

LASTING POWER OF ATTORNEY **Mental Capacity Act 2005**

What is a Lasting Power of Attorney:

It allows you to appoint people you trust to look after your affairs. There are two areas that you will need to consider:-

1. **Property & Affairs**

Where you appoint people you trust to look after all your finances (bank accounts, investments, property, etc)

2. **Personal Welfare**

Where you appoint people you trust to look after your welfare requirements (daily care, medical treatment, etc)

You can have a Lasting Power of Attorney to deal with just one of the above areas or both.

Who can you choose as an Attorney?

Your Attorney should be someone you know well and trust. They must be at least 18 years old and must not be a bankrupt. You can choose more than one person to be your Attorney.

Choosing more than one Attorney.

If you choose more than one Attorney, you need to decide if you want them to act jointly or separately if they wish.

Replacement Attorney

You can choose a replacement Attorney in case your Attorney cannot or does not want to act for you.

When an Attorney can act

Your Attorney can only act once the document has been registered. You can include a restriction so that they can only act if you are mentally incapable, or you can have no restrictions and allow them to act on your instructions. If you become mentally incapable, they can only act in your best interests.

Decisions your Attorney can make for you

If you have a Property and Affairs' Attorney, they can only make financial decisions such as: buy or sell property, manage investments, carry on a business and may assess your personal information. See LPA01 for a more extensive list of powers.

If you have a Personal Welfare Attorney, they can make any decision about your personal welfare such as: where you live, who you live with, access your personal information such as medical records, they can decide what you eat, what you wear and how you spend your day. They will also be able to give and refuse consent to

medical treatment according to your best interests. Your Attorney will only be able to make these decisions where you lack capacity to do this yourself. See LPA02 for a more extensive list of powers.

If you do not say that your Attorney can make decisions about life sustaining treatment, the doctor in charge of your treatment will make the decision in your best interests.

Restricting the powers of your Attorney

You can put legally binding restrictions and conditions on your Attorney's powers and the scope of their authority.

Giving guidance to your Attorney

You can also give guidance to your Attorneys in the Lasting Power of Attorney; this will not be legally binding but may be useful when they have to make decisions on your behalf.

Notifying other people before registration

You can name up to 5 people who have to be notified when an application to register your Lasting Power of Attorney is made. This is an important safeguard, because if you lack capacity at the time of registration, you will be relying on these people to raise any concerns they may have about the registration of the LPA. If you do not name anyone, you will need to have two certificate providers (see below).

Certificate to confirm understanding

When you complete an LPA form, an independent person must complete a certificate to confirm that you are making the LPA of your own free will and that you understand its purpose and the powers you are giving the Attorney. This is an important safeguard and your LPA cannot be registered without this being completed.

Paying the Attorney

Attorneys are entitled to 'out-of-pocket' expenses incurred as a result of carrying out their duties. Solicitors and accountants will charge for their services. You should record any decision you make about this on your LPA.

Registering the LPA

The document cannot be used until it is registered. Either you or your chosen Attorneys can register it.

Register of LPAs

There is a register of LPAs kept by the Public Guardianship Office (OPG). It is possible to access this but access is controlled. On payment of a fee to the OPG you may be able to access certain information about your LPA. This is at the discretion of the OPG and, depending on the reason it is needed, more information may be available to you. The OPG will have guidance on this.

Changing your mind

You can cancel your LPA even if it has been registered providing you have the mental capacity to do so. You must advise your Attorneys if you do and, if it is registered, you must ask the OPG to remove it.

LPA01

Property and Affairs

The standard form does not have any restrictions or conditions. Therefore, if the donor makes no restrictions, the Attorneys can do anything that the donor can do including:-

1. Managing bank accounts, including opening and closing accounts.
2. Claiming and receiving benefits and other payments like pensions, rebates, etc on behalf of the donor.
3. Paying bills, household expenses, care fees, etc.
4. Buying, selling and renting the property of the donor.
5. Making gifts on the donor's behalf – however this is restricted to making gifts to people who are related or connected to the donor for special occasions – i.e. birthdays, weddings, etc ..
6. Making decisions concerning any investments held by the donor.
7. Making all tax returns and adjusting and settling any claims for tax.
8. Paying for private medical care.
9. Purchasing a vehicle or any other equipment which may be required for your benefit, paid from the donor's income or capital
10. Implementing tax planning or similar arrangements. However, an application to the Court of Protection may be required in certain circumstances.

Please note, these are only examples and it is not a complete list of powers.

LPA02

Personal Welfare

The standard form does not have any restrictions or conditions. If the donor makes no restrictions, the Attorneys can do anything that the donor could do including:-

1. Making decisions about the donor's permanent residence.
2. Make decisions on any care that is required and the level of care.
3. Consent or refuse medical treatment including medical procedures, therapy, etc.
4. Make decision on the donor's diet, dress and personal appearance.
5. Take the donor on holiday, choosing the donor's social and cultural activities.
6. Organising work, education or training for the donor.
7. Assessments for and provision of community care services.
8. Rights of access to personal information about the donor.
9. Consenting to the donor being involved in certain areas of research that meet the strict rules set out by the Act.

Please note these are only examples and it is not a complete list of powers.