

Things to consider if you are planning to complete a Lasting Power of Attorney (LPA)

Choice of Attorney

You should consider the following when choosing your attorney:

- They must be over 18
- They must not be an undischarged or interim bankrupt person, if you are making a Property and Affairs Power.
- They must be absolutely trustworthy and possess appropriate skills to make decisions on your behalf.
- They should be people with whom you have a settled and easy relationship and if more than one, who get on with each other well or who are likely to do so.
- You can appoint one attorney but it is advisable to appoint more than one to lessen the chance of abuse of the Power and ensure continuity in case the attorney cannot act.
- They can be a family member (it is common to appoint partners and children), friends or your professional adviser, such as your solicitor. However, please note that it is unlikely to be appropriate to appoint a professional adviser as a welfare attorney.
- They must agree to be your attorney and should understand the role that they will be fulfilling.
- If they know the people who will be notified on registration, they should have a good relationship with them.
- They must act according to the principles laid down in the Mental Capacity Act 2005 and in your best interests as set out in the Act and follow the guidance contained in the Code of Practice. All this is set out in our information sheet on the role of attorneys.
- They will need to sign the Lasting Power of Attorney document accepting their role and their responsibilities.
- You will need to supply the full name, address, date of birth, telephone number (landline or mobile) and email address of your attorney(s).

How do you want them to operate in their role as attorney?

- If you have more than one attorney, consider how you want them to act. Jointly, i.e. always together, or jointly and severally, i.e. together and independently so that they can sometimes sign together and sometimes separately. This works well when the attorneys do not live near to each other, or if one were to retire or die, then the other attorney could still act.
- You can direct that some tasks, e.g. selling your house, must be dealt with together and some tasks together and independently. However, this may cause practical difficulties as some organisations (e.g. banks) have indicated they will not accept such a "mixed" appointment.
- If they are appointed together, they **MUST** be able to sign together which can be difficult in practise and if one dies, loses mental capacity or becomes bankrupt (if the power is a financial power), the document can no longer be used.
- If you appoint your spouse or civil partner, be aware that dissolution of the marriage or civil partnership terminates the appointment of your spouse/civil partner, unless you have indicated otherwise.

Factsheet

Do you want to appoint replacement attorneys, and if so, when?

- It is especially useful to have a replacement attorney if your original attorneys have been appointed jointly.
- Your choice of replacement attorney should be considered in the same way as your original attorney.
- You need to decide which attorney they will be replacing (in the absence of a choice from you, the replacement attorney will replace the first attorney who needs replacing).

Do you wish to place any restrictions and/or conditions on the attorneys you are appointing?

- You may wish to consider restricting the occasions when the attorneys should act for you.
- You do not have to restrict the attorneys, as such restriction will be legally binding and could cause difficulties.
- If you do include restrictions you must be careful that the document can still work. You could have advice on this at our meeting.

Do you want to give your attorneys guidance?

- You may, for example, feel it would be helpful to give your attorneys some idea of the way in which, ideally, you would like your finances dealt with if you no longer have capacity. In relation to a personal and welfare LPA you may want, for example, to indicate where you would want to live and what treatments you may prefer not to have if you lose mental capacity.
- Please consider carefully the types of decisions you would like your attorney to make on your behalf, so we can discuss this in our meeting and draft the Power to meet your wishes.

Do you want your attorneys to be paid?

- Generally, family and friends would not expect to be paid, although you may wish for it to be made clear that their out-of-pocket expenses should be covered.
- If you have professional attorneys, they must be paid for their work and this should be covered.

Notifying people of the registration of the Power

You can choose up to five people to be notified when the LPA is registered with the Office of the Public Guardian. Once the Power is registered, it can be used by your attorney. It is an important safeguard as they can raise concerns on your behalf. It is important that you think carefully as to the people you choose? Ideally they should be a person:

- With whom you are likely to have contact throughout your life
- Who is interested in your best interests and well being
- You should tell them that you are naming them and make sure that they will take their role seriously as it is for your protection
- You need to supply their full personal details as above
- If you decide that no one is to be notified, you will need to have two certificate providers
- Please share the enclosed information with those to be notified so that they can access more information.

