

# LASTING POWER OF ATTORNEY FACTSHEET



## **What is a Lasting Power of Attorney?**

A Lasting Power of Attorney (LPA) is a legal document that lets you choose trusted people to act on your behalf and make decisions for you, if you are unable to do so yourself, due to mental or physical incapacity. There are two types – one looking after finance and property and the second looking after health and welfare.

## **When can I make an LPA?**

An LPA needs to be prepared and signed by you, as the Donor, whilst you have mental capacity to do so. The LPA needs to be prepared in good time and ideally before it is needed for use. If there is no LPA signed before you lose mental capacity then it is not possible to put an LPA in place. It is better too early rather than too late!

## **Who can I appoint as my Attorney?**

You can appoint any number of Attorneys or Replacement Attorneys to act for you under an LPA. You specify who you would like to act, the order of your Attorneys acting and how your Attorneys act. You may want to consider a number of Attorneys being appointed jointly and severally. This means there is flexibility as to who makes decisions or acts. It can be just one attorney for one bank account, for example, with another looking after a different account or they could decide both act on both accounts. If you have concerns you may wish to appoint Attorneys jointly so they have no option but to decide and act together. This can cause some problems from a practical perspective, so needs to be carefully considered. It can be advantageous to have a number of different Attorneys in case one of those people named as Attorneys cannot act for you and sometimes to help share the load.

## **How will a Lasting Power of Attorney help me?**

The LPA gives your Attorneys powers to deal with your finances and property or health and welfare decisions. This will provide peace of mind knowing that both your day to day finances and expenses are looked after in the event that you are not able to do that yourself. It ensures that your trusted Attorneys can assist and protect your financial wealth and your personal wellbeing. This is something that loved ones often want to be able to do but they need an LPA to be able to act in that capacity for you.

### **Why should I make a Lasting Power of Attorney now?**

Without an LPA in place it can be very difficult for your finances and welfare to be adequately managed and looked after, in the way that you would like. If you lose the ability to look after your own finances or welfare then there is no other person with legal responsibility to do that in the absence of an LPA being in place. The recourse at that time would be to the Court of Protection which is a lengthy and expensive procedure. It also means the Court decides who to appoint to act on your behalf, rather than you retaining control of that decision. It can also be helpful to have these documents where there is a physical reason that you are unable to look after your finances – such as a temporary stay in hospital or physical issues meaning you are unable to get out.

### **I have an Enduring Power of Attorney - do I still need a Lasting Power of Attorney?**

Enduring Powers of Attorney were prepared up to 2007 and can still be used. It is not possible to create a new EPA but instead LPAs took over from 1st October 2007. EPAs cover finances only, not welfare. It is worth thinking about putting a LPA in place to cover your welfare decisions.

### **Is it necessary to register a LPA straightaway?**

An LPA can be prepared and signed by the Donor, the Certificate Provider, the Attorney and Replacement Attorneys now. It is not necessary to register straightaway but recommended to ensure there are no problems with the document and it is ready to use in an emergency. The registration process with the Office of the Public Guardian can cause a significant delay in the document being useable. It is currently taking in the region of 12 weeks to register a Lasting Power of Attorney and so early registration makes sense to avoid problems in the future.

If you would like more information about the issues raised, please get in touch with our Private Client team.

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