

FREE LPA GUIDE



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What is this guide about?

If you suffer a serious injury or illness, others may need to step in to make decisions on your behalf about your health and to manage your finances.

A lasting power of attorney (LPA) gives you more control in these situations by letting you choose now who these people will be and what decisions they can make. So, you can relax in the knowledge that you are choosing people you trust and who will have your best interests at heart, should anything happen.

This guide outlines why you should make an LPA, the types of LPA you can make and the process involved in making and registering your LPA. It also provides guidance on some other aspects you should consider and when you need to seek professional advice.

How to use this guide

Read this guide if you want to know how to get started, what you need to consider and how to make your LPA legally effective.

We pride ourselves on explaining legal jargon to ensure your LPAs are made in a clear and understandable manner and you understand the effects of your decisions. As such, legal terminologies are defined and explained throughout the guide.

After reading this guide, you will have a better understanding of how to get started in making your LPA.

If you require further help and information, please do visit www.adewills.co.uk and see how we can help you get started and finished on making your LPA with you.

What is a lasting power of attorney?

An LPA is a legal document which allows you to appoint one or more people to help you make decisions or to make decisions on your behalf in certain circumstances.

This is an important document as it gives you more control over what happens if you have an accident or an illness and cannot make your own decisions (this is known as 'lacking mental capacity').

If you are making an LPA to appoint people to make decisions on your behalf, you are known as the 'donor'. The people you appoint to make these decisions are known as your 'attorneys'.

When making decisions on your behalf, your attorneys cannot do as they wish and always have to act in your best interests.

What is mental capacity?

When discussing LPAs, 'mental capacity' arises a lot, so it is important to understand what it means.

Mental capacity is the ability to make a specific decision at the time it needs to be made. A person with mental capacity has at least a general understanding of:

- the decision they need to make
- why they need to make it
- any information relevant to the decision
- what is likely to happen when they make it.

They should be able to communicate their decision through speech, signs, gestures or through other means.

People can sometimes have the required mental capacity to make certain decisions but don't have the mental capacity to make others. For example,

someone may be able to decide what to buy for dinner but be unable to understand and arrange their home insurance.

Mental capacity is an important concept when it comes to LPAs. This is because the time at which the LPA becomes effective may be determined as at the moment when the donor loses mental capacity to make a particular decision.

To determine whether someone lacks the mental capacity to make a decision you need to answer 'yes' to the following two questions:

1. Do they have a mental or brain problem that stops their brain or mind from working properly?
2. Is that problem causing them such difficulty now that they are unable to make this particular decision at the time it needs to be made?

In the case of big or complex decisions, it may be best to get professional advice, for example, from the person's GP, psychiatrist or psychologist.



Types of lasting powers of attorneys

There are two types of LPA in England and Wales. These are:

- Health and welfare
- Property and financial affairs.

You can choose to make one type or both.



Health and Welfare

This LPA is used for the making decisions about:

- what medical treatment you receive, such as life-sustaining treatment
- staying in your own home and getting help and support from social services
- moving into residential care and finding a good care home
- day-to-day matters such as your diet, dress or daily routine.

To make this LPA, you will have to complete Form **LP1H**.

Financial and Property

This LPA is used for the making decisions about:

- running your bank and savings accounts
- making or selling investments
- paying your bills
- buying or selling your house.



To make this LPA, you will have to complete Form **LP1F**.

How to make your lasting power of attorney

You can make your LPA either:

- Online; or
- Using the paper forms.

Online

You will need to create an account on the gov.uk website.

Once completed, you will need to print out the forms and sign them.

Paper Forms

You will need to download the forms from the gov.uk website (<https://www.gov.uk/government/publications/make-a-lasting-power-of-attorney>).

Once completed, you will need to print them.

In both cases, you will need to sign the completed versions of your printed forms and post them to the Office of the Public Guardian (OPG).

The Office of the Public Guardian

The Office of the Public Guardian ('OPG') is the body responsible for helping people in England and Wales stay in control of decisions about their health and finances and make important decisions for others who cannot decide for themselves.

In doing so, the OPG is responsible for registering LPAs and maintaining registers of attorneys. You will be sending your LPA to the OPG for registration.

Making your lasting power of attorney

As noted on page 5, you will need to choose form LP1F to make an LPA for financial decisions and LP1H for health and care decisions.

When completing the forms, useful guidance notes can be found throughout them. You do not need a lawyer to make an LPA unless you have unusual or specific requirements.

