

Lasting Powers of Attorney

A guide for people who want to make
a Property and Affairs Lasting Power of Attorney

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Introduction

This booklet will assist you in considering whether to make a Lasting Power of Attorney (LPA) for your property and affairs.

If you do decide to make an LPA, there are additional notes available from the Office of the Public Guardian (OPG) on how to complete an LPA form.

The booklet is divided into three parts:

Part A explains what an LPA is and the roles of Attorneys, named persons and the Certificate Provider. It also suggests matters to think about when you are choosing people to take on these roles.

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Part B explains about the Property and Affairs LPA form (or instrument) and gives you information on the power and scope of authority you give to your Attorney if you make a Property and Affairs LPA.

Part C explains the process of registering an LPA and the LPA register.

Please note: OPG can provide guidance on LPAs but **cannot** provide legal advice.

While it is not necessary for you to read the guidance for Attorneys you may find it useful. The guidance for Attorneys will give you an understanding of what an Attorney is required to do when undertaking their role and contains information on:

- the Attorney's duties and responsibilities;
- how your Attorney will assess your capacity before making decisions on your behalf;
- how an Attorney(s) can obtain personal information about you, for example from a bank, doctor or solicitor, to help make decisions in your best interests; and
- how your Attorney should decide what is in your best interests.

Your Attorney(s) will also find it useful to read this booklet so that they get a full picture of the issues involved and the guidance you have read.

The Office of the Public Guardian

The Office of the Public Guardian (OPG) is an executive agency of the Ministry of Justice. It is headed by the Public Guardian, who is responsible for the registration of LPAs and for maintaining the register of LPAs.

The OPG deals with any representations (including complaints) about the way in which an Attorney appointed under an LPA is exercising their powers. Dealing with representations includes checking the Attorney and could involve a Court of Protection visitor visiting them.

If anyone has a concern or a complaint about an Attorney or the way in which the registration of an LPA has been dealt with, they can contact the OPG for advice.

The Mental Capacity Act

The Mental Capacity Act 2005 for England and Wales potentially affects everyone aged over 16 (and in some cases people under 16) and provides a statutory framework to empower and protect people who may not be able to make some decisions for themselves, for example, people with dementia, learning disabilities, mental health problems, stroke or head injuries.

It makes it clear who can take decisions in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. The Act covers major decisions about someone's property and affairs, healthcare treatment or where the person lives, as well as everyday decisions about personal care or what someone eats, where the person lacks capacity to make those decisions themselves.

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The Code of Practice

The Code of Practice supports the Act and provides guidance and information to all those working under the legislation.

It provides guidance for people working with and/or caring for adults who lack capacity, including family members, professionals and carers. It describes their responsibilities when acting or making decisions with, or on behalf of, individuals who lack the capacity to do so themselves.

Attorneys and other people who have a duty of care to someone lacking capacity, such as professionals and paid carers **must have regard** to the Code.

Part A – What is a Lasting Power of Attorney, choosing who you want to be notified – named persons, and the Certificate Provider

Section 1 – What is a Lasting Power of Attorney?

What is an LPA?

A Lasting Power of Attorney (LPA) is a legal document that you (the ‘Donor’) make using a special form. It allows you to choose someone (the ‘Attorney’) you trust to make decisions about things such as your finances and property on your behalf at a time in the future where you are no longer able to or you may lack the mental capacity to make those decisions yourself.

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An LPA **can only be used** when it is registered with the Office of the Public Guardian (OPG).

Are there different types of LPA?

Yes, there are two different types:

A **Property and Affairs** LPA, which this guidance talks about, allows your Attorney to make decisions on your behalf about your property and affairs, including paying your bills, collecting your income and benefits or selling your house subject to any restrictions or conditions. It does not allow your Attorney to make decisions about your personal welfare.

You can appoint a Property and Affairs Attorney to manage your finances and property while you still have capacity as well as when you lack capacity. For example, it may be easier for you to give someone the power to carry out tasks such as paying your bills or collecting your benefits or other income. This might be easier for lots of reasons: you might find it difficult to get about or to talk on the telephone, or you might be out of the country for long periods of time.

A **Personal Welfare** LPA allows your Attorney to make decisions on your behalf about your personal welfare, including whether to give or refuse consent to medical treatment on your behalf and deciding where you live.

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These decisions can only be taken on your behalf when you lack the capacity to make them yourself, for example if you are ill, unconscious or because of the onset of a condition such as dementia. It does not allow your Attorney to make decisions about your property and affairs.

Separate guidance and forms to make a Personal Welfare LPA are available by calling the OPG or you can download them from our website.

What will a Property and Affairs LPA let the person I have chosen do on my behalf?

A Property and Affairs Attorney, using a registered LPA, will be able to make exactly the same kind of decisions you can make now about your money and property. The person will only be able to make decisions within the scope of the powers you have given them and these decisions might include:

- buying or selling any property (land, buildings or other assets) you own;
- opening, closing or operating any bank, building society or other account containing the your funds;
- claiming, receiving and using all benefits, pensions, and allowances, on your behalf.

This list is only intended to give examples of the types of decisions that can be made on your behalf using a Property and Affairs LPA. For more information on the types of decisions an Attorney could make on your behalf, see page 33 of this booklet.

Who can make an LPA?

