

## What is a Lasting Power of Attorney and do I need one?

A Lasting Power of Attorney (also referred to as an LPA) is a legal document that allows someone to choose other people who they would like to make decisions on their behalf when they lack mental capacity to make the decisions themselves. The document is completed in advance of the person losing mental capacity. It is then kept until required. During this period it cannot be used and the person continues to make decisions for themselves.

When required, the LPA is then registered with the Office of the Public Guardian and from that point on it can be used, with other people then being able to make decisions on the person's behalf. The person making the Lasting Power of Attorney is referred to as the 'Donor'. The people chosen to make decisions on behalf of the Donor are called 'Attorneys'.

There are two types of LPA:-

- i. **Health and Welfare:** This allows decisions on treatment, care, medication, where you live, etc.
- ii. **Property and Financial Affairs:** This allows an Attorney to make decisions about paying the bills, dealing with the bank, collecting benefits, selling your house, etc.

Many people make two LPA's. If you want to make both a Property and Financial Affairs LPA and a Health and Welfare LPA, you will be required to complete two separate applications.

An LPA can only be made by completing a 'Lasting Power of Attorney Form', which we can provide and complete on your behalf.

The registration of LPAs is managed by the Office of the Public Guardian (referred to as the OPG).

## Who can make a Lasting Power of Attorney ?

Anyone aged 18 years or over can make an LPA. The document must be made as an individual – two or more people cannot make a joint LPA. Although you may receive assistance in applying for an LPA, the application cannot be made by somebody else on your behalf. Anyone making an LPA needs to have mental capacity when they make it.

An LPA allows you to plan in advance:-

- The decisions you want to be made on your behalf if/when you lose the capacity to make them yourself;
- The people you want to make these decisions;
- How you want the people to make these decisions.

Having an LPA is the safe way of maintaining control over decisions made for you because:-

- It has to be registered with the Office of the Public Guardian before it can be used. If someone else tries to register it, you and your Attorney(s) will be able to object to that registration.
- You choose someone to provide a 'certificate' confirming that you understand the significance and purpose of the document;
- You can choose people to be told about your LPA when it is registered, so that they have an opportunity to raise any concerns;
- Your signature and the signature(s) of your chosen Attorney(s) must be witnessed;
- Your Attorney(s) must follow the Code of Practice of the Mental Capacity Act 2005. If they do not always act in your best interests, the Office of the Public Guardian can step in and your Attorney(s) may be held accountable.
- Your legal representative and the Office of the Public Guardian are available to provide support and advice.

### **How do I decide I want to make and register a Lasting Power of Attorney ?**

If you lose mental capacity at some point, for whatever reason, and you have not completed an LPA, other people may need to apply to the Court of Protection to be able to make decisions on your behalf. This can be very expensive. It can also be stressful for your relatives, friends and carers.

### **Health and Welfare LPA**

A Health and Welfare LPA allows the people you choose to make decisions, e.g:-

- Giving or refusing consent to a particular type of healthcare, including medical treatment decisions;

- You staying in your own home, perhaps with help and support from Social Services;
- You moving into residential housing and choosing the right care home for you;
- Day-to-day issues, such as your diet, dress or daily routine.

An LPA puts you in control of those decisions, which will eventually be made on your behalf if you lose mental capacity.

Once a Health and Welfare LPA has been registered, your Attorney(s) can only make decisions for you when you lack mental capacity to make the decisions yourself.

If you have already made an Enduring Power of Attorney, (before October 2007), it is still valid but it does not allow your Attorney(s) to make decisions about your health and welfare.

### **Other ways of planning for your future Health and Welfare**

There are other ways of stating your preferences to help other people make health and welfare decisions on your behalf in the future:-

- You can write a statement of your preferences and wishes. This is not legally binding, but the people looking after you would be required to take your stated views into account as part of any decisions made on the basis of your best interests;
- If you receive health or social care services, you can create a Care Plan, which is a written document stating the types and frequency of long-term care services a person receives;
- You can make an advance decision to refuse treatment. This is a legally-binding document that allows you to certify particular kinds of treatment that you do not want (in case you lack the capacity to make this decision for yourself at some point in the future).

If you make an advance decision to refuse treatment and then later make a Health and Welfare LPA which gives someone authority to give or refuse consent to the same kind of treatment, your advance decision will become invalid. If you have already made an advance decision and are considering making an LPA, you may wish to seek further advice from your healthcare professional to your social care professional through the Patient Support Groups.

## Property and Financial Affairs LPA

A registered Property and Financial Affairs LPA lets the people you choose make decisions, e.g.:-

- Buying and selling your property;
- Opening, closing and operating bank/building society accounts
- Claiming, receiving and using your benefits, pensions and allowances

By choosing who you want to make decisions for you, an LPA puts you in control of decisions which may eventually be made on your behalf.

Once a Property and Financial Affairs LPA has been registered, your Attorney(s) can start to make decisions for you, both whilst you still have the mental capacity and when you lack mental capacity. This differs from a Health and Welfare LPA.

**If you do not want your Attorney(s) to act until you lack capacity, you can put a restriction to this effect in your LPA.**

Please do not hesitate to contact us if you have any questions regarding this fact sheet or LPAs in general.