



### **Making, changing and ending an LPA**

1. What if a person has capacity and doesn't want all his family members to know that he wants a specific family member to be his attorney and so he doesn't inform them.

The donor can choose who they wish to notify when they make an LPA.

2. Does this include Northern Ireland or is their different paperwork?

The Mental Capacity Act 2005 introduced LPAs. This law only relates to England and Wales. You can find out more about the system in Northern Ireland at [The Office of Care and Protection - Patients Section | Department of Justice](#)

3. Is it indefinite, unless the attorney dies, attorney lacks capacity, is removed by the donor, opts out of being attorney or is on DBS list?

LPAs can end for a number of reasons. You can find out more at [Make, register or end a lasting power of attorney: End your lasting power of attorney - GOV.UK](#)

4. Can I confirm that if attorney has changed name due to marriage / deed poll, the LPA is still valid providing corresponding name change paperwork can be provided?

The LPA remains valid with the previous name. It is not made invalid by a donor or attorney changing their name.

If the donor or attorney contacts OPG to request a name change, we will update the LPA entry on our register and on our Use and View service. However, the paper LPA will not be updated.

You should check with your own organisation as to whether you need the donor or attorney to provide supporting documents when they are using their LPA.

5. How long does it currently take to register a H/W LPA?

It takes 8 to 10 weeks to process and register LPA applications. This includes a statutory waiting period of 4 weeks.

6. Do you have to use a solicitor or go direct to OPG?

You don't need to use a solicitor to make an LPA. You can find out more about making an LPA at [Make, register or end a lasting power of attorney: Overview - GOV.UK](#)



7. Who acts as certificate provider?

The certificate provider can't be related to or an employee of the donor or attorney(s). They must be aged 18 or over and have known the donor well for at least two years.

The certificate provider does not need to be a medical or legal professional. You can read more about this here: [Make a lasting power of attorney - GOV.UK](#)

8. If the donor knows they have an LPA but have lost the original paper copy, is there a way for them to access a full copy of the original? (rather than the summary you've talked about for organisations?)

A donor or their attorney can use a certified copy to register their LPA if they do not have the original form.

A solicitor or notary can also certify copies of the LPA - they may charge a fee for this.

Visit [Make, register or end a lasting power of attorney: Certify a copy of a lasting power of attorney - GOV.UK](#) for more information on how to certify a copy of a lasting power of attorney.

Office copies of the LPA are available in exceptional circumstances only, currently for a fee of £35. The donor should contact OPG for more information.

9. Has there always been separate wealth and health ones as people just use the term to cover both?  
Thanks.

LPAs for Property and Finance and Health and Welfare were created under the Mental Capacity Act 2005 and came into effect on 1 October 2007.

10. With regards to activation of LPA is this something that happens automatically or does this need to be activated in some way?

The LPA needs to be registered in order for the attorney to start acting, and an activation key is needed before the LPA can be used and viewed online.

For more information, you can refer to OPG's blog, which explains more about codes and reference numbers. [Your questions answered: Using your LPA – Office of the Public Guardian](#)

11. I'm concerned about how poorly the donor seems to understand the importance of making their wishes clear on the application. Time and time again I have found patients truly surprised that their LPA has told us something that goes against their wishes and they are not following in the spirit of best interest which puts the persons current and previous beliefs and wishes at the centre. Is there any proposal to address this. I seem to be more and more suggesting people make ADRT's and Advanced Care Plans to ensure this.



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We encourage people to talk about their beliefs and wishes with people they trust. We know these conversations can be difficult, but we have put together some guidance which you can read at [Top tips on starting difficult conversations about LPAs – Office of the Public Guardian](#)

### 12. How easy will it be to amend health LPAs if and when assisted dying is passed?

We will be following the progress of this bill and will work with the Ministry of Justice on any future implications for Health and Welfare LPAs.

### 13. On registering the LPA, is it advised that the donor or attorney take it to key organisations (like banks and GPs) for them to register before the donor loses capacity?

This is up to the individual and their situation. While they have the mental capacity to do so, we advise that the donor tells their attorney(s) all of the organisations they would need to register the LPA with.

## **Paying for an LPA**

### 1. What are the costs for LPAs?

It currently costs £82 to register an LPA. If the donor is making a Property and Finance LPA and a Health and Welfare LPA, the cost will be £164.

Donors may qualify for help with LPA fees, depending on their financial circumstances. You can find out about remissions and exemptions at [Applying for a reduced fee for your power of attorney - GOV.UK](#)

### 2. Question - how much do convicted prisoners pay for LPA, as they are not on benefits, presuming they have no savings? There is no area on the forms to add this information as they do not receive benefits etc. I've tried contacting OPG with no response unfortunately!

Depending on a donor's financial circumstances, they may be able to get help with LPA application fees. Some donors may qualify for a remission (a 50% fee reduction) or an exemption (no fees to pay).