Anyone aged 18 or over, with the capacity to do so, can make an LPA appointing one or more Attorneys to make decisions on their behalf. You cannot make an LPA jointly with another person; each person must make his or her own LPA.

Can someone make an LPA on my behalf?

No, only you can make your LPA. However, you can get help in creating your LPA from a legal adviser should you wish.

What are the safeguards?

An LPA is a very powerful legal document and it is important to remember that the person you appoint as your Attorney, unless you have included restrictions in your LPA, will have the same control you have over your money, savings, any investments and property. Details on restrictions and conditions are contained later in this booklet.

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When choosing an Attorney, it is important that you are confident that they know what you want and that you are comfortable that they will be making decisions on your behalf. However, there are safeguards to protect you. Safeguards already built in to an LPA include:

- the requirement that the LPA must be registered with the OPG before use;
- the requirement to identify someone to provide a Part B Certificate confirming, amongst other things, that you understand the purpose of an LPA and the scope of powers you are giving to your Attorney(s);
- that certain persons chosen by you called 'named persons' are notified before registration of the LPA;
- the requirement for the signatures of the Donor and Attorney(s) to be witnessed;

- the right of specific people (you, the Attorney(s) and named persons) to object to registration of an LPA; and
- your Attorney(s) **must have regard** to the Code of Practice, which provides guidance on the Mental Capacity Act 2005. The Code makes it clear that Attorneys must always act in your best interests.

Optional safeguards:

- including restrictions or conditions in the LPA, which your Attorney(s) must follow – for example, you may include a condition that your Attorney(s) must keep accounts and that they are to submit these accounts to someone of your choice such as a family member or professional; and
- giving guidance in your LPA which your Attorney should take into account when making decisions on your behalf.

Further details on some of these safeguards are included later in this booklet.

What if I have already made an Enduring Power of Attorney ?

If you have already made an Enduring Power of Attorney you may want to contact the OPG for information on whether it should be revoked and replaced with an LPA.

Do I have to live in England or Wales to make a Property and Affairs LPA?

You do not have to live in England and Wales to make a property and affairs LPA, but unless you have assets there, there may not be a need to appoint a Property and Affairs Attorney.

Please note: An LPA made in England and Wales **will not be legally binding** for use in other countries including Scotland, the Republic of Ireland or Northern Ireland. It will be up to institutions (such as banks) in other countries to decide whether to recognise the LPA.

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Do I need to see a solicitor to make an LPA?

You do not have to seek legal advice – it is your choice. However, an LPA is a powerful and important document and you may want to seek advice from someone with experience of preparing them, such as a legal adviser. They will be able to offer you legal advice and may be able to help you fill in the form. There are likely to be costs involved when seeking advice from legal professionals.

How do I make an LPA?

You **must** use the special form enclosed in your pack known as the ‘instrument’ to make your LPA. If you do not have one, the form can be obtained free of charge from the OPG or you can download it from our website. It is also available from stationers that supply legal documents although it is likely that they will charge for the form.

Please note: Throughout the remainder of this booklet we refer to the LPA instrument as ‘the form’.

How much does it cost to make an LPA?

It costs nothing to make an LPA; you only have to pay to **register** it. The forms to create an LPA are available free of charge by calling us or you can download it from our website.

Details of our current fees and charges can be obtained from the website or by calling us.

How do I fill in the form?

The form contains prescribed information that you **must read** along with specific guidance on how to complete parts A – C. Further information on restrictions/conditions can be found on page 33 of this booklet.

Section 2 – Choosing your Attorney

What is a Property and Affairs Attorney?

A Property and Affairs Attorney is the person(s) you choose and appoint, using an LPA form, to make decisions on your behalf about your financial and property affairs. It is an important role and one that the person you have chosen has to agree to take on.

Who can I choose to be my Property and Affairs Attorney?

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Appointing an Attorney to make decisions on your behalf is a very important decision. Unless you specify otherwise in your LPA, once your Property and Affairs LPA is registered your Attorney will be able to make any decision about your property and affairs that you do now, even when you have the capacity to make them yourself.

You can limit the type of decisions your Attorney can make for you by specifying this in the LPA. You can also specify that your Attorney should not act for you until you lack capacity. If you do not specify this, your Attorney will be able to act as soon as the LPA is registered.

However, even though acting under a registered LPA means that your Attorney is your chosen decision-maker, it is important to remember that where you still have the capacity to be involved in decision-making your Attorney must consult you before making a decision on your behalf.

It is important to choose someone you know well, someone you trust to make decisions in your best interests and someone who is happy to take on the role.

You can choose and appoint a family member, friend or anyone willing to act for you, providing they are aged over 18. You can also appoint your spouse, partner or civil partner as your Attorney if you wish.

If you choose your spouse or civil partner, it is important to remember that should your marriage or civil partnership be dissolved or annulled in the future then the LPA will cease, unless:

- you have included a condition within the LPA that your spouse or civil partner can continue to act as your Attorney; or
- you have appointed a replacement Attorney able to replace them (see page 21 for information on replacement Attorneys); or
- you have appointed Attorneys to act together and independently (see pages 18 – 20 for information on appointing Attorneys to act together and independently).

Your Attorney(s) must always be a named **individual** and not listed as an office holder or as the name of a solicitors firm – for example, you cannot appoint the ‘Director of Social Services’ or ‘Joe Bloggs & Co Solicitors’.

