

# PWR TECH GUIDE – LASTING POWER OF ATTORNEY

[Guidance notes for a donor creating a Lasting Power of Attorney]



Below, you will find some guidance on Lasting Power of Attorney (LPA) and the potential costs involved.

At the end of this Briefing Note you will find some guidance on what the roles and responsibilities are of an Attorney, conversely it tells you what you benefit there are of creating an LPA and some things you may wish to give some thought to, to provide your Attorney/s with the maximum amount of guidance.

## LASTING POWER OF ATTORNEY (LPA)


An LPA is a legal document that lets you (the ‘donor’) appoint one or more people (known as ‘attorneys’) to help you make decisions or make decisions on your behalf if you are unable to do so, for whatever reasons.

This gives you more control over what happens to you if, for example, you have an accident or an illness and can’t make decisions at the time they need to be made (i.e., you ‘lack mental capacity’) the theory being that you will have briefed your attorneys with your wishes and instructions, and they will discharge them on your behalf.

Whilst it does give control to a trusted third party, Attorneys are subject to quite strict legally binding regulations and cannot personally benefit from their dealings on your behalf or indeed charge a fee, unless agreed with you during the establishment of the LPA.

As Donor you must be 18+ and have mental capacity at the time of application. [Mental capacity is the ability to make your own decisions or at least be aware of the consequences of your actions and decisions when you make your LPA.]






There are 2 types of LPA:

-  **Health & Welfare**
-  **Property & Financial Affairs**

You can choose to make one type or both, the fee for each LPA is £92.00 and this is paid to the Office of The Public Guardian (OPG) or is part of our fee [if instructing us to put the documentation in place].

## ROLES & RESPONSIBILITIES

**Property and financial affairs attorneys:** As a property and financial affairs attorney, you make (or help the donor make) decisions about things like:

-  Money, tax and bills
-  Bank and building society accounts.
-  Property and investments
-  Pensions and benefits
-  You can use the donor’s money to look after their home and buy anything they need day to day (for example, food).

Discuss decisions that affect the donor’s living arrangements, medical care or daily routine with their health and welfare attorney, if they have one.






**If you decide to sell the donor’s home, discuss where the donor will live with their health and welfare attorney.**



**Looking after money and property:** You must keep the donor’s finances separate from your own, unless you’ve already got something in both of your names like a joint bank account or you own a home together.

**Managing bank accounts:** Before you can manage the donor’s account, you must show the bank the original registered lasting power of attorney (LPA) or a copy of it signed on every page by the donor, a solicitor or notary.

You’ll also need to give proof of:

-  Your name
-  Your address
-  The donor’s name or address if they’re not the same as on the bank account, the bank might ask for additional types of proof.

**Spending money on gifts or donations:** Unless the LPA states otherwise, you can spend money on:

-  **Gifts to a donor’s friend, family member or acquaintance on occasions when you would normally give gifts (such as birthdays or anniversaries)**
-  **Or donations to a charity that the donor wouldn’t object to, for example a charity they’ve donated to previously.**

You must apply to the Court of Protection for any other type of gift or donation, even if the donor has given them before. These include:

- 🌿 **Paying someone's school or university fees.**
- 🌿 **Letting someone live in the donor's property without paying market rent (anything they pay below market rent counts as a gift)**
- 🌿 **Interest-free loans**

You must check that the donor can afford the gift or donation, even if they've spent money on these types of things before. For example, you can't donate their money if that would mean they couldn't afford their care costs.

**Buying and selling property:** We strongly recommend that the Attorney gets legal advice if:

- 🌿 The sale is below the market value.
- 🌿 You want to buy the property yourself.
- 🌿 You're giving it to someone else.

**Making a will:** You can apply for a Statutory Will if the donor needs to make a Will but can't do it themselves. Hopefully if you are reading this document, you will be familiar with the fact that Portcullis Wealth Retention Ltd are members of the Society of Will Writers and thus can take your instructions to create a Last Will & Testament. We can also advise on a Statutory Will.



