

Lasting Power of Attorney

A Lasting Power of Attorney (LPA) is a legal arrangement which allows you to appoint a person (or persons) who, if needed, will make important decisions in the future on your behalf.

This fact sheet gives information about what an LPA is, why you might want to apply for one and what you need to know when applying for one.

The information in this fact sheet is for people living in England and Wales. The legislation for LPAs in Scotland or Northern Ireland is slightly different. For more information on this please refer to the Further Information section at the end of this fact sheet.

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What is an LPA?

It can be hard to imagine a time when you might rely on someone else to make decisions on your behalf. However, if you have been diagnosed with a brain tumour, making an LPA can offer you the reassurance of knowing that if such a time should come, the person making those decisions will be someone you trust.

An LPA is a way of legally appointing a person (known as an 'attorney') to make decisions on your behalf in circumstances you specify. For example, if you think you might at some point in the future, due to your brain tumour, lack the mental capacity to make your own decisions about things such as the management of your care or your financial affairs, you might want to have an LPA in place. This will ensure that the person(s) you have appointed can make decisions for you. There are two types of LPA you can apply for:

- **The property and financial affairs LPA** allows the attorney (s) of your choice to make decisions on your behalf about your property and finances. For example, you might want to allow your attorney to collect your income and pay your bills.
- **The health and welfare LPA** allows your attorney(s) to make decisions on your behalf about where you live and the treatment you receive.

In order to apply for one or both types of LPA, you must be over 18 and have the mental capacity to make your own decisions. If you choose to apply for both, you have to fill-in a separate form for each. In your LPA forms you can specify which responsibilities (and over which areas) you would like your attorney to have.

On your LPA forms, you can also specify when you want your attorney to start making decisions on your behalf. For example, this could be when you are mentally unable to make decisions yourself or it could be as soon as your LPA is registered.

What are the benefits of making an LPA?

- It can be reassuring to know that it is not a total stranger, but someone you trust, who will make important decisions for you if you can't make them for yourself.

- If you have a brain tumour, you might want to have fewer responsibilities. This could be because you might be experiencing fatigue or because you no longer want to be hands-on with some practical issues. An LPA can take some important responsibilities off your hands and allow you to focus on what you want.
- Having an LPA in place ensures that your family and friends don't have problems managing important issues if something sudden happens to you. It can be more difficult, both emotionally and practically, for friends and family members to deal with important issues regarding your care and finances if you don't have a chosen attorney.

Who can I choose as an attorney and how will they act?

To be eligible for the role of attorney, the person you choose will have to be over 18 and, in the case of a property and financial affairs LPA, must not have been declared bankrupt.

You can have more than one attorney. You should think carefully about who you appoint as an attorney since they will be making important decisions on your behalf. It should be someone who you trust; who you think is reliable, responsible and has the skills to carry out the role. Most people choose family members or close friends as their attorneys. However, you can also choose a professional, for example a solicitor or accountant, to act as your attorney.

If you choose more than one attorney for your LPA(s), you will have to specify how you want them to act. For example, you can have them acting jointly, which means they would all have to agree before a decision is made or, jointly and severally, which means they can act together or separately. You also have the option of choosing to separate between matters you want them to work on jointly or severally. A downside of having attorneys only making decisions jointly, is that if one attorney dies, the LPA becomes ineffective.

However many attorneys you choose to have, the LPA commits them legally to act according to the following principles, which are part of the Mental Capacity Act:

- Acting in your best interest
- Considering your wishes (past and present) when making decisions
- Not taking advantage of you for their own benefit
- Keeping your and their money separate

If your chosen attorney(s) fails to act according to these principles, your LPA could be cancelled. If your attorney is found to have taken advantage of you in any way, they might be prosecuted.

How do I create an LPA?

You will have to carefully read the information in the LPA form before filling it in (please see the Further Information section). Each LPA costs £110 to register. Although you could fill in the forms yourself, because of the importance and complexity of the LPA, you may like to consider using a solicitor's services (this can incur an extra cost depending on the rate charged by your solicitor).

A number of signatures are required before the LPA forms are complete and ready for submission. Firstly, someone needs to sign the 'certificate of capacity' which states that you have the mental capacity to make an LPA. This person can be a professional such as your doctor or solicitor, or someone independent who has known you personally for at least two years and who doesn't benefit in any way from the LPA. Secondly, each attorney will have to sign stating that they agree to act as your attorney and understand what is required from them in this role. A witness will also have to be present when you sign.

Once completed, the forms should be sent in paper copy to the Office of the Public Guardian (OPG) where your application will be considered. For your LPA to be valid it must be registered at the OPG. Any complaints or objections relating to the way in which attorneys carry out their responsibilities will be handled by the OPG. In case of any serious issues, the OPG can pass cases to the Court of Protection who can take further action.

What happens if I already have an Enduring Power of Attorney (EPA)?

The EPA has been replaced by the LPA which means you can no longer make an EPA. However, if you have an existing valid EPA that was made before the 1st of October 2007, it should still be valid and can be used. An EPA only covers decisions relating to wealth, property and financial affairs. If you want to have an attorney for health and care decisions, you will need to make a health and welfare LPA in addition to your EPA.