Please note: You can still appoint an office holder but their **name** must be specified on the LPA form.

You can also choose a trust corporation to be your Attorney. A trust corporation is usually, but not always, a trust department of a bank.

Who cannot act as my Attorney?

You can choose anyone over the age of 18 to be your Attorney. However, the person you choose must not be bankrupt when they sign the LPA form. You should also note that if your Attorney(s) become bankrupt in the future, this could result in the LPA being cancelled if it has been registered with the OPG. This only applies to Attorneys appointed under a Property and Affairs LPA.

Can I appoint more than one Attorney?

You can appoint as many Attorneys as you wish, but it is important that you consider how you are appointing them. You will need to specify whether you want to appoint your Attorneys to act:

- together; or
- together and independently; or
- together in some matters and together and independently in others.

You should ensure that you and they fully understand how they have been appointed to act and what that will mean in practice when they are making-decisions for you.

In an LPA form ‘together’ means jointly and ‘together and independently’ means jointly and severally for the purposes of the Mental Capacity Act 2005.

What is the difference between appointing Attorneys together and appointing them together and independently?

Attorneys appointed together **must always** act together. They must **all agree** before doing anything on your behalf. If one Attorney does not agree with a proposed action that decision **cannot** be made.

Donors often use this as a safeguard to ensure that all those they trust to make decisions for them are in agreement. However, you must remember that this could delay decisions that may need to be taken at short notice.

Please note: Appointing lots of Attorneys to all work together could mean:

- it is difficult for them to act/make decisions;
- the LPA could be cancelled if they cannot work together; or
- the LPA could be cancelled if one of them dies or lacks the capacity to make decisions as your Attorney.

There is no right or wrong way to appoint your Attorneys to act but these are points for you to think about.

Attorneys appointed together and independently can act on their own and they can act together. This means, for example, that **any one** of your Attorneys appointed together and independently can decide on a particular issue. This can be useful if one of your chosen Attorneys is not available all of the time to help make decisions on your behalf, for example, if they work abroad for long periods of time.

Also, if one of the Attorneys becomes ill, dies or lacks the capacity to act, the LPA will still continue and the remaining Attorneys can continue to act.

You can also appoint your Attorneys to act together in respect of some matters and together and independently in respect of others – for example, you could appoint your Attorneys to act together when deciding to sell your house but appoint them to act together and independently when paying your nursing home fees.

You will need to set out clearly what these matters are when you appoint your Attorneys.

Please note: It is important to remember that if you do decide to appoint more than one Attorney but do not specify **how you are appointing them**, they will be appointed together.

What is a replacement Attorney and when might I need one?

Replacement Attorneys are people you can appoint to act in place of an Attorney who is no longer able to or does not wish to make decisions on your behalf as your Attorney. For example, you may choose your spouse as your Attorney, then choose your son/daughter as a replacement if your spouse should die or can no longer act on your behalf.

You can choose as many replacements as you want. They can act in place of any of your Attorneys but you must set out how they are to be appointed. Your Attorneys cannot choose people to replace them.

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As with appointing any Attorney, when appointing a replacement Attorney you must consider how they are to act, for example solely or together, as already discussed on page 18 of this booklet.

If you want to appoint a replacement Attorney, you do so at the time you make your LPA, and your replacement Attorney has to sign up to taking on this role like any other Attorney. It is your decision whether to appoint a replacement and it is not a requirement of an LPA that you do so.

Your replacement Attorney(s) can replace **any** of your chosen Attorneys. The replacement Attorney(s) will play no part in making decisions for you unless they are needed to replace your original Attorney(s).

However, if you have more than one Attorney you can specify who you wish your replacement Attorney(s) to replace or who they cannot replace. You can include a condition when appointing a replacement Attorney(s), stating that the replacement is to replace:

- **any** Attorney not wishing to or able to carry out their duties;
- a **specific** Attorney (of your choice), should that Attorney no longer wish to or is not able to act on your behalf; or
- **any** Attorney not wishing to or able to carry out their duties **except** a specified Attorney (of your choice).

Please note: You can only appoint a replacement Attorney for your original Attorneys, not additional replacements for the replacement Attorneys.

Who can be a replacement Attorney?

Anyone over the aged of 18 can be a replacement Attorney. For further details please see 'Who can I choose to be my property and affairs Attorney?' on page 16.

When considering whether you would like to appoint a replacement Attorney, it is important to choose someone you know well and trust to make decisions in your best interests in the same way that you selected your first choice Attorney.

Please note: It is important that you or your Attorneys inform the OPG that an Attorney has been replaced. We will ask for the instrument back and attach a note to it that the replacement has happened. We will then update the LPA register to ensure that it remains up to date, which is vital in circumstances where the register needs to be accessed and searched to locate details of an Attorney.

Can my Attorney(s) claim out-of-pocket expenses or charge for their services?

Your Attorney will be able to claim out-of-pocket expenses for things such as telephone calls, postage charges and transport costs that are incurred whilst specifically undertaking their duties as your Attorney. The expenses must be in direct proportion to the size of your estate and the duties they undertake.

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However, it is entirely up to you whether you want your Attorney to receive payments/fees specifically for taking on the role of Attorney and acting on your behalf.

If you do decide that your Attorney should be able to make a charge or if you decide to appoint a professional, for example a solicitor or an accountant, it would be wise to make a note of the agreed fees in section A, part 8 of the LPA form.

