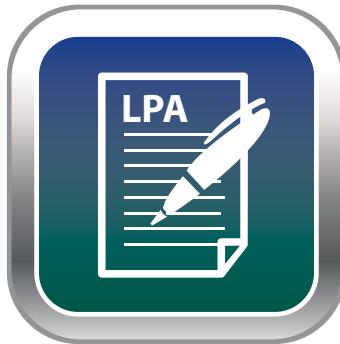




**Buckingham Wills & Probate**

Part of Bicester Wills Ltd

# **Your Guide to Lasting Powers of Attorney**



**This guide will help you make the decisions  
which are right for you and your family**

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**A Lasting Power of Attorney (LPA) is a legal document in which one person, the donor, grants power to another person or persons, attorney or attorneys, to take decisions and deal with the donor's property and finances, or to take decisions regarding their health and care. If you were ever to lose the mental capacity in the future, an LPA is a useful document to have, to ensure that someone you trust, family member or friend, and whom you have appointed at the time you had capacity, will be able to make these decisions on your behalf.**

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## What is meant by “mental capacity”?

In simple terms, mental capacity means the ability to make a decision in relation to a specific issue.

The Mental Capacity Act 2005 (“the Act”) states a person is deemed to lack capacity if:

- They have an impairment or disturbance in the functioning of their mind or brain; and
- That impairment or disturbance renders them unable to make a decision about a specific issue at the time it needs to be made.



The issue of capacity is decision and time specific and does not merely extend to that person’s ability to make decisions generally. A person may therefore lack capacity to make a decision about certain issues but not others.

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## What is the role of the attorney?

Anyone over the age of 18 can act as an attorney (with the exception of paid care workers). An attorney could be a family member, friend, spouse or civil partner, or even a professional such as a solicitor.

An LPA gives a lot of responsibilities to the attorney and they must act in your best interests.

As the attorney has the power to make many important decisions on your behalf, it is important that you take time to carefully consider who you feel would be able to carry out this role and who you trust to act in your best interests.



**Your attorney must act in your best interests.**



## What is meant by “best interests”?

This may be quite obvious and logical to most people. However, when acting on your behalf if you ever do lose mental capacity, an attorney must consider your individual circumstances and continue to encourage you to participate in the decision making process, whenever they can.

Additionally, the attorney must take into consideration their knowledge of your beliefs and values and your past and present feelings.

They must also consult with your family members, friends or those involved your care, to obtain a wider view as to your views and feelings, to better inform them as to what may be in your best interests.

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## When should I make an LPA?

There are many situations in life when you may need someone to make decisions for you. These could be either in the short-term, such as during a brief hospital admission, or in contemplation of the effects of a long-term diagnosis, such as dementia.

Making an LPA enables you to make provision for any eventuality in which you may need someone to make decisions on your behalf.

**Remember** – you can only grant someone an LPA while you have the mental capacity to do so. Should you lose capacity in the future, you will not then be able to grant the power. Your family will need to apply to the Court of Protection to obtain the power to control your finances. This can be a longer and more expensive route.

**It is a good idea to put an LPA in place as soon as possible.  
Many people set them up at the same time as making their will.**



## What are the types of LPA?

There are two types of LPA. They are:

- **Financial Decisions LPA** - A Financial Decisions LPA covers decisions about your finances and property. If there comes a time when you can't manage your finances anymore, your attorney will do this for you. This can include paying your bills, collecting your income and benefits, or selling your house. It can only be used by your attorney once it has been registered at the Office of the Public Guardian (OPG).
- **Health and Care Decisions LPA** - A Health and Care Decisions LPA allows your attorney to make decisions on your behalf about your health and care, if there comes a time when you are unable to make these decisions for yourself. A health and care decisions attorney could make decisions about where you live, for example, or day-to-day care.

You can also give your health and care attorney the power to accept or refuse life-sustaining treatment on your behalf. You will be asked whether you wish to do this or not on the form, and you will need to state your intention clearly.

A Health and Care Decisions LPA can only be used once the form is registered at the OPG and you are in a position where you don't have the mental capacity to make decisions about your own welfare.