If the donor doesn't qualify for a remission or an exemption but paying fees would cause hardship, they can apply to have fees waived. To find out more information about hardship applications, please refer to the guidance section on the LPA120 form - [Applying for a reduced fee for your power of attorney - GOV.UK](#)

## **Viewing an LPA and access codes**

### 1. Have you got a simple one page guide we can share with NHS Wards regarding the View service and how to use if a patient's family member says they have LPA?



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You can find guidance at [Using the View an LPA service - GOV.UK](#) . Feel free to share the link with your NHS colleagues.

We are exploring other ways of sharing information to make it easier for people to understand how the service works.

2. Just wondered if there is an option to still have paper copies of documents for those who do not use or have access to laptop etc

In the current service the donor or attorney can use the original registered LPA or a certified copy of the LPA.

3. Can you use the checking service without a code?

To view the LPA summary on [View a lasting power of attorney - GOV.UK](#) you will need an access code. The donor or attorney should be able to provide this for you, if the LPA was registered on or after 1 January 2016.

If the LPA was made before 1 January 2016, the donor or attorney will need to show the paper LPA.

If you are unable to get an access code or view the paper LPA, you can search OPG's register at [Request a search of the OPG registers - GOV.UK](#)

4. Is the code the number of the LPA?

No, the access code is separate to the LPA reference number.

The donor or attorney can generate an access code using their LPA reference number and activation key.

5. Is it possible for anyone to search and access the records with the code- eg: a carer/neighbour sees the OPG letter and code and decides to check the data- what are the GDPR protections in place to prevent unauthorised access?

If a company or organisation views the LPA online, the donor and attorneys will be able to see when and how the LPA was used.

6. Will the LPA summary identify any restrictions on the donor's authority?

Yes, the View an LPA service shows any restrictions the donor put in place when making the LPA.



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7. In my experience of using the OPG100 request to search the register, the response indicates if there are restrictions on how the donor can act but does not give details. Will this be more visible on the online service in the future?

You can check restrictions on LPAs registered on or after 1 January 2016 at [View a lasting power of attorney - GOV.UK](#)

If you are using an OPG100 to search our register, you can also ask for information about restrictions. You will need to tell us why you are asking for this information.

8. Currently as a GP practice we ask for a copy of the LPA which is inputted on the notes; would you suggest to use the View a LPA instead as this is up to date version?

We would encourage your GP practice to use the View an LPA service. There are many benefits to using this service rather than relying on paper copies. You can read about these at [Using the View an LPA service - GOV.UK](#).

9. How often should we recheck if an LPA has changed?

This is a decision for you to make within your organisation.

10. Will LPAs made before 2016 eventually be backdated and digitalised to view online?

No, there are currently no plans to backdate.

### **Modernising Lasting Power of Attorney**

1. When is this digitalisation happening?

We are working towards the modernisation of our lasting power of attorney service. It will take some time to get the new service design. We are working closely with the Ministry of Justice to plan for testing of the new service, but we don't have any dates to share.

### **Acting as an attorney**

1. Is there any legal advice support available via OPG for attorneys?

OPG cannot provide legal advice to attorneys. However, attorneys can contact us for help and guidance. They can also refer to the detailed guides at [How to be an attorney - GOV.UK](#)

2. If someone has LPA for someone who passes away-the LPA ends with the deceased was my understanding. however, we are seeing an increase in family wanting full access to the deceased



medical records. does the LPA have any kind of access rights due to the LPA that was in place? or would this only be ok if they were an executor of the will?

When the donor dies, the attorney's authority comes to an end. Your organisation should be able to provide you with guidance about the disclosure of medical information after the person has died.

## **Capacity**

1. How is 'capacity' assessed?

For information on assessing capacity, please see [Make decisions on behalf of someone: Checking mental capacity - GOV.UK](#)

2. Is there anything on the documents that cover fluctuating capacity?

A donor must have capacity to make an LPA.

LPAs can be helpful for people with fluctuating capacity, as their attorneys will be able to step in quickly and easily. As long as the LPA is registered, the attorneys can act if the donor has been assessed as lacking capacity to make the decision for themselves.

Health and Welfare attorneys should only act if the donor lacks capacity to make the decision for themselves. Property and Finance attorneys may be able to act while the donor still has mental capacity, but only if the LPA says that they can and if the donor gives their permission.

3. Will any amends/safeguards be made to assure the certificate [provider] knows what to ask to assess capacity?

The certificate provider is not responsible for assessing the donor's mental capacity. This is because the Mental Capacity Act 2005 states that capacity must be assumed unless there is evidence to the contrary.

The role of the certificate provider is to make sure the donor can understand independently what they are signing and is not being forced into doing it. Ideally a certificate provider will speak to the donor separately and privately before signing and witnessing the document. We will be reviewing our guidance for certificate providers.

4. There appear to be two points at which capacity is assessed - when the LPA is taken out and also when the attorney needs to act on behalf of the donor - is this correct?