Does my Attorney(s) have to live in England or Wales?

No, however, it is important to consider that if your Attorney(s) lives abroad for significant periods of time or on a permanent basis they may have problems dealing with some matters or in situations that need urgent attention.

Can my Attorney(s) give up their role?

Yes. If your LPA is unregistered your Attorney must give you formal notice to do this. If your LPA is registered the Attorney will need to give formal notice to the OPG and they should notify you too. They can notify the OPG by using form LPA005 (disclaimer by Attorney or proposed Attorney) available from the OPG or from our website.

Please note: You cannot authorise your existing Attorney to appoint a replacement Attorney if they wish to leave their role. It is your role to appoint a replacement Attorney when you create the LPA, if you wish to do so.

What happens if my Attorney does not act in my best interests?

The Public Guardian is responsible for maintaining the register of LPAs and so is aware of all registered LPAs. If evidence is presented to the OPG that an Attorney is not acting in the Donor's best interests, the Public Guardian will consider what, if any, action might need to be taken.

The Court of Protection may also become involved and ask the Attorney to account for all of their dealings and/or cancel the LPA if there is sufficient evidence that the Attorney has not acted in the Donor's best interests.

If the Attorney does not perform his or her duties properly, he or she may be ordered to compensate you for any losses. Anyone ill-treating or wilfully neglecting someone they have care of who lacks capacity, or to whom an LPA appointment relates, can be found guilty of a criminal offence. The penalty for such an offence is a fine and/or a sentence of imprisonment of up to five years.

Helping your Attorney

To help your Attorney make decisions that are in your best interests in the future you should talk to them now and make them aware of any specific views or wishes that you may have. For example, you may want to let your Attorney know now your views on ethical investments.

You can also give your Attorney written guidance in your LPA on what things to take into consideration when making decisions on your behalf, but this should be in addition to discussing these matters with them.

If you change your mind about a particular issue and you tell other people, you should always let your Attorney know.

In this way, for example, you can make it clear to your Attorney that, should you lack the capacity in the future, any investments made on your behalf should be with companies whose activities you would consider to be unethical.

What happens if my Attorney dies?

If an Attorney dies you have a number of options depending on whether your LPA is registered, whether you have appointed a replacement Attorney and whether you still have capacity to choose a new Attorney.

If this situation arises and you still have capacity, you should contact the OPG for guidance on what steps you might need to take next.

Section 3 – Choosing who I want to be notified – named persons

What is a named person?

This is someone you specify on your LPA, who you want to be notified when an application is made to register your LPA.

Why do I need them?

Selecting people to notify of an application to register is one of the key safeguards of an LPA.

Listing people, known as named persons, allows you to decide at the time you make your LPA who **you** would like to be notified that registration of your LPA is taking place. Once notified, if the people you choose have concerns about the registration of your LPA – for example they feel that you were put under pressure to make it – they can object to the LPA being registered.

You **are advised to name up to five people** if at all possible. Naming this many people could be particularly useful if in the future one or more of your named persons cannot be contacted.

Detailed guidance on how the named persons can object is part of the notice sent to them by the person making an application to register the LPA.

Who should I choose to be notified?

You can select up to five people and it is up to you to select the people you want to be notified. However, it is important to remember that the person/people you choose should know you well enough to be able to raise any concerns they may have about an application to register your LPA.

You can choose family members or friends or, if you prefer, someone else such as a health or social care worker that knows you.

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Once you have chosen who you would like as your named persons, but before you complete the LPA, it would be wise to make them aware of your LPA and that you would like to choose them to be notified when an application to register is made, and explain to them what that means. If they do not want to take on this role it is probably best to choose someone else.

It is very important that you keep the addresses/contact details of your named persons up to date. You should do this on a separate sheet and keep this with your completed LPA.

Please note: You must not make ANY amendments to a completed and signed LPA.

Should I advise my named persons of the person(s) I have appointed as Attorney(s)?

You do not have to. This is your choice. However, making your named persons aware of this information in advance will allow them to raise any queries or concerns that they may have about the LPA with you.

This may help to reduce unfounded objections when the application to register the LPA is made, potentially avoiding extra costs and lengthy delays to the process.

What happens if I do not have or want anyone to be notified?

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We advise that you try to include named persons where possible. However, if you decide not to name anyone or if you do not have anyone suitable to name, then you must have two separate Certificate Providers – more information on the Certificate Provider is in section 4 of this booklet.

Section 4 – The Certificate Provider

What is a Certificate Provider?

A Certificate Provider is a person **that you must select** to complete a Part B Certificate of the LPA form confirming that you understand the LPA and that you are not under any pressure to make it.

We recommend also making your named persons aware of your choice of Certificate Provider. This will allow them to raise any queries or concerns that they have about the Certificate Provider with you. This may avoid unnecessary delays or objections at the point of registration.

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Choosing your Certificate Provider is a very important safeguard of an LPA.

Why do I need this Certificate?

The Certificate is a vital part of the LPA document. Without it, the LPA is not valid and cannot be registered. For this reason, the Certificate must not be detached from the LPA.

Who can I choose to be a Certificate Provider?

You can choose two types of Certificate Provider.

Category A

Knowledge certification – a knowledge-based Certificate Provider is someone that you know personally and have done so for at least **two years**.

or

Category B

Skills certification – a skills-based Certificate Provider is someone who considers that they have the **relevant professional skills and expertise** to certify your LPA.

