



# LASTING POWERS OF ATTORNEY

EXPLANATORY GUIDANCE

Anyone, at any time, can become incapable to legally manage their own affairs, sometimes temporarily, sometimes permanently, often unexpectedly. This is known as mental incapacity.

If you become mentally incapable, who would you want to make decisions about your medical treatment or your care needs or your finances or any property you own? The law does not grant any automatic legal entitlement for anyone to make those decisions on your behalf, irrespective of whether they are your family or not.

## **LASTING POWERS OF ATTORNEY** (“LPA” for short)

It is possible to ensure that if you become mentally incapable your affairs can be managed on your behalf by family or friends or professional advisors – that is, by people you have chosen and appointed by yourself. You can do this by granting an LPA.

This ensures that your affairs are dealt with how you want them dealt with and it avoids a lengthy and costly Court process having to be begun by social services or those around you for the Court to determine who should act on your behalf, in which matters and on what terms.

### **WHAT IS AN LPA?**

An LPA is a legal document that enables you to grant to a specified person (or persons), known as your Attorney(s), authority to act on your behalf to make decisions regarding your affairs if you become mentally incapable to make those decisions yourself.

Subject to certain conditions and safeguards, an LPA remains in force until your death. Whereas a Will determines what is to happen to your affairs on your death, an LPA deals with your affairs during your lifetime. You might like to think of an LPA as a form of ‘insurance policy’ – something you enter into now and which aims to protect you against problems that might arise in the future.

There are two types of LPA:

- Health & Welfare LPA – this deals with decisions regarding your medical treatment, general welfare and any care needs;
- Property & Financial Affairs LPA – this deals with decisions on use of your finances, assets and property you own or co-own.

## ARE THEY DIFFERENT TO ENDURING POWERS OF ATTORNEY?

It is no longer possible to enter into an Enduring Power of Attorney (“EPA” for short). LPAs have replaced EPAs.

If you have an existing EPA it may still be valid and usable. It is important to remember though that an EPA only covers your property and financial affairs. You will still need to enter into a Health & Welfare LPA for anything to do with decisions regarding your medical treatment, general welfare and care needs.

## IS THERE A GOOD TIME TO THINK ABOUT LPAs?

Any time is a good time to consider an LPA!

It is strongly advised to consider preparing one or both LPAs whatever stage of your adult life you are at. As highlighted at the outset, anyone, at any time, can become incapable to legally manage their own affairs, sometimes temporarily, sometimes permanently, often unexpectedly.

As long as you have mental capacity, it is never too early or too late to consider an LPA. It is a misconception to think that an LPA is *only* something to consider at the post-retirement or later-life stage.

From a practical point of view, it is always best to make an LPA before a problem arises. A common misconception is to associate loss of mental capacity solely with an illness such as Alzheimer’s when in reality it could arise at any time either through other illnesses or as the result of an accident, such as a car or sporting accident.

## WHAT HAPPENS IF I DO NOT HAVE AN LPA?

There is no automatic legal provision to give any person any specific authority to act on your behalf if you were to lose mental capacity for whatever reason. To get such specific authority a person would have to apply to the Court. That is a costly and potentially lengthy process (significantly more costly than an LPA) and carries ongoing obligations to the Court for that person. You cannot influence the process (as you no longer have mental capacity) and you have no control over who gets the authority.

In relation to finances in particular, your money may be frozen until the Court appoints someone to deal with your affairs. During the time that it takes to complete the process, your affairs are not looked after and bills may not be paid.

## WHAT IS THE POSITION IF I HAVE AN LPA?

You choose who will make decisions on your behalf. They are appointed by you and you grant them the legal right and direct what decisions they can make on your behalf.

An LPA does not take away from you any ability for you to take decisions regarding your own affairs but simply puts in place provisions for who you would wish to make those decisions for you if you were unable to make them yourself.

## ATTORNEYS

### WHO SHOULD I CHOOSE AS MY ATTORNEY?

You should choose someone you trust and know will be able to make suitable decisions on your behalf.

The person needs to be over 18.

It is a considerable responsibility to be an Attorney, so if you wish to appoint a family member or friend, it would be sensible to ask them beforehand if they are happy to act.

Consider multiple Attorneys. It is in general advisable to make any LPA as 'complete' as you can so as to seek to avoid any potential need to change it at a later date at further cost. Think about the age, health and circumstances of your Attorney. If you appoint only one Attorney, think about what would happen if they are no longer able to act when later needed (if they die or become mentally incapacitated, for example) - your LPA would no longer be of use for what you had intended.