Throughout the LPA, there are sections where you might want legal advice. These are marked with the following lawyer symbol:



The first pages of the most recent forms look like this:

The donor

An LPA is just for one person. Anyone can be a donor, provided:

- You are at least 18 years old
- You have mental capacity to make an LPA.

There could be complications in making an LPA for the following reasons:

- Residency: if you live or have property outside England and Wales
- Bankruptcy: if you are bankrupt or subject to a debt relief order and want to make an LPA for your financial decisions.

You can ask others to help you fill in the form. However, you must still choose what goes in your LPA. Only you can give others the power to make decisions with your LPA on your behalf.

The attorneys

The people you choose to act for you are called your attorneys.

You can have as many attorneys as you like. You need to have at least one, but do bear in mind that, whilst there is no upper limit, too many attorneys could make things difficult as they will need to work together.

Before naming someone in your LPA as an attorney, make sure they agree to the appointment.

The order in which you write the attorneys' details in the form is not significant – each attorney is as important as the others.

When choosing your attorneys, consider:

- How many you want to appoint and if they will be able to work together
- Whether you can trust them to act in your best interests

- The extent to which you know each other and how well they understand you
- How willing they will be to make decisions for you
- How well they organise their own affairs, such as looking after their own money.

Your attorney does not need to be a solicitor. It can be your relative, friend and other people you trust who have no legal background.

An attorney must be aged 18 or over and have mental capacity.

How should your attorneys make decisions?

If you have chosen more than one attorney, you need to decide how they should make decisions on your behalf. The available options are:

- Jointly and severally
- Jointly
- Jointly for some decisions, jointly and severally for other decisions.

‘Jointly and severally’ is the most commonly chosen option. This option provides that your attorney can make decisions together or just one of them can make a decision on their own.

This is the most flexible and practical way for attorneys to make decisions because it means your LPA can still work, say, if one of your attorneys is abroad on holiday at the time a decision needs to be made.

If you choose a different option than ‘jointly and severally’ and your attorneys are unable to unanimously agree a joint decision, the decision cannot be made. This might render your LPA unworkable.

If you choose ‘jointly for some decisions, jointly and severally for other decisions’, you need to complete a Continuation sheet to provide which decisions must be made jointly.

Replacement attorneys

If one of your original attorneys can no longer make decisions on your behalf, replacement attorneys are the people who can step in to take their place.

The replacement attorney will step in if one your original attorneys:

- Dies
- Loses mental capacity themselves
- Decides they no longer wish to act on your behalf (which is called 'disclaiming their appointment')
- Was your spouse or civil partner but your relationship has legally ended (unless you have included an instruction for them to continue)
- Becomes bankrupt or subject to a debt relief order (this only applies to Financial LPAs).

A replacement attorney can only act if the original attorney they are replacing is permanently unable to make decisions for one of these reasons.

A replacement attorney cannot temporarily stand in for an attorney who is still able to act (for example, the original attorney is abroad on holiday) and they also cannot replace a replacement attorney.

If you include more than one replacement attorney in your LPA, they all start at the same time, unless you have:

- Appointed your attorneys to act jointly and severally **and**
- Stated the order in which your original attorneys will be replaced.

Replacing an attorney who acts 'jointly and severally'

If you appoint your attorneys to act jointly and severally, replacement attorneys usually step in if one original attorney cannot act for you anymore. The replacement attorneys and any remaining original attorneys can then make decisions 'jointly and severally'.

Replacing attorneys who act 'jointly' or 'jointly for some decisions, jointly and severally for other decisions'

If you appoint your attorneys either 'jointly' or 'jointly for some decisions, jointly and severally for other decisions', it is important to have replacement attorneys.

If one original attorney cannot act for you anymore, all your other attorneys must stop making any joint decisions. If this happens, any replacement attorneys will step in to make the joint decisions. If you do not have any replacements, your LPA will stop working for joint decisions. This is because the law sees a group appointed 'jointly' as a single unit.

When can your attorneys make decisions?

This question applies to the Financial LPA only.

As mentioned earlier, LPAs are intended to take effect when you lose mental capacity. However, with Form LP1F you have a choice as to when it becomes effective.

A Financial LPA can usually be used as soon as it is registered. Even if you still have mental capacity, you can tell your attorneys to start using the LPA immediately. If you then lose mental capacity, they can carry on using the LPA.