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The following are suitable skills-based Certificate Providers listed on the LPA form:

- registered healthcare professional (including a GP);
- solicitor, barrister or advocate;
- registered social worker; or
- Independent Mental Capacity Advocate (**IMCA**).

You can also pick someone **not listed on the form**. However, they must consider that they have the relevant professional skills and expertise to provide a Certificate and be able to specify on the Certificate what their relevant professional skills and expertise are.

Skills-based certificate providers are entitled to charge a fee for providing the certificate.

Is there anyone who cannot be a Certificate Provider?

You **cannot** select anyone from the following list to be a certificate provider:

- member of your or your Attorney's family;
- business partner or paid employee of yours or your Attorney(s);
- Attorney appointed in this form or another LPA or any EPA made by you;
- the owner, director, manager, or an employee of a care home in which you currently live or their family member; or
- director or employee of a trust corporation appointed as Attorney in your LPA.

It is important to remember that you must choose a suitable Certificate Provider and that they must complete the Part B Certificate as soon as possible **after you fill in and sign your parts** of the LPA. **Without the completed Certificate your LPA cannot be registered or used.**

What if the Certificate Provider has any concerns?

If your Certificate Provider has any concerns about your understanding of the LPA or feels that you have been influenced or pressured in to making it, they can contact us and make us aware of their concerns.

The Certificate Provider and Witness guidance booklet, which provides further information for Certificate Providers and Witnesses on their role and responsibilities, is available by calling the OPG or can be downloaded from our website.

Part B – The LPA form and understanding the powers you give in a Property and Affairs LPA

Section 5 – The LPA form

Is there any guidance available to help me fill in the LPA form?

Yes, as well as information contained within this booklet there are also detailed notes on completing the LPA form. In addition, the LPA contains prescribed information that you **must** read before making your LPA. This information is available from the OPG.

Section 6 – The Property and Affairs LPA

What sort of powers will my Attorney(s) have?

Making an LPA that does not contain any restrictions or conditions means that **once the LPA is registered** your Attorney(s) will be able to do **anything** that you can do now in relation to your property and affairs. This might include:

- opening, closing or operating any account containing your money;
- claiming and receiving on your behalf, for example, all pensions, benefits, allowances, services, financial contributions, repayments, rebates to which you may be entitled;
- making all tax returns and adjusting and settling any claim for tax;

- paying your household expenses;
- buying, leasing, selling and otherwise dealing with any interest in property of any kind or description;
- paying for private medical care and residential care costs;
- making gifts on your behalf, including any limits on the size of such gifts or the people that receive them, subject to any restrictions;
- purchasing out of your income or capital, a vehicle or any other equipment which may be required for your benefit; and
- implementing tax planning or similar arrangements (this may need an application to the Court of Protection).

The list above is just to give you examples of the types of powers that are included in a Property and Affairs LPA and it is not intended to be exhaustive.

You may wish to include a condition that your Attorney(s) must act in a certain way or include restrictions preventing your Attorney(s) from specifically making some of the decisions listed above.

It is important when making your LPA that you are satisfied that you have given your chosen Attorney(s) the right powers to enable them to make the decisions you want made about your property and affairs in the future should you lack the capacity to make them yourself.

Will my Attorney(s) be able to use my LPA to access personal information about me?

There may be times when carrying out their duties that your Attorney needs to access personal information about you, for example from a doctor, a bank or solicitor, to help them make a decision that is in your best interests. Most of this information will be personal information about you and much of it will be sensitive and/or confidential.

Provided they are acting within the powers you have given them in the LPA, they are entitled to ask for this information in the same way you would do, subject to some limitations.

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Where possible they should only ask for information about you that will help them make a decision on your behalf.

For further guidance on access to personal information please see chapter 16 of the Code of Practice.

Can I include a restriction or condition that my LPA is only registered when I lack mental capacity?

Yes you can. But you must specify how the Attorney is to show that you lack mental capacity, for example, you can include a condition that your Attorney(s) is not to register your LPA until they are able to obtain medical evidence stating that you have lost capacity.

What other restrictions or conditions can I include in the LPA?

You can include restrictions and/or conditions in your LPA, which will allow you to decide which decisions you want your Attorney to make.

Including conditions in your LPA

You may want to add a condition to your LPA so that your Attorney **must act in a particular way**. For example, you may include a condition for them to continue charitable donations on your behalf.

Including restrictions in your LPA

You may also want **to limit the powers** your Attorney has. For example, you could include a restriction that says your Attorney cannot make decisions about your investment portfolio because you have given this responsibility to someone else.

Please note: You should think carefully about how you word any restrictions or conditions that you include in your LPA. To ensure that anybody dealing with your financial and property affairs, such as banks, building societies and solicitors, can follow them effectively in the future, any restrictions or conditions should be straightforward, easy to understand and capable of being put into practice.

If there are any conditions or restrictions that are considered to be too complicated or not practical it is possible that the OPG will need to refer your LPA to the Court of Protection for them to consider cancelling that condition or restriction from your LPA.

You should remember that restrictions and conditions are there for your Attorney(s) to follow when making decisions on your behalf and in your best interests. They are not intended to act as statements of your intentions for others to follow.

