

Lasting Powers of Attorney

Lasting Powers of Attorney (LPA) came into existence in October 2007. There are two types: Health and Welfare and Property and Financial Affairs. The Health and Welfare LPA deals with decisions relating to life-sustaining treatment, decisions about care and your personal welfare. The Property and Financial Affairs LPA deals with all financial decisions, including decisions relating to your property, investments and bank accounts.

The people who are appointed to act under an LPA are called attorneys. The attorneys will only be able to act when the LPA's have been signed by you, the Donor, the certificate provider and the Attorneys and have been duly registered with the Office of the Public Guardian.

When more than one attorney is appointed they can act either jointly or jointly and severally. The difference between joint appointments and joint and several appointments is that in a joint appointment the attorneys can only make decisions together, whereas with a joint and several appointment the attorneys can make decisions together or separately. If any of your attorneys could not act for any reason in the case of a joint appointment, the whole Lasting Power of Attorney would fail. For this reason, a joint and several appointment is usually a safer decision. You can even elect that some decisions are made jointly (such as selling a property or transactions over a certain sum) and all others made jointly and severally.

If you do not have LPA's in place and in the future you become incapacitated for any reason; then it may be necessary for an application to be made to the Court of Protection to appoint a Deputy to make financial decisions on your behalf. This is both costly (a minimum of £2,000 initial outlay plus annual costs) and time-consuming, as it can take up to 12 months to obtain the court authority. There is no general Court of Protection Deputyship for Health and Welfare decisions, so the opportunity to appoint someone to act generally on your behalf would be lost.

Lasting Power of Attorney - Health & Welfare

A Health and Welfare LPA allows your attorney (s) to make welfare and health care decisions on your behalf **only** when you lack the mental capacity to do so yourself. The lack of capacity can also include incidents where you are taken ill, are unconscious, or a medical condition renders you incapable of making such decisions. This could also extend if you wish, to giving or refusing consent to the continuation of life-sustaining treatment, such as life support.

Health and Welfare Attorneys can make decisions about the following aspects of your life. (This list is not exhaustive):

- Where you live, who you should live with and who you should have contact with;
- Your day-to-day care including your diet, dress and wellbeing;
- Consent to give or refuse medical examinations and treatment on your behalf;
- Assessment of provision for any community service provided to you;
- Whether you should take part in any social activities, education activities or leisure activities;
- Your personal paperwork and any correspondence received by you;
- Any rights of access to your personal details on data; and any complaints about your general or specific care and treatment

In the absence of a H & W LPA, social services may overrule your families wishes on a 'best interests' basis, and they would have no choice but to confirm any decisions made with the Court of Protection.

In your health and welfare LPA you can decide whether or not you would like your attorneys to have the authority to make decisions regarding life-sustaining treatment. Life-sustaining treatment includes more obvious forms, such as life support, or even anti-biotics if there were a life-threatening infection.

You can insert guidance in the LPA to assist your attorneys in making decisions. I have included some general clauses here. If there is anything specific to you that you may wish to add, please mention this on the form that follows and I will try to find a suitable precedent clause.

Some example clauses – please tick any that are appropriate

1. My attorneys must not decide I am to move into residential care unless, in my doctor's opinion, I can no longer live independently and care at home is not a viable option for me.
 2. My attorneys must not agree to life-sustaining treatment if I am in a persistent or permanent vegetative state.
 3. If I am to move into residential care, I do not wish to engage in social activities and entertainment that I did not previously participate in.
 4. My attorney(s) must ensure that I am given food broadly consistent with a healthy, Mediterranean diet.
 5. My attorney(s) shall keep a written record of all significant welfare/healthcare decisions (s) he/ they make(s) on my behalf and s/he/ they will provide a copy of the records to _____ if requested.
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1. I do not wish to be placed in residential care unless the doctor advises care at home is no longer appropriate for me. If I am to be placed in residential care I wish for the emphasis to be placed upon quality and comfort and for the financial impact to be a secondary consideration.
 2. In the event that I am unconscious and there is no realistic prospect of me regaining consciousness or I am suffering from an incurable or irreversible condition that will result in my death within a relatively short time I do not wish to be resuscitated and only wish to receive treatment which will safeguard my dignity make me more comfortable and relieve pain even if such treatment may unintentionally precipitate my death.
 3. It is my wish, without conferring any obligation on my attorneys or any enforceable right by those I wish my attorney to consult that:
 - a. My attorney(s) should consult with _____ before making any decision to move me from my permanent home for the time being.
 - b. If I need to go into a care home my preferred choice of home would be [insert name and address of care home].
 - c. My attorney(s) should seek the views of _____ before making any decision to move me from my permanent home for the time being to any other location, unless the move is to a hospital or hospice.'

