

## Fact Sheet

# Enduring Powers of Attorney and Lasting Powers of Attorney

### Lasting Powers of Attorney (LPA)

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

An LPA is a legal document that you (the Donor) make using a special form. It allows you to choose someone (the Attorney) that you trust to make decisions on your behalf about things such as your property and affairs or your personal welfare at a time in the future when either you no longer wish to make those decisions or you lack the mental capacity to make those decisions yourself.

It is possible to appoint more than one person to take those decisions on your behalf. You may also appoint one or more persons to act in respect of your Property and Finances and different people to take decision relating to your Personal Welfare.

An LPA **can only be used** after it is registered with the OPG. This differs from the EPA which only needs to be registered if the person giving the power has lost mental capacity to understand the decisions being taken on their behalf.

There are two different types of LPA:

#### *(1) The personal welfare LPA*

A Personal Welfare LPA allows you to plan ahead by choosing one or more people to make decisions on your behalf regarding your personal healthcare and welfare.

These personal welfare decisions can only be taken by somebody else when you lack the capacity to make them for yourself; for example if you are unconscious or because of the onset of a condition such as dementia.

The Attorney(s) you appoint to make personal welfare decisions will only be able to use this power once the LPA has been registered and provided that you cannot make the required decision for yourself.



You can decide to give your Attorney the power to make decisions about any or all of your personal welfare matters, including healthcare matters. This could involve some significant decisions, such as:

- giving or refusing consent to particular types of health care, including medical treatment decisions; or
- whether you continue to live in your own home, perhaps with help and support from social services, or whether residential care would be more appropriate for you.

If you want your Attorney(s) to have the power to make decisions about 'life-sustaining treatment', **you have to** expressly give your chosen Attorney(s) the power to make such decisions.

You can also give your Attorney(s) the power to make decisions about day-to-day aspects of your personal welfare, such as your diet, your dress, or your daily routine. It is up to you which of these decisions you want to allow your Attorney to make.

This type of LPA does not allow the person(s) you have chosen (your Attorney) to make decisions about your property and affairs. If you would like someone to be able to make property and affairs decisions on your behalf you will need to make a Property and Affairs LPA.

## **(2) *The property and affairs LPA***

A Property and Affairs LPA allows you to plan ahead by choosing one or more people to make decisions on your behalf regarding your property and financial affairs.

You can appoint a property and affairs Attorney to manage your finances and property whilst you still have capacity as well as when you lack capacity. For example, it may be easier for you to give someone the power to carry out tasks such as paying your bills or collecting your benefits or other income.

This might be easier for lots of reasons: you might find it difficult to get about or to talk on the telephone, or you might be out of the country for long periods of time.

You can decide to give your Attorney(s) the power to make decisions about any or all of your property and affairs matters. This could include paying your bills, collecting your benefits or selling your house.



This type of LPA does not allow the person(s) you have chosen (your Attorney) to make decisions about your personal welfare. If you want someone to be able to make personal welfare decisions on your behalf you will need to make a Personal Welfare LPA.

### ***Who can make an LPA?***

Anyone aged 18 or over, with the capacity to do so, can make an LPA appointing one or more Attorneys to make decisions on their behalf.

### ***People involved in making an LPA***

The following are the different people involved in making an LPA:

- ***Donor***  
A Donor is someone who makes an LPA appointing an Attorney(s) to make decisions about his/her personal welfare, property and affairs or both.
- ***The Attorney(s)***  
An Attorney is the person(s) you choose and appoint, using an LPA form, to make decisions on your behalf about either your personal welfare of property and affairs or both. It is an important role and one that the person chosen has to agree to take on.
- ***Named person(s)***  
A named person is someone chosen by the Donor to be notified when an application is made to register their LPA. They have the right to object to the registration of the LPA if they have concerns about the registration. The named person(s) are specified in the LPA form. Selecting people to notify of an application to register is one of the key safeguards to protect you if you make an LPA.
- ***Certificate provider***  
A certificate provider is a person the Donor must select to complete a Part B Certificate in the LPA form. The certificate provider must confirm that the Donor understands the LPA and that the Donor is not under any pressure to make it. The certificate provider is an important safeguard introduced by the new system.



- **Witness**

A witness is someone who signs the LPA form to confirm that they witnessed:

- the Donor (the person making the LPA) signing and dating the LPA form; and/or
- the Attorney(s) (the person appointed by the Donor) signing and dating the LPA form.

It is an important role and acts as a further safeguard.

### Is there any requirement to register the LPA?

An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA will not give the Attorney any legal powers to make a decision for the Donor. The Donor can register the LPA while they have capacity, or the Attorney can apply to register the LPA at any time. Whilst in theory the OPG should register an LPA within 6 weeks, in reality registration is taking much longer and more in the region of 12 weeks. The OPG are very strict upon the way a document has been drafted and completed and if it has not been done correctly they may refuse registration. This can lead to many problems where capacity of the person giving the power has worsened as they may be unable to complete a replacement document. It also increases costs as a further registration fee will be payable upon resubmission to the OPG. These are further reasons why such documents should be prepared only after taking proper legal advice and by a suitably qualified person to ensure that delays and errors are minimised.



## Enduring Powers of Attorney (EPA)

### I already have an Enduring Power of Attorney (EPA)

The Mental Capacity Act replaces the EPA with a new and different type of power of attorney called a Lasting Power of Attorney (LPA). This means that you cannot make any changes to an existing EPA or make a new one. It does not invalidate any existing documents.

However if you have an unregistered EPA, your Attorney will still need to register it with the Office of the Public Guardian (OPG) if they have reason to believe you are, or are becoming, mentally incapable in the future.

You can also make an LPA to run alongside an EPA if you wish. For example you may have an existing EPA that makes provision for decisions about your property and affairs, and decide to make a Personal Welfare LPA to run alongside that, to provide for decisions concerning your healthcare and welfare.

### Revoking (cancelling) an existing EPA

An Enduring Power of Attorney (EPA) must be registered when the Donor is losing or has lost the mental capacity to manage their own affairs.

If your EPA is currently unregistered you may also consider replacing it with a Property and Affairs LPA. You can revoke an unregistered EPA at any time whilst you have the mental capacity to do so. However, if the EPA has been registered, it cannot be revoked except by permission of the Court of Protection.

The best way to revoke an unregistered EPA is to sign a formal document (called a 'Deed of Revocation'). We can assist you with this, please contact **Emma Harrison** in our private client department.

### How to contact us

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