You may wish to seek legal or professional advice on the types of restrictions and conditions you want to include in your LPA.

Is there any suggested wording for restrictions/conditions?

No, we are not able to provide you with wording for restrictions or conditions. In any particular situation, you may want to seek further advice from a legal or financial professional such as a solicitor or accountant.

What about guidance in an LPA?

When making decisions on your behalf, your Attorney(s) must follow any restrictions or conditions you included in your LPA. But you may also like to include some broader guidance on your wishes and feelings on particular matters. This will not be binding on your Attorney(s) but may help them when making decisions in your best interests.

Can my Attorney(s) sell my home?

Yes, providing that decision is in your best interests and you have not included a restriction in your LPA preventing them from doing so.

Can my Attorney(s) gain access to my will?

No. If you have not included a condition in your LPA allowing your Attorney access to your will, they will not be entitled to have access to any will or codicil you have made.

However, if your Attorney believes that they need to see your will to help them carry out their duties and the person holding your will refuses to show them a copy, they can make an application to the Court of Protection for an order to release the will. This will incur a charge.

Can my Attorney(s) make a new will on my behalf or amend my existing will?

No. If you are unable to amend your existing will or make a will but one is needed, your Attorney will need to apply to the Court of Protection for a Statutory Will. Information on making or amending a will is available from the OPG.

Can my Attorney(s) make gifts from my money?

Yes. Your Attorney can make **limited** gifts from your money as long as you have not said they cannot by including any restrictions in your LPA. You can exclude the power to make gifts from your LPA.

However, your Attorney can only make gifts to people who are related to or connected with you on occasions such as birthdays, wedding or civil partnership anniversaries, or any other occasion when you would usually give gifts to your family, friends or associates.

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The value of any gift given by your Attorney must be reasonable compared to everything you own.

If your Attorney wishes to make a gift other than those mentioned above, for example for inheritance tax purposes, they will need to apply to the Court of Protection for permission to do this. Information on making an application to the Court of Protection is available from the OPG and can be downloaded from our website.

Could my Attorney(s) deal with matters where I am a trustee?

Possibly, but this is a complicated area and you should get legal advice before proceeding.

What about my investments?

Unless you include a restriction in your LPA relating to your investments, your Attorney(s) will be able to make decisions about them, providing these decisions are in your best interests.

Can I still make decisions if my LPA is registered?

Yes. If you have capacity to make a decision, your Attorney can act for you in your best interests and on your instructions. If your Attorney reasonably believes that you lack capacity to make a decision he or she can make that decision for you in your best interests, but your Attorney is always obliged to help you make as many of your own decisions as you possibly can.

What happens if I disagree with the decisions my Attorney is making?

If you are unhappy with your Attorney's actions and still have the capacity to do so, you can revoke your LPA. If you decide to revoke your LPA you should advise the OPG so that we can update the LPA register.

If your Attorney makes a decision when they believe that you lack the capacity to do so yourself and make it in what they believe to be your best interests, you will need to discuss your concerns with them in the first instance.

If you still feel unhappy with their decision you can contact the OPG and advise us that you believe your Attorney(s) should not be acting or is not acting in your best interests and we will investigate.

Part C – Registering your LPA and the LPA register

Section 7 – Registering your LPA

When can someone use my LPA?

No one other than your Attorney(s) can use your LPA. Your Attorney(s) can only use your LPA when it has been correctly completed, signed, witnessed **and has been registered with the OPG.**

When does my LPA have to be registered?

Your LPA can be registered any time after you have made it and **cannot** be used until it has been registered. The LPA is made when it has been completed and signed by all those who are required to sign.

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The benefit of registering the LPA shortly after it is made is that it will be ready to be used by your Attorney(s) when it is needed.

If an application to register your LPA is made a long time before it is needed you may need to look at the registered document from time to time to make sure that the contents are still relevant to your circumstances. In this situation you may wish to contact the OPG or visit our website to obtain up-to-date information on LPAs.

Can I make changes to my completed LPA?

No. A signed, witnessed and certified LPA is a deed.

Please note: You cannot make **any changes** to the LPA if it has been signed, witnessed and certified.

If the contact details of your named persons or your Attorney(s) have changed you should record these on a separate sheet and keep it with your LPA.

If you need to change any aspect of your LPA – for example any restrictions or conditions or you want to appoint a new Attorney – you will need to consider making a new LPA. You cannot make any changes to a signed and certified LPA.

Who registers the LPA?

The Attorney(s) or you, as the Donor, can apply to register an LPA, providing the correct forms are completed and the named persons listed on your LPA are notified.

You can appoint someone else such as a legal professional to make the application on your behalf if you wish.

A guide to registering an LPA, is available by calling the OPG or you can download it from our website.

Section 8 – The LPA register

What is the LPA register?

The LPA register is the OPG's searchable database containing the details of all registered LPAs. It is important to remember that once your LPA is registered certain pieces of information will be available **to anyone who applies to search the register**. There is a fee to search the register.

Why does the OPG have a register?

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The Mental Capacity Act 2005 sets out the functions of the OPG. One of these is to establish and maintain a register of registered LPAs.

One of the purposes of the register is to allow those with an interest, such as healthcare professionals, to search the register to see whether an LPA has been registered by the OPG for a particular person.

What information of mine will be on the register?

The type of information made available from the register will depend on the type of search that someone applies for. There are two types of search: a first tier and a second tier search, with each providing different levels of information to the applicant.