**An attorney can't change a donor's Last Will & Testament. They will be ordered to repay the donor's money if they misuse the LPA or make decisions to benefit themselves.**

**Health & Welfare attorneys:** As a health and welfare attorney, you make (or help the donor make) decisions about things such as:

- 🌿 Daily routine, for example washing, dressing, and eating.
- 🌿 Medical care
- 🌿 Where the donor lives.
- 🌿 You can give your health and welfare attorney the power to refuse life-sustaining treatment on your behalf by choosing a particular option on the LPA. *[We are familiar with these circumstances and can act in a compassionate and sanguine fashion to help host / liaise with a discussion between the Donor and their attorneys as it can be an emotionally charged conversation for all parties.]*
- 🌿 If matters come to a point where such a conversation must be had with medical professionals, then the Attorney will need to:
  - 🌿 Show the LPA to care staff.
  - 🌿 Sign medical consent forms.
  - 🌿 Make decisions in the donor's best interests.

You can't always make decisions about the donor's medical treatment, for example if the donor's made a living will or has been sectioned.

**Advance Decision (Sometimes referred to as a "Living will")** This is a legal statement made by the donor about

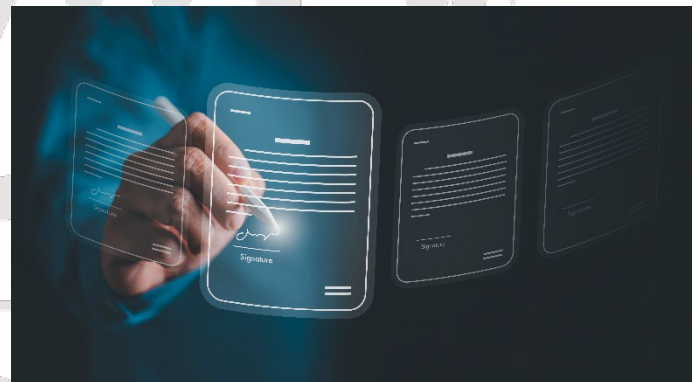
which medical treatments they do or don't want. You'll need to give this to care staff along with the LPA. NHS Choices has information about advance decisions. *[If you have an advance decision registered with NHS Choices, then as donor it's important to think about how your advance decision and LPA for health and welfare work together. Note whichever you made most recently may override the other if they contradict each other.]*

**Circumstances where the Attorney(s) may need to apply for a one-off decision:** An attorney may need to apply for a one-off decision from the Court of Protection to decide about a medical treatment if:

- 🌿 the living will and LPA give different instructions.
- 🌿 the medical staff or the donor's friends and family disagree about whether the treatment should be given. *[This is why, experience has taught us to ensure a conversation is had on what the Donor's expectations are. Which gives the Attorney both the factual and emotional authority to act accordingly]*

**Accessing money for personal care of the Donor:** An attorney might need to spend your money on things that maintain or improve your quality of life. This can include:

- 🌿 New clothes or hairdressing.
- 🌿 Decorating their home or room in a care home
- 🌿 Paying for extra support so the donor can go out more, for example to visit friends or relatives or to go on holiday.
- 🌿 The Attorney must ask for money from the Property & Financial Attorney as they oversee your funds.



**Sign the LPA in the right order.** The different sections of the LPA must be signed in the right order. If they're not, we cannot register the LPA and the donor may have to pay the application fee again. Sections must be signed in this order:

The donor signs and dates:

- 🌿 Continuation sheets 1 and 2, if used
- 🌿 Section 5, if it's a health and welfare LPA
- 🌿 Section 9, followed by their witness.
- 🌿 The certificate provider signs and dates section 10.
- 🌿 The attorneys and any replacement attorneys sign and date section 11, followed by their witnesses.
- 🌿 The person applying to register the LPA (either the donor or attorney) signs and dates section 15

- 🌿 If the attorneys are appointed jointly and they are applying to register the LPA, they all need to sign section 15.
- 🌿 If the attorneys are appointed jointly and severally, or jointly for some decisions, only one attorney needs to sign section 15.
- 🌿 Everyone can sign the LPA on the same day or different days if people sign in the right order.
- 🌿 All the information on this page is also included in the LPA document that you will print and download once you've finished making the LPA.

**Who can be a witness?:** Witnesses are impartial people who watch the donor, attorneys and any replacement attorneys sign the LPA. The witnesses must also sign the LPA to say they've seen the donor and attorney's sign.

