

LPAs – Have You Got The Power?

With many people now living longer, planning for the future has never been more necessary. An important issue to consider is what would happen if you lost capacity? Who would look after your affairs, make decisions on your behalf, who will honour your wishes and ensure your best interests are protected?

All of these issues can be managed with a Lasting Power of Attorney (“LPA”) and we hope that the following question and answer article will provide you with an insight into the benefits of an LPA and the problems that can be encountered without one.

What is an LPA?

It is a document that is signed by someone (called “the Donor”) in order to give power to another person (called “the Attorney”) to allow them to manage their financial affairs. Under a separate document you can give your Attorney power to make health and welfare decisions on your behalf. It means that if the Donor becomes mentally incapable then the Donor’s affairs are in the hands of a trusted person whom they have appointed.

Who should have an LPA?

It is particularly relevant for elderly people and anyone suffering from an advancing illness. However, anyone who wants to put their affairs in order should consider having one just in case. It will give you peace of mind that someone of your choosing will look after your financial affairs or make health and welfare decisions should the need arise.

What happens if you become incapable and you do not have an LPA?

Your financial affairs will have to put under the control of the Court of Protection. This body decides who

will manage your affairs. The person who is appointed (called “the Deputy”) may not necessarily be someone you know or the one you would want to deal with your affairs.

The Deputyship process is expensive and time-consuming. Annual accounts must be sent to the Court of Protection for approval and the Deputy’s powers to manage your affairs are usually limited.

You might also find that health and welfare decisions are being made for you by the Local Authority and Medical Practitioners based on what are deemed to be your best interests. These best interest decisions might, of course, not actually reflect your true wishes.

Who should be chosen as your Attorney?

Your choice of person should be made with care, as the powers given by an LPA can be very wide. Those who are usually chosen include such people as a spouse or partner, an adult son or daughter, a professional adviser, or a combination of these.

Being an Attorney involves a personal responsibility, so the persons chosen to act for you in this capacity must consent to do so.

What powers does an Attorney have?

An LPA can be prepared in respect of both financial and welfare matters.

Under a financial LPA, your Attorney would have the power to deal with things such as bank and building society accounts, shares and also, if necessary, sell your house.

Under a health and welfare LPA your Attorneys would have powers to participate in National Health Service and Local Authority care assessments and decision-making processes on your behalf. These decision-

making processes could include matters such as whether or not you should move into care accommodation or be cared for in your own home. If you do not have a health and welfare LPA then you do not have an appointed person to formally represent you in these matters.

The health and welfare LPA could also include powers for the Attorneys to accept or refuse life-sustaining medical treatment on your behalf, although you can exclude this particular power if you wish to do so.

When can my Attorney act for me?

In order for the LPA to be valid, it must be registered with the Office of the Public Guardian, for which a registration fee is payable. Your Attorney can only act on your behalf if the LPA has been registered.

Once the LPA has been registered, your Attorney can deal with your financial affairs with your consent whilst you still have mental capacity and this power to manage your financial affairs would continue the event of your incapacity.

Can there be more than one Attorney?

Yes. They can be appointed to either act together in all matters (jointly) or to act independently of each other (jointly and severally). In certain cases an appointment can be made where the Attorneys can act jointly in respect of some matters jointly and severally in respect of others.

Can you limit the powers given to an Attorney?

Yes. You can discuss this with your legal adviser, although in most cases this is unwise, as it may well be the case that the LPA would be needed to deal with an

asset that has been excluded from the Power. This can cause complications with the use of the LPA.

Can you cancel an LPA?

Yes. You can do so at any time as long as you are mentally capable. You can also make a new one at any time, again providing you are still mentally capable. However, further Court fees will be payable to register the newly made LPA. Once you become mentally incapable, the LPA can only be revoked with a Court Order.

What happens to my Enduring Power of Attorney (EPA)?

If you have made an EPA, it will remain valid but only in respect of property and financial affairs. If you wish to give your Attorney Power to deal with the health and welfare matters, then you will need to make a health and welfare LPA.