There is no requirement for a donor to have their capacity assessed before making an LPA. However, if



there is evidence that the donor may lack capacity to make an LPA, a formal capacity assessment should be undertaken.

Health and Welfare attorneys should only act if the donor lacks capacity to make the decision for themselves. Property and Finance attorneys may be able to act while the donor still has mental capacity, but only if the LPA says that they can and if the donor gives their permission.

5. I'm just wondering if there is any paperwork for families and professionals to evidence they are involving people in their decision making and re-addressing capacity? Thanks

OPG does not require attorneys or professionals they work with to fill in forms to show how they are making decisions. However, attorneys should keep a record of any significant decisions they make on behalf of the donor. They should include details of who they consulted and any disputes about a decision.

OPG does require court appointed deputies to tell us about significant decisions they make on behalf of the person they are acting on behalf of. They must use their annual deputy report to tell us.

If you are a professional making a 'best interest' decision under the Mental Capacity Act 2005, your organisation may have specific resources or forms to document how you arrived at the decision.

6. I thought it wasn't possible to assess mental capacity retrospectively?

If there is uncertainty about the validity of an LPA, OPG or the Court of Protection (COP) may ask a special visitor to form an opinion as to whether the donor was likely to have had capacity to make their LPA. Special visitors are medical practitioners with an experience of mental incapacity.

The visitor will usually review medical or care records from the time that the LPA was made. They may also speak to people involved in caring for or supporting the donor. However, OPG doesn't make the final decision. A COP Judge is responsible for deciding whether the LPA is valid.

### **Concerns about attorneys or deputies**

1. How do you verify the donor has capacity? Having become LPA for a number of family members, it seems very easy to manipulate this if that was intention. Have had numerous LPA's that appear to have been completed at a time where it was unlikely the person had capacity to make a valid LPA

Certificate providers are responsible for making sure that the donor understands what they are signing and that they are not being forced into making an LPA.

If you have concerns that a donor did not have capacity to make a valid LPA, you can raise a concern to OPG at [Report a concern about an attorney, deputy or guardian - GOV.UK](#)



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2. If an investigation is started and there is evidence of misappropriation by LPA, what happens with that information if the individual dies, ending your jurisdiction. Is it shared with the LA/ police? Are the names of the LPA registered in case of future applications?

OPG works collaboratively to protect adults at risk of abuse or neglect. If we don't have jurisdiction, or if our jurisdiction to investigate ends, we may refer concerns to other authorities.

3. How can an urgent check be made if a patient has an LPA where there is a safeguarding concern is raised. I have previously requested this and been told can take up to 5 days before I receive a response

If you need information to help with urgent enquiries, please refer to [Urgent enquiries: check if someone has an attorney or deputy - GOV.UK](#)

4. If an LPA is under investigation, is it still valid?

Yes, the LPA would remain valid during an investigation. However, the attorney must follow the five principles of the Mental Capacity Act 2005 when making decisions on behalf of the donor. You can find out more about the five principles in chapter two of the Mental Capacity Act Code of Practice at [Mental Capacity Act Code of Practice - GOV.UK](#)

If there is a significant disagreement over a decision which needs to be made on the donor's behalf, you may need to apply to the Court of Protection for a one-off decision.

5. I work in an adult learning disabilities service; it's very common for us to find people stating they have LPA for a person who we are near certain would never have had capacity to assign this. This happened often during covid when parents wanted to refuse covid vaccination. We did report to OPG but the LPAs were upheld.

We can't comment on the outcome of individual investigations. However, there may be times when other authorities (such as the NHS or local authority) have more evidence of a person's capacity at the time of making an LPA. They may be the more appropriate party to make an application to the Court of Protection, asking that the LPA is revoked.

If there is a disagreement over a decision that needs to be made on behalf of a person who lacks capacity, it may be necessary to apply to the Court of Protection for a one-off decision.

You can find guidance on vaccinations for attorneys and deputies here [Guidance on vaccinations for attorneys and deputies - GOV.UK](#)





## **Deputyship**

1. Will this digital view only cover LPA or will you be able to see deputyships, or will that still be using OPG100?

You will still need to use an OPG100 form to find out whether there is a deputyship order in place.

2. How does a COP deputyship get evidenced easily online? Is there a code generated to view that too? think the applications are more frequently for property and finance rather than health and welfare deputyship.

Unfortunately, it is not possible to view deputyship orders online. The deputy should provide a copy of their court order upon request. If you wish to verify the deputyship order or if you are unable to obtain a copy of the order from the deputy, you can use an OPG100 form.

Health and Welfare deputyship orders are not routinely granted by the Court of Protection. It is also worth noting that the court decides what powers to give to the deputy, so it is important to check the terms of the deputyship order.

## **EPAs**

1. Will EPAs have to be converted to LPA?

If an EPA was signed and witnessed before October 2007, it can still be used. However, EPAs only cover financial affairs.

