

FACTSHEET

Wills, Trusts + Probate



Acting as a 'Certificate Provider'

The role of the 'Certificate Provider' is to make sure that the person making the Lasting Power of Attorney (LPA) is mentally capable of doing so and isn't being placed under any pressure.

The Mental Capacity Act 2005 (MCA)

introduced two new forms of LPA:

- + Financial Decisions LPA
- + Health + Care Decisions LPA

A requirement of the MCA was that a 'certificate provider' had to be involved in the preparation and signing of an LPA. This is to safeguard and protect the interests of the person making the LPA (the 'donor').

Role of the certificate provider

The role of the certificate provider is crucial in establishing the validity of the LPA. They're responsible for certifying that:

- + the donor understands what an LPA is and the contents of the LPA
- + the donor understands the powers they are giving the attorney under their LPA
- + the donor is not being pressured, tricked or influenced to make the LPA
- + there's nothing else that would prevent the LPA being created

The LPA certificate forms part of the LPA form. The certificate provider must read Parts A + B together with the information on page two.

They must also confirm on the LPA that they've read the prescribed information, or that they've had it read to them.

The standard guidance in the code of practice suggests that the certificate provider asks the donor a number of questions, including:

- + What is your understanding of an LPA?
- + What are your reasons for making it?
- + Why have you chosen me to be your certificate provider?
- + What powers are you giving to your attorney(s)?
- + If there are any restrictions in the LPA, what do you believe they achieve?
- + Do you have any reason to think your attorney(s) could be untrustworthy?

- + When could you cancel the LPA?
- + Are there any other reasons why the LPA should not be created?

If it becomes apparent that there are capacity problems, the certificate provider shouldn't provide the certificate without first seeking a medical opinion.

If a lack of capacity is clear, an application can be made to the Court of Protection for a suitable deputy to be appointed.

Signing the LPA

The regulations state that the certificate must be given 'as soon as practicable' after the LPA has been executed.

If too much time passes between the date that the donor signs the LPA and when the certificate is provided, it may be more difficult for the certificate provider to certify the facts.

In most cases, it's preferable for the certificate to be provided at the same time as the donor signs Part A of the LPA.

Who can act as certificate provider?

The certificate provider must have known the donor for a certain amount of time, or have the skills needed to form an opinion.

Regulation 8(1) of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 state that the following people can give a certificate:

- a person chosen by the donor as being someone who has known him personally for at least two years which ends immediately before the date on which that person signs the LPA certificate; (i.e. knowledge based certificate)
- a person chosen by the donor who, on account of his professional skills and expertise, reasonably considers that he is competent to make the judgements necessary to certify the matters set out in paragraph 2(1)(e) of Schedule 1 to the Act (i.e. skills based certificate)

The regulations give the following examples of suitable persons within paragraph b, above:

- + a registered health care professional
- + a barrister, solicitor or advocate called or
- + admitted in any part of the UK
- + a registered social worker, or
- + an independent mental capacity advocate

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Acting as a 'Certificate Provider'

Who cannot act as certificate provider?

The regulations also include a list of those who can't give an LPA certificate. They include:

- + a family member of the donor
- + a donee of the power
- + a donee of:
 - + any other lasting power of attorney, or
 - + an enduring power of attorney which has been executed by the donor
- + a director or employee of a trust corporation acting as a donee
- + an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed

Does the certificate provider need to see the donor alone?

The regulations don't make any reference to the donor of the LPA being seen by the certificate provider in private.

However, as a matter of best practice, it's preferable for the donor to be seen alone. That way the certificate provider can feel confident about the certificate that is being given.

Further information

For advice and guidance on acting as a Certificate Provider, or for help establishing a Lasting Power of Attorney, contact our specialist Wills, trusts and probate team on **0117 325 2929**.

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