Lasting Power of Attorney - Property & Financial Affairs

A Property and Affairs LPA allows your attorneys to make decisions relating to your property and finances as you specify.

Once registered, an attorney under a Property and Affairs LPA will be able to make the same decisions that you can make about the property and financial aspects of your life. Your LPA must contain the scope of powers that you wish to give to the Attorneys. Decisions relating to Property and Affairs made by your attorneys may include the following:

- buying and selling your house or property;
- opening, closing and dealing with the operation of any bank or building society accounts that you have;
- dealing with your taxation issues and making any tax returns on your behalf;
- paying bills and expenses;
- claiming and using for your benefit, any pension payments, benefit payments or allowances

It is important to note that this is not an exhaustive list of decisions that can be made by your attorneys, it merely highlights some of the aspects that you should think about about the scope of the power given to your attorneys before entering into an LPA.

The Lasting Power of Attorney allows for your attorneys to make small gifts from your finances, however, in doing so, your attorneys must adhere to any restrictions that you have placed on such gifts in the LPA document. The provision of such gifts is very limited. Care should be taken if you offer financial help to any attorney – if you lose capacity, the attorney would not be able to gift money to themselves even if they simply follow your behaviour patterns.

Once an LPA is in use, no attorney can authorise gifts to any person, including themselves, without the authority of the Court (bar small sums on customary occasions).

For your information you are able to limit a Property and Financial LPA so that it is only effective if you were unable to make decisions for yourself. There are pitfalls to this, such as if you were feeling like you were in need of assistance with your finances, you would not be able to let your attorneys use the LPA to help you, as the LPA could only be used if you were considered to be incapable. In law mental capacity exists for far longer than a lay person may think, so this could mean your attorneys are unable to assist you if you were in need of help managing things.

Some example clauses – please tick any that are appropriate

Investments

1. My attorney(s) must:
 - (i) apply the principles set out in section 1 of the Mental Capacity Act 2005 and have regard to the guidance in the Code of Practice to the Act, and in particular, support me to make those decisions I am capable of making, and in this respect, have regard to chapter 3 of the Code;
 - (ii) if I cannot make my own decisions or choose to not make a decision, my attorney(s), so far as is reasonably practical, should encourage my participation, and take into account my (current and past) views, feelings, beliefs and values and any other factor that I would consider important, in making a decision which is in my best interests; and
 - (iii) try to achieve the outcome I would want, where my views are rational, sensible, responsible and pragmatically capable of implementation in the circumstances.
2. My attorneys must not sell my home unless, in my doctor's opinion, I can no longer live independently.

Supervision / Reporting

3. If [my siblings B or S] ask to see my bank statements or any paperwork concerning the management of my property and financial affairs my attorney(s) shall comply with such request, as soon as it is reasonably practical.
4. I direct that my attorneys shall provide copies of my bank statements on a quarterly basis to my _____.
5. If it is practicable and appropriate, in determining what is in my best interests, my attorney(s) must consult with [my _____] and take into account [his/her/their views] [if and when decisions are proposed to be made about gifts over [£50] and the sale of my home.

Investments

If you have a financial advisor then you may hold funds in a discretionary managed investment. If you do hold this type of fund, or may do in the future, it is vital that specific wording is placed in your LPA so that this may continue. Please check with your financial advisor for bespoke specific wording, or tick below:

'My attorney(s) may transfer my investments into a discretionary management scheme. Or, if I already had investments in a discretionary management scheme before I lost capacity to make financial decisions, I want the scheme to continue. I understand in both cases that managers of the scheme will make investment decisions and my investments will be held in their names or the names of their nominees'.