Factsheet

Who will be the Certificate Provider

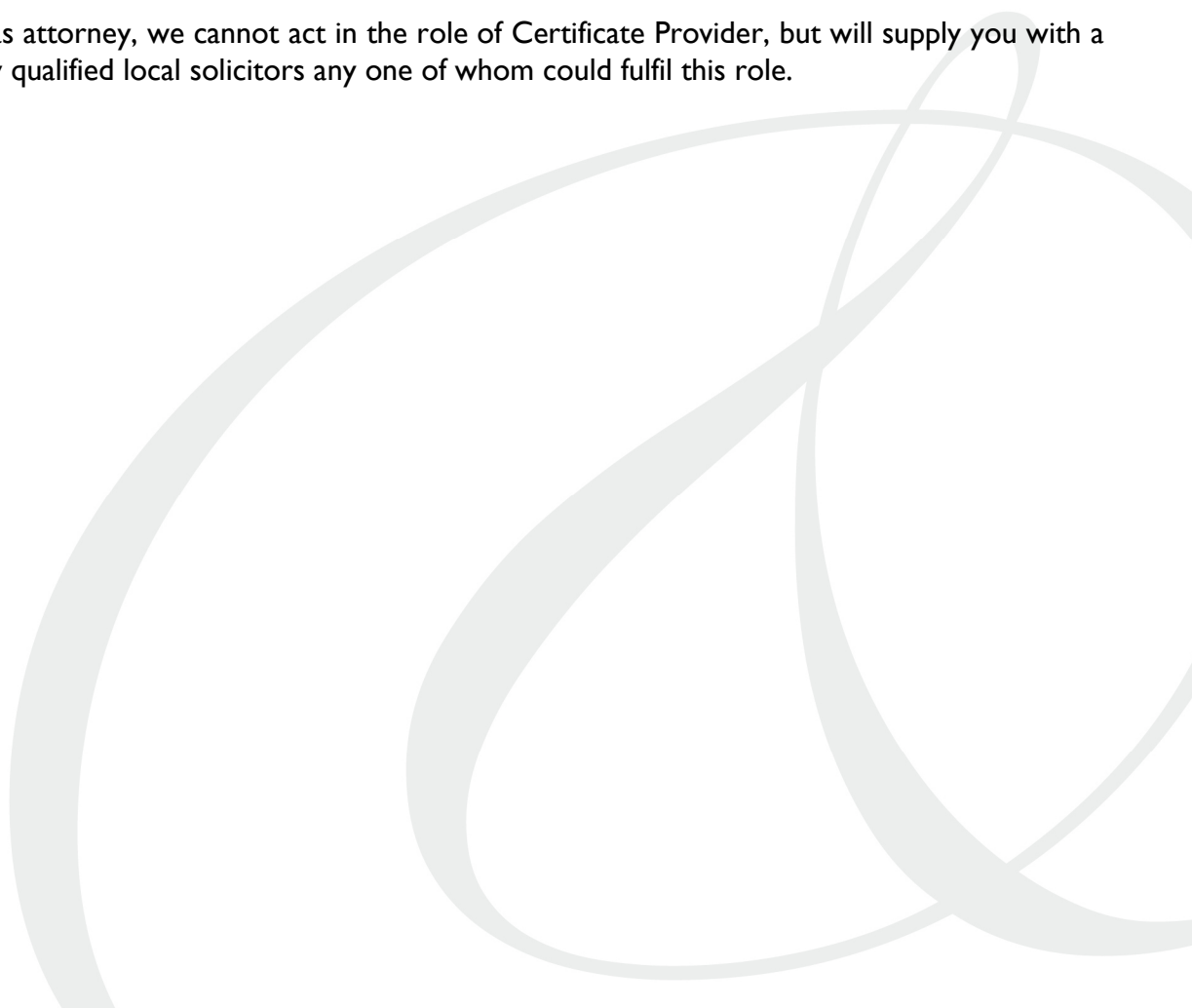
- They must be someone of your choice and over 18 years of age
- Someone whom you have known for at least two years, or
- Someone who on account of their professional skills and expertise considers themselves competent to make the judgements necessary to give the certificate such as a lawyer or doctor.

They cannot be:

- A member of your family
- A family member of any of your attorneys
- Your business partner or paid employee
- Any attorney appointed by you under this document or another LPA or Enduring Power of Attorney
- The owner, manager or employee of a care home in which you are living, or their family member or partner
- A director or employee of a trust corporation appointed as your attorney

If we are not appointed as attorneys, we can act as Certificate Provider but, in order to fulfil the requirements of the document itself, we may need to see you alone at some point, even though you are with your spouse/civil partner/partner.

If we agree to act as attorney, we cannot act in the role of Certificate Provider, but will supply you with a list of appropriately qualified local solicitors any one of whom could fulfil this role.



Factsheet

For details of who to contact for more information or to arrange a meeting:

Charles Lucas & Marshall
28 Bartholomew Street
Newbury
Berkshire RG14 5EU Telephone (01635) 521212
ask@clmlaw.co.uk

Charles Lucas & Marshall
28 High Street
Hungerford
Berkshire RG17 0NF Telephone (01488) 682506
ask@clmlaw.co.uk

Charles Lucas & Marshall
Brooklands
48 Newbury Street Wantage
Oxfordshire
OX12 8DF Telephone (01235) 771234
ask@clmlaw.co.uk

Charles Lucas & Marshall
Eastcott House
4 High Street
Swindon
Wiltshire
SN1 3EP Telephone (01793) 511055
ask@clmlaw.co.uk