

LASTING POWERS OF ATTORNEY PROPERTY AND AFFAIRS

A Property and Affairs Lasting Power of Attorney (“the LPA”) will allow you (“the donor”) to appoint whoever you wish to be your attorney to manage your finances and property should you be unable to do so yourself.

If you do not have an LPA and you can no longer deal with your affairs, your nearest relatives will have to apply to the Court of Protection to be appointed. This can take up to 2 years to be dealt with by the Court, and the costs can be over £1,500. Whilst an application is being heard, nobody will be able to access any accounts or investments held in your sole name.

An LPA will allow your attorneys to make decisions in relation to your affairs as if they were you. They will be able to buy or sell land or property on your behalf; operate your bank accounts, including closing and opening different accounts; and they will be able to receive and use all benefits and pensions on your behalf. You can however restrict the powers that you grant to your attorneys.

The LPA has safeguards in place to protect the donor. You grant to your attorneys wide ranging powers, and it is therefore important that you carefully consider who you wish to appoint. You must be able to trust your attorneys completely. The safeguards in place include a requirement that the LPA must be registered before it can be used and that the donor must identify someone to provide a certificate confirming you understand the purpose of the LPA.

You also have the opportunity to include in the LPA a list of up to 5 people that you wish to be notified before the registration of the LPA. You should consider including people who know you well, and are close to you, as they have the opportunity to object to the registration if they do not feel it would be in your best interests.

The LPA enables you to appoint replacement attorneys, should any of your attorneys be unable or unwilling to act for any reason. You can include conditions in the LPA stating that the replacement is to replace:

- any attorney who does not wish to or is unable to carry out their duties;
- a specific attorney, should that attorney be unable to act;
- any attorney except a specified attorney.

In order to complete the LPA you must select a Certificate Provider to complete Part B of the LPA. You may choose a Certificate Provider from 1 of 2 categories. You may ask someone that you have known personally for at **least 2 years**, in which case they can complete Category A. Alternatively, you can ask someone with the relevant professional skills and knowledge, for example a solicitor, to certify the LPA, and they would complete Category B.

This is a very important decision, as it is this provider that confirms that you have the capacity to complete the LPA, and that you understand the contents of it, as well as the powers you are granting to your attorneys.

If you do not choose anyone to be notified before the registration of the LPA, you must choose a further Certificate Provider. There are several categories of people who cannot be a Certificate Provider, and these include a member of your or your attorney’s family, or an attorney appointed in the LPA or any other LPA made by you.

The LPA can be registered at any point after it has been signed by the donor, the Certificate Provider, and all of the attorneys, including any replacements. It **cannot be used** until it has been registered. However, you cannot make changes to the LPA once it has been registered. Should you wish to make amendments, you will need to consider making a new LPA.

A new change to the law is that the Office of the Public Guardian will now hold all the LPA information in a searchable database, and, once registered, certain pieces of information contained in your LPA will be available to anyone who searches the register. The register is designed to enable those with an interest, such as healthcare professionals, to see whether an LPA has been registered.

PERSONAL WELFARE

A Personal Welfare LPA will enable you to appoint attorneys to make decisions for you in relation to medical treatment, and whether to give or refuse consent to such treatment. They are also able to decide where you should live. However, they are only able to make these decisions once you have lost the capacity to make them yourselves, be it through injury, or because of the onset of a mental condition.

However, a Personal Welfare LPA does not allow your attorneys to make decisions in relation to your property and affairs. To do this, a property and affairs LPA must be completed, and correspondingly, a property and affairs LPA will not enable your attorneys to make decisions relating to your personal welfare.

The powers granted to your attorneys under the Personal Welfare LPA are broad in scope, ranging from significant decisions such as:

- giving or receiving particular types of healthcare including medical treatment
- consenting or refusing operations, or a particular course of treatment
- choosing whether you should be allowed to stay in your own home, or whether you need to be moved into a care home
- deciding, alone or with others, on the level of care which you may require
- arranging for you to undertake work, education or training
- deciding on your daily routine, including your diet

The Personal Welfare LPA contains the same safeguards as the Property and Affairs LPA, discussed earlier. You are able to add further safeguards should you wish, including restricting your attorneys to only making decisions about a particular illness that you may have. You must consider whether you wish to place conditions or restrictions upon your attorneys. You can state that you wish your attorneys to discuss matters with a particular person before a decision is made, or limit the powers that they have. One limit is to allow them to only make decisions about your social care or healthcare, but not both. However, the conditions must be carefully worded in order that any health or social care staff can understand them in the future

Because of the powers that you are granting to your attorneys it is very important that you choose them carefully. You can choose to appoint any member of your family, a friend or anyone willing to act for you, provided they are over 18, including a spouse. However, should you choose a spouse and your marriage is dissolved or annulled, the LPA will cease unless you have provided for a replacement, or you have appointed more than one attorney and allowed for them to act together and separately.

Your attorneys can only act within the powers that you grant them under the Personal Welfare LPA. There are several areas in which they are unable to make decisions on your behalf, including consenting to a marriage or civil partnership, or consenting to the annulment or dissolution of a marriage or civil partnership.

One of the most important sections of the Personal Welfare LPA relates to 'life-sustaining treatment'. If you wish your attorneys to have the power to make these decisions you must expressly grant them this on the form. If not, any decisions will be made by a health professional. 'Life-sustaining treatment' means any treatment that is needed to keep you alive, from serious surgical operations to antibiotics if you contract pneumonia.

If you allow your attorneys to make decisions about life-sustaining treatment this may mean making decisions about withdrawing treatments if they are not effective.

Any LPA made in England and Wales *WILL NOT* be legally binding for use in other countries including Scotland.

This fact sheet deals briefly with what is a highly complex subject. It should not be taken as complete, accurate or precise

Full legal advice should be sought wherever a legal situation arises

September 2008