Alternatively, you can decide that your Financial LPA will take effect, and your attorneys will be able to act for you, only when you lose mental capacity.

"As soon as my LPA has been registered (and also when I do not have mental capacity)"

This option is suitable for you if you want your attorneys to help you with your finances while you have mental capacity.

For example, if you cannot leave the house or it is difficult to contact your electrical supplier, you might choose to ask your attorneys to deal with the

bank or to pay the bills. Another situation is asking your attorneys to act for you if you are away, say, on holiday.

You can limit the decisions your attorneys can make in the Instructions section mentioned below. This may be useful if, say, you do not want your attorneys to make decisions regarding selling your house.

“Only when I do not have mental capacity”

This is the choice for you if you do not want your attorneys to make decisions or act for you while you have mental capacity.

Consequently, you will look after your own finances while you still have mental capacity. Your LPA will only come into effect if you ever lose mental capacity.

It is sometimes the case that banks and other financial institutions require written confirmation that a donor does not have mental capacity before they will recognise the attorney’s authority to act under an LPA.

A mental capacity assessment can usually be conducted by the donor’s GP, care co-ordinator, social worker or care home staff.

Life-sustaining treatment

This question applies to the **Health and Welfare LPA only**.

This is a very important section as you are choosing whether your attorneys can give or refuse consent to life-sustaining treatment on your behalf.

Life-sustaining treatment includes care, surgery, medicine or other help from doctors that’s needed to keep you alive, such as:

- A serious operation, including a heart bypass or organ transplant
- Cancer treatment
- Artificial nutrition or hydration (food or water given other than by mouth).

Whether some treatments are in fact life-sustaining depends on the circumstances. For example, if you had pneumonia, then a simple course of antibiotics could be life-sustaining.

It is also important to remember that decisions about life-sustaining treatment can be needed in unexpected situations; for example, a routine operation that did not go as planned.

If you want your attorneys to make life-sustaining treatment decisions, they will be able to speak to your doctors on your behalf as if they were you.

Otherwise, your doctors will take into account the views of your attorneys and people who are interested in your welfare as well as any written statements you have made, where it is practical and appropriate to do so.

People to notify when the lasting power of attorney is registered

Letting people know about your LPA just before it is registered protects you. It is especially important if there is a long time between making your LPA and registering it.

You can choose up to five people to notify about your LPA when it is about to be registered.

These are not to be your attorneys or replacement attorneys, but are instead people who know you well and would be willing to raise concerns about your LPA. They can object to the LPA if they think you were under pressure to make it or if they think fraud was involved.

People usually choose their family members or close friends.

It is important to check that the people you are planning to notify are happy to be named in your LPA. You should explain to them that:

- They do not have to do anything right away
- They will only be told when you or your attorneys apply to register your LPA
- Their names and addresses will be sent to the OPG
- They do not have to do anything when they are contacted, unless they have concerns

Preferences and Instructions

Whilst most people leave this section blank, it does give you the opportunity to personalise your LPA to suit your specific needs by giving your attorneys instructions or telling them your preferences.

Preferences are what you would like all your attorneys to think about when they make decisions for you. Your attorneys do not have to follow them but should bear them in mind.

If you write any preferences, avoid words such as 'must' and 'shall'. Instead use words such as 'prefer' and 'would like', so it is clear that you're giving your attorneys advice.

If your attorneys must do something, include it in your instructions. Instructions tell your attorneys what they must do when acting on your behalf. If you write any instructions, use words such as 'must', 'shall' and 'have to'.

If you are not sure about what you can put in this section, it is important to seek legal advice. Visit <http://www.adewills.co.uk/lpas> for a comprehensive list of the examples of preferences and instructions you can include in both LPAs.

Whilst this section is optional, the only circumstances in which you must write an instruction is in a Financial LPA if:

- You have investments managed by a bank and want that to continue
- You want to allow your attorneys to let a bank manage your investments.

Your legal rights and responsibilities

An LPA is a legal agreement (also known as a 'deed') between you and your attorneys. In Section 8 of both LPAs, there is important information that you, your attorneys and your certificate provider (explained below) must read. The section is part of the legal agreement that you all are making between yourselves.

This section outlines the principles of the Mental Capacity Act 2005 and the rules in the Mental Capacity Act Code of Practice, which your attorneys must follow.

It also emphasises that your attorneys must act in your best interests when making decisions and acting for you.



