fill in the forms by hand and send them by post.

Ask OPG to send the LPA forms to you:

0300 456 0300

Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH

What happens after the online application or posted forms have been submitted?

It takes OPG up to 10 weeks to register an LPA. The LPA is valid as soon as OPG has registered it.

OPG will confirm registration with you by post or email (depending on which you prefer). OPG will also contact your attorneys to let them know the LPA has been registered.

You should keep a copy of the registered LPA.

What is an enduring power of attorney (EPA)?

LPAs were introduced in 2007 and replaced enduring powers of attorney (EPA).

EPAs give someone legal authorisation to act on your behalf in a legal or business matter.

If you have an EPA and do not want to change it, you don't need to apply for an LPA. However, you will need to apply for an LPA if you want to change an existing EPA.

Want to know more?

LPAs are covered by a piece of law called the Mental Capacity Act. The Act's Code of Practice (available at www.gov.uk/opg/mca-code) explains the law clearly.

For more background information, also visit www.scie.org.uk/mca-directory