The first tier search provides limited data about you and your LPA to anyone, on the payment of a fee.

The information provided would include:

- the record number the OPG has given to the registered LPA;
- your name;
- any other/previous names you have;
- the type of LPA you have made: a Property and Affairs LPA or a Personal Welfare LPA or one of each **but not the contents of the LPA;**
- the date the LPA form was signed;
- the date the LPA was registered;
- whether or not the LPA is still active, for example, has it been cancelled;
- the full names of your Attorney(s);
- how the Attorney(s) are appointed;
- the full name of any replacement Attorney(s);
- whether the LPA contains any restrictions, conditions or guidance **but not the details of the restrictions, conditions or guidance;** and
- whether or not a note has been attached to the LPA, **but no details of what the note says.**

The second tier search: Anyone can, on application and payment of a fee, undertake a second tier search.

However, this will require the applicant to explain in greater detail to the OPG why they require the information they have asked for and to demonstrate that the request for this is in your best interests.

There is not a defined list of the information that may be disclosed in a second tier search because it will be different in every case, depending on what is required and what is in your best interests.

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The Lasting Power of Attorney register booklet provides further information about the LPA register and the information contained on it. It is available by calling the OPG or can be downloaded from our website.

Section 9 – Objections

Can someone object to the Attorney being appointed?

Only the Donor, the named persons or other Attorneys are able to object to the registration of an LPA.

Objections by a named person(s) or an Attorney(s) will have to be either:

On factual grounds – the OPG can be asked to stop the registration if:

- the Donor is bankrupt or interim bankrupt (for Property and Affairs LPAs only);
- the Attorney is bankrupt or interim bankrupt (for Property and Affairs LPAs only);
- the Attorney is a trust corporation and is wound up or dissolved (for Property and Affairs LPAs only);
- the Donor is dead;
- the Attorney is dead;
- there has been dissolution or annulment of a marriage or civil partnership between the Donor and Attorney (except if the LPA provided that such an event should not affect the instrument);
- the Attorney(s) lack the capacity to be an Attorney under the LPA; or
- the Attorney(s) have disclaimed their appointment.

On prescribed grounds – objections to the Court of Protection against registration of the LPA can only be made on the following grounds:

- that the power purported to be created by the instrument is not valid as an LPA for example, the person objecting does not believe the Donor had capacity to make an LPA;
- that the power created by the instrument no longer exists – for example the Donor revoked it at a time when he/she had capacity to do so;
- that fraud or undue pressure was used to induce the Donor to make the power;
- the Attorney proposes to behave in a way that would contravene his/her authority or would not be in the Donor's best interests.

The OPG will require appropriate evidence to support any factual objection raised.

Objections by the Donor do not need to be on any specific grounds.

If the OPG or the Court receive an objection to your application to register an LPA, they will contact you to advise what steps you need to take next.

Section 10 – Contact us

Office of the Public Guardian
Archway Tower
2 Junction Road
London N19 5SZ

Phone Number: 0845 330 2900

Fax Number: 020 7664 7705

Email: customerservices@publicguardian.gsi.gov.uk

Website: www.publicguardian.gov.uk

DX: 141150 Archway 2

Textphone: 020 7664 7755 (If you have speech or hearing difficulties and have access to a textphone, you can call the OPG textphone and we will assist you.)

International Calls: +44 20 7664 7000

International Faxes: +44 20 7664 7705

Please note: The OPG provides advice about OPG processes only, and cannot provide legal advice or services to any party. The OPG recommends that you seek independent legal advice where appropriate. Information in this publication is believed to be correct at the time of printing, however the OPG does not accept liability for any error it may contain.

Section 11 – Useful contacts

Organisation and what it is/does	Contact Information
<p>Action for Advocacy</p> <p>A resource and support agency for the advocacy sector</p>	<p>PO Box 31856, Lorrimore Square, London, SE17 3XR</p> <p>www.actionforadvocacy.org.uk</p>
<p>Age Concern England</p> <p>The UK's largest organisation working to promote wellbeing of all older people. It provides vital services, information and support to thousands of older people</p>	<p>Astral House, 1268 London Road, London, SW16 4ER</p> <p>www.ageconcern.org.uk</p> <p>www.accymru.org.uk</p> <p>Information line 0800 00 99 66</p>
<p>Alzheimer's Society</p> <p>The UK's leading care and research charity for people with dementia, their families and carers</p>	<p>Gordon House, 10 Greencoat Place, London, SW1P 1PH</p> <p>www.alzheimers.org.uk</p> <p>Helpline 0845 300 0336</p>

Organisation and what it is/does	Contact Information
<p>Carers UK</p> <p>Looks after family, partners or friends in need of help because they are ill, frail or have a disability. Aims to help carers' by providing unpaid care for ill, frail or disabled family members or friends</p>	<p>20/25 Glasshouse Yard, London, EC1A 4JT</p> <p>www.carersuk.org</p> <p>T 020 7566 7637</p> <p>F 020 7490 8824</p>
<p>Down's Syndrome Association</p> <p>Provides information and support for people with Down's Syndrome, their families and carers</p>	<p>Langdon Down Centre, 2a Langdon Park, Teddington, Middlesex, TW11 9PS</p> <p>www.downs-syndrome.org.uk</p> <p>T 0845 230 0372</p> <p>F 0845 230 0373</p>
<p>Foundation for People with Learning Disabilities</p> <p>Works with people with learning disabilities, their families and those who support them to improve the quality of their lives and promotes the rights, quality of life and opportunities of people with learning disabilities and their families</p>	<p>Sea Containers House, 20 Upper Ground, London, SE1 9QB</p> <p>www.learningdisabilities.org.uk</p> <p>T 020 7803 1100</p>

