



# Lasting Powers of Attorney

How can we help?

Thackray Williams



Having made the important decision to put in place a Lasting Power of Attorney, it is equally important to make sure you get the paperwork right.

Nearly 130,000 Lasting Power of Attorney (LPA) applications have been rejected over the last five years and almost 30,000 in 2022-2023 alone. Why? Because they contained mistakes.

If you make a mistake, the Office of the Public Guardian will return the forms to you, to rectify the mistake and reapply.

This further slows down the process of the registering of an LPA which already takes on average 20 weeks. This crucial document can only be registered whilst you have mental capacity so making sure you submit it mistake free in the first place can be critical depending on your circumstances.

# Common mistakes when filling in LPA forms

The application fee is £82 to register therefore £164 to register both a financial and property affairs LPA and a health and welfare LPA.

If you make a mistake, your LPA will be rejected and will not be legally valid. You will have to apply again. If this is done within three months you will have to pay another £41 per application, failing that, the full £82 per application would be applicable again. If a mistake cannot be rectified you will need to start from the beginning.

The most common mistakes are:

1. **Incorrect signing order:** the order in which the donor (the person making the LPA) signs, then the certificate provider, and then the attorneys is important. Signing in a different order means the LPA will be rejected by the OPG.
  2. **Leaving out information:** dates and signatures, leaving pages blank by mistake.
  3. **Using the wrong witnesses:** if you choose someone to witness your signature who is not eligible to do so, for example, an attorney cannot witness a donor's signature because there is a conflict of interest, the LPA will be rejected.
  4. **Contradictory requests:** an example is a donor appointing an attorney to make a certain decision and then including specific instructions which go against this. If this request makes the LPA illogical, it will be rejected.
  5. **Failing to provide full names:** all names including middle names must be provided in full and not just initials. The OPG will reject the LPA if this is not done. Furthermore, this is important as banks and other financial institutions may refuse to grant the attorney access to funds if there are spelling mistakes or discrepancies in the documentation.
  6. **Incorrect amendments:** all amendments must be crossed out and new text inserted and initialed by the Donor and witness.
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# How can we help?

Our Private Client team has extensive and specialist experience preparing and registering LPAs. We can not only ensure your LPA is prepared correctly to avoid the common mistakes mentioned above, but we can also help in the following ways:

1. **Instructions and Preferences:** You have the option to include instructions and preferences in your LPA. Instructions are binding on the attorneys and must be followed. It is however important to ensure that instructions do not make the LPA so restrictive that it makes the attorney's job more difficult than it needs to be. Preferences give general guidance on how you would like your finances, or personal care and welfare managed. However, your attorneys do not have to follow these if they feel an alternative action is in your best interests. We can help ensure both your instructions and preferences are drafted appropriately.
2. **Capacity:** To make an LPA, the donor has to have the mental capacity to do so. We can have a conversation with the donor to ensure they have the capacity to make an LPA. If not, we can work with the family to explore alternative options including applying to the Court of Protection to appoint a deputy.
3. **Certificate Provider:** The Certificate Provider of your LPA is an independent person who will certify that you are making the LPA of your own free will, without pressure, that you understand the implication of what you are doing, and that you have mental capacity to do so. The role of the Certificate Provider is a serious and involved task and should not be taken lightly. We are able to act as Certificate Providers and certify that you have the ability to make an LPA. If the LPA is ever challenged in the future we will be able to attest to the fact that the Donor made the LPA of their own free will, without pressure, understood the implication of what they did, and that they had mental capacity to do so.

For further information, please contact a member of our Private Client team on 020 8290 0440 who will be happy to advise you.

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