There are two ways of appointing multiple Attorneys. You either appoint more than one Attorney (they are all appointed jointly together) or you appoint what are known as Replacement Attorneys (they 'step in' to become appointed should your Attorney(s) no longer be able to act). You can appoint more than one Replacement Attorney.

If you appoint multiple Attorneys (whether as Attorneys or Replacement Attorneys), you must decide whether they are to act "jointly" or "jointly and severally".

If appointed “jointly”, your Attorneys must always act together and cannot act separately – for example, they would all have to agree to a decision regarding your care. Of special note to consider is that if any of them died or refused to act, the LPA would become ineffective.

If appointed “jointly and severally”, your Attorneys can all act together but can also act separately if need be. Any of them can make decisions on your behalf as if acting alone. If one of them died the other(s) could continue to act on your behalf and the LPA would remain effective.

You can specify that some decisions of your Attorney(s) be made “jointly” and other decisions be made “jointly and severally”. It is crucial in this scenario to ensure that such imposed conditions would work in practice.

### **WHAT AUTHORITY DO I GIVE MY ATTORNEYS?**

By default, you give your Attorney(s) general authority to act on your behalf in all matters covered by the particular LPA (either Health & Welfare or Property & Financial Affairs).

If you wish, you can restrict your Attorney(s)’ authority by placing preferences or instructions on them. Those must be workable legally and in practice otherwise the LPA may not be valid and can be rejected.

So, whilst your Attorney(s) will by default have full unrestricted powers to make decisions on your behalf unless you choose to impose restrictions, remember that this is part of why you choose your Attorney(s) carefully in the first place and that if you limit their powers, that could restrict their ability to look after your affairs properly or fully.

## **HEALTH & WELFARE LPA**

### **WHAT DOES IT COVER?**

In an unrestricted Health & Welfare LPA your Attorney(s) can potentially make decisions regarding:

- giving or refusing consent to healthcare;
- staying in your own home and getting help and support from social services;
- moving into residential care and finding a good care home;
- day-to-day matters such as diet, dress and routine;
- arrangements for medical, dental or optical treatment;

- assessments for and provisions of community care services;
- complaints about your care and treatment.

### **WHEN DOES IT BECOME OPERATIVE?**

As long as the Health & Welfare LPA is registered (see later), your Attorney(s) can make decisions for you on those specific aspects of your health and welfare for which you no longer have the mental capacity to make decisions yourself.

### **WHAT DOESN'T IT COVER?**

In essence, your Attorney(s) under a Health & Welfare LPA can do anything you can, except:

- remake or alter your Will;
- make decisions about your property or financial affairs;
- anything prohibited or restricted by the LPA;
- act on your behalf in your capacity as a trustee;
- make a decision regarding life sustaining treatment motivated by a desire to bring about your death.

### **LIFE SUSTAINING TREATMENT**

A specific choice you have to make when entering into a Health & Welfare LPA is in relation to life sustaining medical treatment. That is any treatment which in the view of the medical professionals treating you is necessary to keep you alive. There are a variety of circumstances that may involve life sustaining treatment but it could include medication, an operation or imposition of life support systems.

The choice you have to make is whether to give your Attorney(s) authority to make a decision on life sustaining treatment on your behalf or whether not to.

## **PROPERTY & FINANCIAL AFFAIRS LPA**

### **WHAT DOES IT COVER?**

In an unrestricted Property & Financial Affairs LPA your Attorney(s) can deal with all of your property and financial affairs as if they were the owner, for example potentially making decisions regarding:

- buying and selling your home or other property;
- opening, closing and using your bank and building society accounts;
- claiming, receiving and using your benefits, pensions and allowances;
- paying your household, care and other bills;
- making or selling investments.

### WHEN DOES IT BECOME OPERATIVE?

Within the Property & Financial Affairs LPA itself, you must decide whether authorisation is given to your Attorney(s) on registration of the LPA (see later) or upon your loss of mental capacity. This is not always an easy decision and we will talk you through the choice and the practical considerations it is wise to bear in mind.