Organisation and what it is/does	Contact Information
<p>Headway – the brain injury association</p> <p>Promotes understanding of all aspects of brain injury; and provides information, support and services to people with a brain injury, their family and carers</p>	<p>4 King Edward Court Service, King Edward Street, Nottingham, NG1 1EW</p> <p>www.headway.org.uk</p> <p>Helpline 0808 800 2244</p>
<p>MENCAP</p> <p>Charity working with people with learning disabilities, their families and carers</p>	<p>123 Golden Lane, London, EC1Y 0RT</p> <p>www.mencap.org.uk</p> <p>T 020 7454 0454</p>
<p>Mental Health Foundation</p> <p>A leading UK charity that provides information, carries out research, campaigns and works to improve services for anyone affected by mental health problems, whatever their age and wherever they live</p>	<p>Sea Containers House, 20 Upper Ground, London, SE1 9QB</p> <p>www.mentalhealth.org.uk</p> <p>T 020 7803 1100</p>

Organisation and what it is/does	Contact Information
<p>MIND</p> <p>Leading mental health charity, working to create a better life for everyone with experience of mental distress</p>	<p>15-19 Broadway, Stratford, London, E15 4BQ</p> <p>www.mind.org.uk</p> <p>Infoline 0845 766 0163</p>
<p>National Autistic Society (NAS)</p> <p>Champions the rights and interests of all people with autism and provide accessible support and services to people with autism and their families</p>	<p>393 City Road, London, EC1V 1NG</p> <p>www.nas.org.uk</p> <p>Helpline 0845 070 4004</p>
<p>National Care Association (NCA)</p> <p>Provides easy access to information about the independent care sector to members of the public and care professionals</p>	<p>45-49 Leather Lane, London, EC1N 7JT</p> <p>www.nca.gb.com</p> <p>T 020 7831 7090</p>
<p>The National Family Carer Network</p> <p>A network that provides a focal point for issues affecting families that include an adult with a learning disability</p>	<p>Merchants House, Wapping Road, Bristol, BS1 4RW</p> <p>www.familycarers.org.uk</p> <p>T 0117 930 2600</p>

Organisation and what it is/does	Contact Information
<p>The Home Farm Trust Ltd</p> <p>A network that provides support and information for family carers</p>	<p>Merchants House, Wapping Road, Bristol, BS1 4RW</p> <p>www.hft.org.uk</p> <p>T 0117 930 2600</p>
<p>Patient Concern</p> <p>An organisation committed to promoting choice and empowerment for all health service users</p>	<p>PO Box 23732, London, SW5 9FY</p> <p>www.patientconcern.org.uk</p> <p>E patientconcern@hotmail.com</p>
<p>The Relatives and Residents Association</p> <p>An organisation for older people needing, or living in, residential care and the families and friends left behind. Offers support and information via a helpline</p>	<p>24 The Ivories, 6-18 Northampton Street, London, N1 2HY</p> <p>www.relres.org</p> <p>Helpline 020 7359 8136</p>

Organisation and what it is/does	Contact Information
<p>RESCARE</p> <p>The national society for children and adults with learning disabilities and their families</p>	<p>Steven Jackson House, 31 Buxton Road, Heaviley, Stockport, SK2 6LS</p> <p>www.rescare.org.uk</p> <p>Helpline 0800 032 7330</p>
<p>Scope</p> <p>Disability organisation in England and Wales, whose focus is people with cerebral palsy</p>	<p>6 Market Road, London, N7 9PW</p> <p>www.scope.org.uk</p> <p>Response line 0808 800 3000</p> <p>T 020 7619 7100</p>
<p>Sense</p> <p>Charity providing specialist information, advice and services to deaf blind people, their families, carers and the professionals who work with them. Funded to develop training materials which address the advocacy issues for deafblind people</p>	<p>11-13 Clifton Terrace, Finsbury Park, London, N4 3SR</p> <p>www.sense.org.uk</p> <p>T 0845 127 0060</p> <p>F 0845 127 0061</p> <p>Text 0845 127 0062</p>

Organisation and what it is/does	Contact Information
<p>Turning Point</p> <p>The UK's leading social care organisation, providing services for people with complex needs, including those affected by drug and alcohol misuse, mental health problems and those with a learning disability</p>	<p>Standon House, 21 Mansell Street, London E1 8AA</p> <p>www.turning-point.co.uk</p> <p>T 020 7841 7600</p>
<p>United Response</p> <p>Supporting people with learning disabilities and mental health needs across England to live in the community</p>	<p>113-123 Upper Richmond Road, Putney, London, SW15 2TL</p> <p>www.unitedresponse.org.uk</p> <p>T 020 8246 5200</p> <p>F 020 8780 9538</p> <p>Minicom 020 8785 1706</p>

A guide for people who want to make a Property and Affairs Lasting Power of Attorney

A guide for people who want to make a Property and Affairs Lasting Power of Attorney