Signing your lasting power of attorney

The LPA must be signed by the people involved in the correct order. If this is not done so, the OPG will not register it and your attorney will not be able to use the LPA.

The important thing to remember is that you must sign your LPA before anyone else does.

When making the Health and Welfare LPA, it is also important to remember to sign the section about life-sustaining treatment before signing Section 9 of the LPA.

If you have used any Continuation sheets, these must also be signed before signing Section 9 of the LPAs.

Order of signing

The LPA must be signed in this order:

1. You (the donor) sign

You must sign:

- Section 5 of the Health and Welfare LPA (about life sustaining treatment)
- Continuation sheet(s) 1, if used
- Continuation sheet(s) 2, if used
- Section 9 of the LPA.

Whilst it is better to sign everything on the same day, this is not imperative; however, what is imperative is that Section 9 must be signed last.

2. The certificate provider signs

The certificate provider must sign after the donor but before the attorneys. They must read Sections 8 and 10 of the LPA before they sign Section 10.

A certificate provider is an impartial person who confirms that you (the donor) understand what you are doing and that nobody is forcing you to make an LPA. They must confirm that:

- You understand the significance of the LPA
- You have not been put under pressure to make it
- There has been no fraud involved in making the LPA
- There is no other reason for concern.

If possible, they should discuss your LPA with you in private, without attorneys or other people present, before they sign to 'certify' their part of the LPA.

Your certificate provider can witness the signatures of you and your attorneys and can also be your 'people to notify'.

Who can be a certificate provider?

A certificate provider must be at least 18 years old and either:

- A friend, colleague or someone you have known well for at least two years. They must be more than just an acquaintance and can include your neighbour, someone from your social or sports club, a work colleague, or similar; or
- Your doctor, lawyer or someone with the professional skills to judge whether you understand what you are doing and are not being forced to make an LPA. This can include a registered healthcare professional (such as your GP), a solicitor, barrister or advocate, a registered social worker or an independent mental capacity advocate (IMCA).

Who cannot be a certificate provider?

The certificate provider must not be:

- an attorney or replacement attorney for the LPA
- an attorney or replacement attorney in any other LPA or enduring power of attorney (EPA) that you've already made
- a member of your or your attorneys' families – including wives, husbands, civil partners, in-laws and step-relatives
- an unmarried partner, boyfriend or girlfriend of yours or of any of your attorneys – whether or not they live at the same address
- your business partner or one of your attorneys' business partners
- your employee or one of your attorneys' employees
- an owner, manager, director or employee of a care home where you live, or a member of their family
- anyone running or working for a trust corporation appointed as an attorney in a financial decisions LPA

3. All the attorneys and replacement attorneys sign

All of your attorneys and replacement attorneys must then sign Section 11 of the LPA.

When your attorneys sign section 11, they are forming a legal agreement with you (the donor). They are bound by everything written in the form up to this point, including section 8 of the LPA ('Your legal rights and responsibilities') and the declaration in section 11.

They must read the LPA (including section 8) or it must be read to them. They must then sign section 11 in the presence of an impartial witness.

The attorneys and replacement attorneys can witness each other's signatures. You (the donor) cannot be the witness.

Attorneys and replacements should sign as soon as possible after the certificate provider – it's preferable if they all sign on the same day.

Registering your lasting power of attorney

The LPA cannot be used until it is registered by the OPG. Only the donor or one of the attorneys can apply to register the LPA.

An attorney is able to apply to register the LPA on their own if they are:

- The only attorney
- Appointed 'jointly and severally'
- Appointed 'jointly for some decisions, jointly and severally for other decisions' – unless the donor has stated in the LPA document that all the attorneys must apply together.