What happens if a loved one has lost their mental capacity but hasn't made an LPA?

Once someone can no longer make their own decisions (once they have lost mental capacity) you cannot obtain an LPA on their behalf. You can apply to the Court of Protection regarding a particular decision. However, if there is an on-going need to make decisions on your loved one's behalf then you can ask the Court of Protection to appoint you as a 'deputy'.

This is a costly process. Applying to become a deputy costs £400, or £900 if there needs to be a hearing. There is also a £100 'deputy assessment' fee (in effect a setup fee) payable to the Office of the Public Guardian. A security bond is likely to be required which can vary in cost (it could be a few hundred pounds) and can be a one off up front annual cost.

Once you become deputy, you will also have to pay an annual fee of £35, or £320 depending on the level of supervision your deputyship requires. *For more information on the costs of deputyship, visit:*

gov.uk/become-deputy/fees

A deputy is usually a family member or close friend and once appointed they can make decisions about that person's personal welfare, property and/or financial affairs. If there is no one suitable or willing to act as a deputy, the court can appoint a professional from a panel. Sometimes, two or more deputies are appointed and they can be asked to act together or independently. It is possible to have some reasonable expenses met if you are appointed as a deputy.

As a deputy, you will need to be able to demonstrate that you are acting in the best interests of the person who has lost capacity. The Court can cancel the appointment if it is deemed that you are no longer acting in the best interests of that person. You will also be required to submit accounts to the Court of Protection annually, in which you must show how the money has been spent. The OPG will be responsible for supervising and supporting you. *For more information about this process, please see the Government website:*

gov.uk/apply-to-the-court-of-protection

If necessary, you can apply to the Court of Protection for an emergency order, which can be made in as little as 24 hours. You might need to do this if an urgent decision needed to be made to protect your loved one's health or safety. It is also possible to apply for an interim order, for example, if urgent action was needed to pay your loved one's care home fees. *(For more information please see the last part of the following section)*

Further information

The process for making an LPA is different in Scotland and Northern Ireland. For more information please see:

- For **Scotland** visit:
publicguardian-scotland.gov.uk/power-of-attorney
- For **Northern Ireland** visit:
nidirect.gov.uk/managing-your-affairs-and-enduring-power-of-attorney
- For more information on LPAs and help in completing the forms in **England and Wales** contact the Office of the Public Guardian:
Telephone: 0300 456 0300 (9am-5pm weekdays)
Email: customerservices@publicguardian.gsi.gov.uk
Web: ustice.gov.uk/about/opg
- You can also find the LPA forms here:
gov.uk/lasting-power-of-attorney
- To contact the Court of Protection regarding a loved one who might be losing their capacity to make their own decisions, or any other enquiry:

[Continued overleaf >](#)

Email: courtprotectionenquiries@hmcts.gsi.gov.uk

Telephone: 0300 456 4600

Monday to Friday, 9am to 5pm

- **Court of Protection emergency applications**

Contact the Court of Protection if there's a situation that needs an urgent decision, for example, when you want to stop someone who lacks mental capacity being removed from where they live.

Ask to speak to the Urgent Business Officer when you call.

Telephone: 0300 456 4600

Monday to Friday, 10am to 4pm

Out-of-hours emergency applications

Telephone: 020 7947 6000

What if I have further questions?

If you require further information, any clarification of information, or wish to discuss any concerns, please contact our Support and Information Team:

Call: 0808 800 0004

(free from landlines and most mobiles:

3, O2, Orange, T-mobile, EE, Virgin and Vodafone)

Email: support@thebraintumourcharity.org

Join our closed Facebook group:

bit.ly/supportonfacebook

About us

The Brain Tumour Charity makes every effort to ensure that we provide accurate, up-to-date and unbiased facts about brain tumours. We hope that these will add to the advice you have already been given. Please do continue to talk to your health team if you are worried about any medical issues.

The Brain Tumour Charity is at the forefront of the fight to defeat brain tumours and is the only national charity making a difference every day to the lives of people with a brain tumour and their families. We fund pioneering research to increase survival, raise awareness of the symptoms and effects of brain

tumours and provide support for everyone affected to improve quality of life.

We rely 100% on charitable donations to fund our vital work. If you would like to make a donation, or want to find out about other ways to support us including fundraising, leaving a gift in your will or giving in memory, please visit us at thebraintumourcharity.org, call us on **01252 749043** or email fundraising@thebraintumourcharity.org

About this fact sheet

This fact sheet has been written and edited by The Brain Tumour Charity's Support and Information Team. The accuracy of legal information has been verified by solicitors. Our fact sheets have been produced with the assistance of patient and carer representatives and up-to-date, reliable sources of evidence. If you would like a list of references for any of the fact sheets, or would like more information about how we produce them, please contact us.

This fact sheet is for general guidance purposes only. No steps should be taken relying only on it. Appropriate professional advice should be sought before any course of action is pursued. If you would like any further information, please let us know.



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Your notes

**Saving lives through research,
information, awareness & policy**



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