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## What are the requirements for a valid LPA?

A valid LPA must:

- Be created when the donor has capacity.
- Be in writing and in the prescribed form.
- Include information about the nature and effect of the LPA.
- Be signed by the donor to demonstrate their intent for it to apply when they no longer have capacity.
- Be signed by the attorney(s) to demonstrate they understand their duties, particularly to act in the donor's best interests.
- Include a certificate provided by a third party who can confirm the donor has capacity at the time the LPA is signed and to ensure that the donor is not being unduly influenced to make an LPA.
- Be registered with the Office of the Public Guardian before the attorney(s) can act.



## How do LPAs come into force?

LPAs must be registered with the Office of the Public Guardian (“OPG”) before the attorneys can act. A donor should register an LPA whilst they still have the mental capacity to do so. However, if the donor signed the LPA whilst having capacity, then the attorney is able to register it on the donor’s behalf later on, even if the donor has already lost mental capacity.

Once registered, the OPG then has a responsibility to oversee the actions of the attorney and make sure that they are acting in the donor’s best interests at all times.

The OPG’s registration fee is currently £82 for each LPA. You may be exempt from paying this fee, or it may be reduced to £41 for each LPA, if you are on certain benefits or if the donor’s gross income is below a £12,000 per annum.

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## Benefits of making an LPA

There are a number of reasons for making an LPA:

- It can be reassuring to know that, if you are unable to make a decision for yourself in the future, your chosen person will make these decisions for you.
- Making an LPA ensures that the person you want to make decisions for you will be able to do so. This prevents a stranger, such as a court official or a Solicitor, or someone you may not trust, from having this power.
- An LPA can reduce problems that may occur in the future. It can be more expensive and time-consuming for family or friends to try to gain a similar power in the future.
- Making an LPA can help prompt discussions with your family or others about your future wishes.





## Advice and Costs

Buckingham Wills & Probate (part of Bicester Wills Ltd) have many years experience in advising clients on the best way to set up their LPAs.

The cost for advising you through the process, acting as the Professional Certificate Provider, dealing with the Office of Public Guardian and setting up the documents, is **£325** per Lasting Power of Attorney document but a discount is offered as follows:



- Financial Decisions LPA for a couple - **£500**
- Health & Care Decisions LPA for a couple - **£500**
- Both Financial Decisions LPA and Health & Care Decisions LPA for one person - **£500**
- Both Financial Decisions LPA and Health & Care Decisions LPA for a couple - **£950**

There is also a registration fee payable to the Office of Public Guardian of £82 per document. This registration fee may be reduced to £41 per document if your income is below £12,000 per annum, or waived completely if you are in receipt of certain benefits.

If you would like to make an appointment to discuss Lasting Power of Attorneys, please get in touch on 01280 811201 and we will be happy to help.



# Buckingham Wills & Probate

Part of Bicester Wills Ltd

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Buckingham Wills & Probate is part of Bicester Wills Ltd which was set up in 2010 by Gail Church, who was an Independent Financial Adviser for over 15 years. Gail now specialises in Will writing and estate planning from offices in Crown Walk, Bicester; Castle Street, Buckingham and covers the Brackley, Buckingham and Oxfordshire areas.

Buckingham Wills & Probate provides clients with an affordable Will writing and estate planning service, and can also offer Inheritance Tax planning advice, Lasting Powers of Attorney, Probate assistance and Trusts. All services are on a fixed fee basis.

"Gail made it a painless and thought provoking exercise...our wishes have been understood and will be acted upon..

We will have no hesitation in recommending your services to other members of our family as well as our friends and business associates."

Mr W of Witney

"You handled my situation in a professional, knowledgeable, yet friendly manner that far exceeded my expectations. Nothing ever seemed to be too much trouble."

Mrs K of Bicester

"Very thorough and efficient with very reasonable fees."

Mr P of Chesterton

"Honest and straightforward advice. I'd highly recommend Gail and Bicester Wills."

Mrs B of Brackley

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