



INFORMATION SHEET FOR CLIENTS

LASTING POWERS OF ATTORNEY

Explanatory Notes

A Lasting Power of Attorney (“LPA”) is a new type of power of attorney, which replaces Enduring Powers of Attorney (“EPA”). Please note that existing EPAs are not affected and remain valid.

An LPA allows anyone to delegate to a person of their choice the power to make decisions about personal matters, such as healthcare, and also finance and property.

There are two kinds of LPA – the Health and Welfare LPA and the Property and Affairs LPA.

The person who makes the LPA is called “the Donor” and the person to who power is delegated is called “the Attorney”.

The Donor must have mental capacity to make the LPA, but it continues to be able to be used by the Attorney even if the Donor loses mental capacity.

An LPA may be revoked at any time if you change your mind, provided that the Office of Public Guardian is informed if it has been registered. It cannot be revoked if mental capacity has been lost.

Health and Welfare LPA

You can delegate authority to a person of your choice giving them the power to decide, for instance, where you should live and to decide whether to give or refuse consent to medical treatment. You may specify restrictions on the power, and you can set out your own views and wishes in your LPA to give guidance on how it should be exercised. Your Attorney is obliged by law to act in your best interests and to abide by a Code of Practice. A Health and Welfare LPA cannot be used until the Donor loses capacity.

Property and Affairs LPA

You can delegate power to deal with your property and affairs so that your Attorney can do anything you would have been able to do yourself. An Attorney can operate accounts, invest or withdraw your money, claim benefits and deal with your tax returns. An Attorney can also sell your house, and can make limited gifts from your money.

You can specify instructions on the power in your LPA, including a provision that it cannot be used until you have lost capacity.

Attorneys do not have power to make a Will for the Donor, however, unless otherwise expressed by the Donor, the Attorneys **can** request copies of the Donor's Will.

Again, there is a Code of Practice in place which must be observed.

Registration

LPAs must be registered with the Office of Public Guardian before they can be operated. Currently, it is taking 6-8 weeks for the Office of Public Guardian to return registered LPAs.

When operating an LPA, the Attorney must have regard to the principle that the Donor should make decisions personally whenever possible.

The Court fee is £82 for each LPA registered. However, if you can prove that you earn below £12,000 per annum, the fees can be halved to £41 per document. If you are in receipt of certain benefits and can prove this to the Office of the Public Guardian, the fees can be removed altogether.

The Office of Public Guardian keeps a register and is responsible for reviewing the acts of Attorneys. The object of this is to prevent abuse of LPAs.

The Donor or Attorney can register and notify any persons specified.

There is a period of 4 weeks from the date notice is given to the named persons in which the donor, Attorney or your named parties can object to the registration. Grounds for objection might be fraud or undue influence on the Donor, or that the Attorney is not behaving in the Donor's best interests.

If the Donor objects to registration, it can only go ahead if the Office of Public Guardian is satisfied that the Donor has no capacity to object.

After registration, a Property and Affairs LPA can be used immediately, whether or not the Donor has capacity.

A Health and Welfare LPA can only be used if the Donor lacks capacity to make the decision.

Once on the register, anyone can get basic information relating to the LPA on payment of a fee.

How to make an LPA

This is an important document and cannot be changed if you lose capacity, so it is vital that proper advice is taken before making either form of LPA.

As well as choosing an Attorney or Attorneys, and specifying their authority, a "certificate provider" must sign the LPA to confirm you understand the purpose and scope of the LPA, are not under duress or pressure to make it, and that there is no other reason that should prevent the LPA being completed.

The certificate provider cannot be a member of your family or the Attorney's family.

You may also specify any individuals to be given notice of registration of the LPA.

LPAs must be properly completed. When you sign, your signature must be witnessed by an independent party. A spouse or civil partner may not act as your witness. The certificate provider can act as a witness.

Attorneys

You can appoint anyone over 18, including your spouse or partner, however, a bankrupt individual cannot be an Attorney for the Property and Affairs document. Clearly you must be able to trust your Attorney(s) as you are delegating important powers.

You can appoint more than one Attorney. You can specify that they must act together or act independently. You can specify that certain important decisions should be joint and others made by one independently.

For convenience and practicality, it might be best to appoint an Attorney who lives near you and can act independently, rather than more than one in different areas as this might hinder operation of the LPA.

You can name a replacement Attorney should one be unable to act for you.

Alternatives to making an LPA

- 1 You could simply make an ordinary Power of Attorney (Section 10 Power of Attorney) to deal with your property and affairs. This would cease to have effect if you lost capacity and you would risk having the Court of Protection appoint a deputy to deal with your affairs. If there is urgent need for an Attorney to act and the Donor has full mental capacity, a Section 10 Power of Attorney can be executed and used as a stop gap while an LPA is being registered.
- 2 If you are concerned about medical decisions, you could make an Advance Directive or a Living Will setting out your wishes, but this is limited.
- 3 **You could decide to take no action. If you lost capacity in the future someone could apply to the Court of Protection to be appointed as your deputy to act on your behalf. You would have no say over who this person might be.**