A witness can be:

- ⊕ **Anyone aged 18 or over, apart from the donor.**
- ⊕ **The certificate provider and any 'people to notify'.**
- ⊕ **Attorneys or replacement attorneys can witness each other's signature but not the donor's.**
- ⊕ **Witnesses must give their full name and address wherever they sign the form.**
- ⊖ **If you send your LPA to us and it's signed in the wrong order, the OPG cannot register it.**
- ⊖ **You'll have to complete some or all it again and the donor may have to pay another application fee, as well as additional time-based fees to Portcullis Wealth Retention Ltd as we will have to start the process all over again.**
- ⊖ **If you make a mistake, do not use correction fluid (Tippex).**
- ⊖ **If at any point you are unsure, please call us and we will clarify any issues or concerns, it's better to be safe than sorry!**

## FEES & CHARGES

We charge a flat fee, which on the face of it will seem quite high, however our involvement isn't limited to some on-line form filling. As you have already read, during the consideration stage you may want us to discuss certain sensitive matters with your attorneys or provide some advice and clarity on roles and responsibilities our fee covers the time costs and intellectual property incurred.

### Once we have agreement:

1. We will create the LPA's and make the on-line application on your behalf. In addition, we will need to certify your mental capacity and confirm whether you were acting under duress.
2. Pre-complete both sets of forms with a variety of data including personal information, full names and personal details of your nominated attorneys and get the application signed off by your GP.
3. We will then print off all the Lasting Power of Attorney applications forms, and dispatch as directed by the donor to get the forms signed and witnessed.

4. Each Attorney will need to sign and accept their role, and their signature must be independently witnessed. We will write to each attorney with strict instructions on where to sign and date etc. *[The OPG are notorious for returning incorrectly completed applications and will apply their rules strictly, each time a new application is submitted, a new £82 fee is charged, so accuracy is critical]*
5. Once the Office of The Public Guardian have accepted the forms they are then signed, dated, and sealed usually with a perforated reference number at the foot of each page and other OPG seals to confirm authenticity and its legality. *[Due to a 4-week cooling off notice imposed by the OPG, the LPA's typically take between 8 – 12 weeks to organise start to finish so please be patient, we will do everything possible to bring the registration to as swift a conclusion as possible.]*
6. The sealed LPA must then be registered with the various companies with whom you have investments, savings etc. but will also be registered with your bank, all your utility providers and your GP (Doctor), we will do this for you certifying copies of the documents and recording responses. *[This point can be quite admin intensive, as multiple letters need to be sent to multiple providers all by recorded delivery etc.]*
7. Throughout the process we will chase all signatories and correspondents to get the documents correctly sorted and liaise with you on progress etc.
8. We will provide advice to the donor and attorneys on the legal aspects and responsibilities of acting as an attorney.
9. The PWR admin team will deal with the day-to-day administration of the registration, initially with the OPG, then afterwards with your GP and all your investment, savings, and pension providers as directed.

### Portcullis Wealth Retention Ltd Charges:

The first LPA is charged at **£448.00** regardless of whether this for the Property & Financial or Health & Welfare LPA if you chose both types then the second LPA is charged at **£177.00**.

Therefore, a single person opting for both types of LPA will be charged **£625.00** (This includes the OPG Fee @ £92.00 per LPA)

For a couple, the fee will be **£177.00** per additional LPA being a total of **£979.00** for both types of LPA.

Our fee includes registration with the OPG, dealing with all documentation, letters to notifiable persons, providing certified duplicate copies and OPG application costs.

As usual the fees are payable upon engagement, and we will handle the OPG disbursements on your behalf through our you.gov account.



Any statement or opinion reflects our understanding of current or proposed legislation and regulation which may change without notice.



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## NEXT STEPS:

Hopefully the above information has given you some insight into some of the proactive steps you can take to have your affairs managed by an attorney with your approval and how they law will govern their actions etc.

If you want to contact us or are interested in receiving more details about any aspect of this guide and advice on how best to create an LPA or how best to advise loved ones on how an LPA works then please do not hesitate to get in contact.



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James A Caviel is a member of the self-regulatory body of the Society of Will Writers by examination.

They regularly vet practitioners through stringent membership requirements, proficiency standards and ongoing professional training.



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