### WHAT DOESN'T IT COVER?

In essence, your Attorney(s) under a Property & Financial Affairs LPA can do anything you can, except:

- remake or alter your Will;
- make substantial gifts;
- make decisions about your medical or health care;
- anything prohibited or restricted by the LPA;
- act on your behalf in your capacity as a trustee

## LEGALITIES

### CERTIFICATE PROVIDER

To make a valid LPA you must have someone act as your certificate provider. They provide a certificate as to your mental capacity and confirm that you understand and approve the contents of the LPA and your choice of Attorney(s) and that you are not under any pressure to make the LPA. The Certificate Provider must be an independent person (independent to anything within the LPA) and must meet certain criteria.

If we are acting on your behalf in preparing your LPA, we will act as your Certificate Provider. It will be necessary for us to meet with you and to speak with you alone.

## REGISTRATION

Before an LPA can be used by your Attorney(s) it must be registered at the Office of the Public Guardian.

An application for registration can be made at any time once the LPA is completed and it can be made by you or by your Attorney(s). A fee is payable to the Office of the Public Guardian on registration, currently £110. The registration process usually takes around 3 months.

We recommend that an LPA is registered as soon as it is completed. We register as a matter of course if we are acting on your behalf in preparing your LPA. This avoids potential later problems in your Attorneys being unable to act whilst waiting for the Office of the Public Guardian to complete their processes if the application for registration has only been made once you have lost mental capacity. It also allows the LPA to be 'ready and waiting' for when it is needed. You can either keep your registered LPA yourself or we can hold it for you.

## NAMED PERSONS

You have the choice to nominate one or more 'Named Person's in your LPA. This is a free choice. A 'Named Person' is someone chosen by you to be notified when any application is made to register your LPA. They have the right to object to registration of the LPA if they have concerns, for example about your ability to have made the LPA or if they suspect fraud. It is designed as a safeguard to protect you and can be useful, for example, if you are excluding close family or friends from the LPA and do not wish later questions to be raised about that which may jeopardise the LPA.

## HOW WE CAN HELP

### WHO ARE LEIGH DUNCAN SOLICITORS?

We are a small, family-run, firm of Solicitors based in Beaconsfield town centre newly established in 2016 by a husband and wife team who have extensive experience in working for and servicing the local community.

We pride ourselves on our expertise, approachability and, above all, customer service. You can ask us anything, anywhere and at any time. We will always put you first.



As Solicitors we are authorised and regulated by the Solicitors Regulation Authority. Details are on the reverse of this leaflet.

### **DO I HAVE TO USE A SOLICITOR FOR AN LPA?**

No. There is no requirement that you must use a solicitor to enter into an LPA.

However, LPAs are important legal documents and you must make a number of informed choices and decisions when entering into them. It is prudent that you take advice and guidance on that to avoid any pitfalls and to avoid inadvertent consequences from the LPA through misunderstanding the process or forms. Bear in mind also that if there are errors in your documentation or anything within it which the Office of the Public Guardian deems unworkable you risk the LPA being rejected on application for registration and loss of your registration fee.

### **WHERE CAN YOU SEE ME?**

We are happy to see you anywhere, if your circumstances dictate it and within reasonable locality.

You can come into our offices or we can visit you at home. We are flexible and can arrange appointments out of normal office hours if needed.

### **HOW MUCH DO YOU CHARGE?**

We undertake LPAs at competitive fixed per-document fees. Our charges are inclusive of VAT. If we quote you a figure, that is what you will pay. This allows you to budget and it gives you certainty.

Unlike some other solicitors or companies our fixed fee includes our work in registering the LPA for you with the Office of the Public Guardian (subject to you paying the Office of the Public Guardian's own registration fee).

Contact us for details of our fixed LPA fees.

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Contact us for any further information or questions you may have arising out of this leaflet.  
We are ready and willing to help you with LPAs or any other service we provide.

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This leaflet offers explanatory guidance in generalised terms on what is a complex subject. It is not designed as full or partial legal advice on any given personal or general circumstances. Whilst we believe the contents to be correct at the time of printing, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning anything referred to in this leaflet and neither Leigh Duncan Solicitors nor the author can accept any responsibility for any loss suffered, whether directly or indirectly, by any person as a result of acting in reliance upon the contents of this document.

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Leigh Duncan Solicitors is a trading name of Leigh Duncan LLP, registered as a Limited Liability Partnership in England & Wales, No.OC403471. The registered office is as above and the members of the LLP are Janine Leigh Heil and Ingmar Duncan Heil. Leigh Duncan LLP is authorised and regulated by the Solicitors Regulation Authority, No.628752. VAT registration number 241163345.