Your Lasting Power/s of Attorney

What type/s of LPA/s would you like to make?: Both types of LPA _____

Property and Financial Affairs LPA?: _____ Health and Welfare LPA?: _____

Telephone number/Email: _____

Your details - DONORS - Clients 1 and 2

1.(a) Your title _____ Your full name: _____

(b) Your address: _____

_____ Post code: _____

(c) Your date of birth: _____

2. (a) Your title _____ Your full name: _____

- Your address:

_____ Post code: _____

(c) Your date of birth: _____

ATTORNEYS

Please list the people you **MAY** wish to appoint as your Attorneys:

For a married couple, you can appoint each other and an attorney or attorneys to either act alongside or in substitution, when you can no longer act for each other. Please give some thought to this.

If in the future you were less able to get out and about, and you wish for your children (for example) to take care of the day-to-day matters for you both, then a sole initial appointment would prevent this. It is therefore safer, sometimes, to appoint all the attorneys on a joint and several basis in the first instance.

You can appoint different attorneys in each LPA, and you can make an initial appointment and then appoint substitutes. If you are unsure please just provide details of all those who you may wish to include. If you need assistance in making this decision, we can discuss this in our meeting.

ATTORNEY DETAILS

Please enter the title, full name, address, telephone number (or email address), date of birth and relationship to you for each attorney here. Accuracy is of paramount importance:

3.(a) Title: _____ Full name: _____

(b) Address: _____

_____ Post code: _____

Relationship: _____ DOB: _____

Tel: _____ Email: _____

4.(a) Title: _____ Full name: _____

(b) Address: _____

_____ Post code: _____

Relationship: _____ DOB: _____

Tel: _____ Email: _____

5.(a) Title: _____ Full name: _____

(b) Address: _____

_____ Post code: _____

Relationship: _____ DOB: _____

Tel: _____ Email: _____

6.(a) Title: _____ Full name: _____

(b) Address: _____

_____ Post code: _____

Relationship: _____ DOB: _____

Tel: _____ Email: _____

Client 1 – Initials/First name: _____

Have you ever made an Enduring or Lasting Power of Attorney? YES NO
If yes, can you please include a copy.

Have you ever made an advanced decision or a DNR? YES NO
If yes, can you please include a copy.

Can you read, write and sign documents? YES NO

Details: _____

Have you been diagnosed with any medical condition affecting memory? YES NO

Details: _____

Client 2 – Initials/First name: _____

Have you ever made an Enduring or Lasting Power of Attorney? YES NO
If yes, can you please include a copy.

Have you ever made an advanced decision or a DNR? YES NO
If yes, can you please include a copy.

Can you read, write and sign documents? YES NO

Details: _____

Have you been diagnosed with any medical condition affecting memory? YES NO

Details: _____

Do you wish to give your attorneys authority to give or refuse life sustaining treatment?

Client 1: _____

Client 2: _____

CERTIFICATE PROVIDER

You have to choose a 'Certificate Provider' who is responsible for ensuring that you understand the meaning and effect of the Power of Attorney you are making, and is satisfied that you are of full mental capacity and are doing so voluntarily and not under any pressure. You can EITHER choose someone who has known you personally for at least the last 2 years OR certain professional people can act, such as Lawyers or Doctors.

We are happy to undertake this role at no extra cost if you wish us to.

(If you have issues with memory that have been diagnosed and/or there is any possibility of an LPA being challenged it is usually safest to ask a Doctor or other mental capacity specialist to sign as Certificate Provider.)

PEOPLE TO BE INFORMED

A further safeguard is to let someone who may have an interest in your welfare know that you are drawing up a Lasting Power of Attorney. Then if there were ever any issues in the future they would be well placed to raise concerns. This is **not compulsory** or a requirement and is a personal choice. Please list name/s and address/es here:

Person to be informed 1: _____

Person to be informed 2: _____

SAFEGUARD

Are there any children or close relatives that you are not mentioning in your LPAs who may take issue with this in the future? Please give full details and both initial alongside.

BRIEF DESCRIPTION AND VALUE OF ASSETS:

Joint names:

Home: _____

Other property: _____

Savings: _____

Investments: _____

Client 1:

Home (in sole name): _____ Other property: _____

Savings: _____

Investments: _____

Client 2:

Home (in sole name): _____ Other property: _____

Savings: _____

Investments: _____