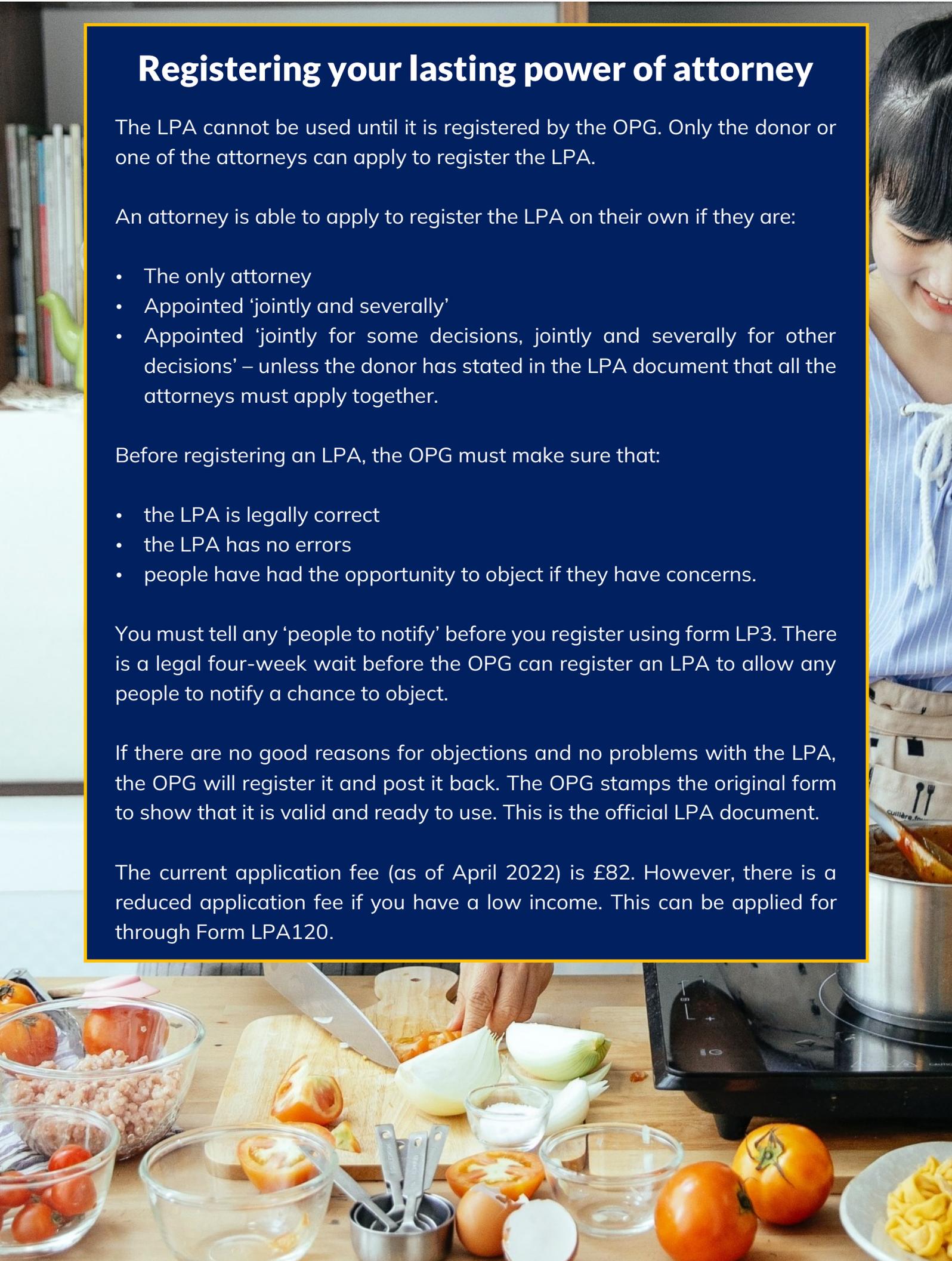
Before registering an LPA, the OPG must make sure that:

- the LPA is legally correct
- the LPA has no errors
- people have had the opportunity to object if they have concerns.

You must tell any 'people to notify' before you register using form LP3. There is a legal four-week wait before the OPG can register an LPA to allow any people to notify a chance to object.

If there are no good reasons for objections and no problems with the LPA, the OPG will register it and post it back. The OPG stamps the original form to show that it is valid and ready to use. This is the official LPA document.

The current application fee (as of April 2022) is £82. However, there is a reduced application fee if you have a low income. This can be applied for through Form LPA120.



