

LASTING POWERS OF ATTORNEY (LPAs)

There are two sorts of LPAs; one to deal with Property & Affairs and one to cover Health & Welfare. You can create either one or both of them.

The documents are designed to have effect if you lose your mental capacity and to ensure that the person you want to make decisions for you will be able to do so. They prevent someone else being appointed without your consent.

Preparing an LPA reduces the possibility of problems occurring in the future and means that you family will know what you want. It is likely to be more expensive and difficult for your family to obtain similar powers after you lose your capacity.

If you do not have an LPA and lose capacity it will be necessary for a member of your family to apply to the Court of Protection to be appointed to act on your behalf. The application fee alone is £400.

If you run your own business you should also consider whether to create an additional LPA appointing someone to run the business. You will need to determine what any business agreements say about the loss of mental capacity in order to decide whether this is necessary. This is something that our solicitors can assist you with.

Granting an LPA gives away very significant powers and there are risks involved. That is why we advise you to seek advice and assistance from a solicitor.

Property & Affairs LPA

These cover decisions about your finances and property. If there comes a time when you can't manage your finances anymore your attorney can do this for you. This can include paying bills, collecting income and benefits or selling your house.

You can restrict the powers of the attorney or place conditions on what they can do.

The LPA can only be used once it has been registered with the Office of the Public Guardian (OPG). It can be used while you have mental capacity to deal with matters yourself unless you restrict it.

Health & Welfare LPA

These allow your attorney to make decisions about your health and welfare if you are unable to do so. An attorney could make decisions about where you live, your day-to-day care, your diet and what you wear.

You can also give your attorney the power to accept or refuse life sustaining treatment. You will be asked whether or not you wish to do this on the form.

It is important to be aware of the effect this decision can have on any other advance decision that you have made. If you allow your attorney to make this treatment decision it will overrule any previous advance decision. If you decide not to give your attorney this power your advance decision will remain valid.

This type of LPA can only be used after registration with the OPG and when you no longer have the mental capacity to make decisions about your own welfare.

Attorneys

You can choose anyone to be your attorney as long as they are over 18. For a property and affairs LPA they cannot be bankrupt. The person must be willing and able to carry out the role.

It's important to think carefully about who you will appoint. You need to appoint someone reliable, who you trust and who has the skills to carry out the role. You can, and probably should, have more than one attorney.

Most people appoint a relative or friend but you can also appoint a professional such as an accountant or solicitor. A professional will charge for their time.

When making decisions your attorneys must follow the Mental Capacity Act. This means that they:

- must act in your best interests
- must consider your past and present wishes
- cannot take advantage of you to benefit themselves
- must keep all of your money separate from their own

If the attorney does not comply, the LPA could be cancelled. If an attorney is suspected of taking advantage this will be investigated by the OPG and the person could be prosecuted.