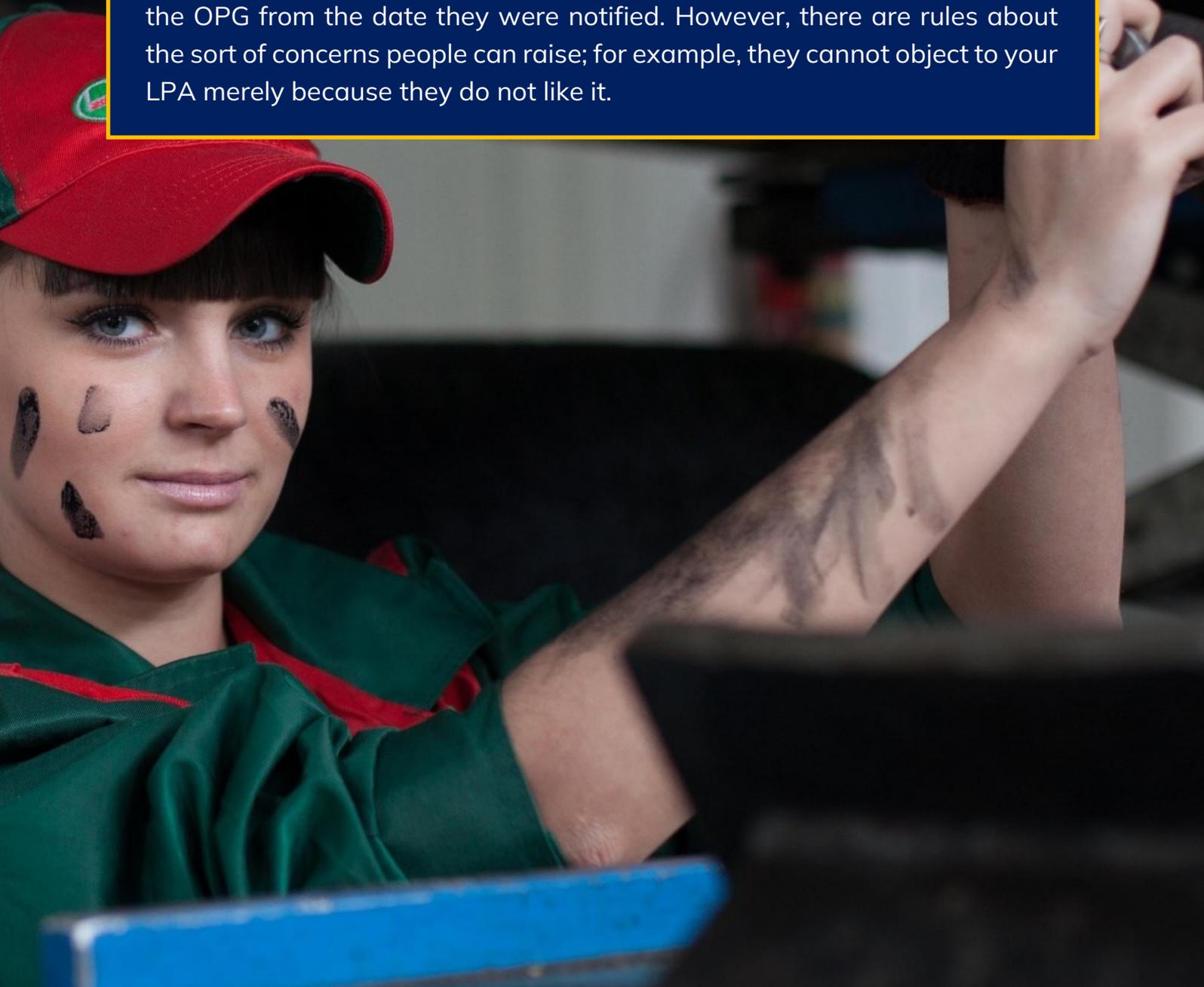
Notifying people about your registered lasting power of attorney

Each person to notify must receive their own LP3 form. Even if you are applying to register both the Financial and the Health and Welfare LPAs, and the people to notify are the same on each form, you still have to notify each of them twice.

You do not need to tell the people to notify about replacement attorneys.

If the person to notify has no concerns, they do not have to do anything.

If they have reasons to object to the LPA, they have three weeks to object to the OPG from the date they were notified. However, there are rules about the sort of concerns people can raise; for example, they cannot object to your LPA merely because they do not like it.



Cancelling your lasting power of attorney

You (the donor) can cancel your LPA at any time, as long as you have mental capacity. It does not matter if the LPA is registered. If it is registered, you must write a 'deed of revocation' to cancel it.

You must sign and date the deed while watched by a witness, who must also sign and date it. Your witness does not have to be the same one you used for your original LPA.

You must then send the deed to the OPG with the original, registered LPA document. You must also tell all your attorneys that you are cancelling your LPA.

Get started today

Visit www.adewills.co.uk
Email info@adewills.co.uk
Click [here](#) to request a call back