

Lasting Powers of Attorney (LPA)

Have you ever considered how you would manage if you became incapable of managing your finances, either because you were physically incapable of going to the bank or signing cheques or if you were mentally incapable? Have you also considered whether you would like someone else to make decisions about where you live or what medical treatment you should receive in the event that you cannot make such decisions yourself due to mental incapacity?

Although it is sometimes difficult to think about such a thing happening to you, simple tasks can become more and more difficult as you get older and especially if you become ill, have an accident or suffer from an illness such as dementia or Alzheimer's. Occasionally, much younger people may suffer a loss of mental capacity due to a sudden illness or as a result of an injury or accident.

Whilst you are still fit and well, you can prepare a document which allows **YOU TO CHOOSE** who you would want to deal with your finances if you are unable. The document is a Lasting Power of Attorney (LPA) whereby you appoint one or more Attorneys to deal with your property and affairs or make personal welfare decisions. This can allow your Attorneys to carry out everyday tasks such as paying your bills or more significant duties such as selling your house or for them to decide where you live or what medical treatment you receive.

This information sheet answers ten of the most important questions about LPAs.

1. What are LPAs?

LPAs were created by the Mental Capacity Act 2005 (MCA 2005). The MCA 2005 covers England and Wales and provides a statutory framework for adults who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they may lack capacity in the future.

2. How do they work?

An LPA enables a person aged 18 or over (the donor) to appoint another person or persons (their donee or attorney) to act on their behalf, following the principles of the MCA 2005, if they subsequently lose capacity. A person can choose to delegate decisions affecting their personal welfare - including healthcare and medical treatment decisions - as well as decisions concerning their property and financial matters to their attorney(s).

3. What types of LPA are there?

Property and affairs LPAs (PALPA)

PALPAs can be used to appoint attorneys to make a range of decisions – including the buying and selling of property, operating a bank account, dealing with tax affairs, and claiming benefits.

Personal welfare LPAs (PWLPA)

PWLPA's might authorise the attorney(s) to make decisions about where the donor should live, consenting to or refusing medical treatment on the donor's behalf, and day-to-day care, including diet and dress.

4. Do they need to be Registered?

The LPA must be registered with the Office of the Public Guardian (OPG) before it can be used.

5. Who should I choose as Attorney(s)?

The choice of Attorney(s) is clearly a personal decision for the donor, but the Attorney(s) must be absolutely trustworthy. The appointment of a sole attorney, whether this be for a PALPA or a PWLPA, may provide greater opportunity for abuse and exploitation than appointing more than one attorney. If the donor wishes to

create both a PALPA and a PWLPA then they should consider whether they wish to appoint different attorneys for each LPA.

It is possible to allow some flexibility, for example the donor may wish to appoint **a family member and a professional to act together and independently** with, perhaps, the family member dealing with day-to-day matters, and the professional dealing with more complex decisions.

6. What if I want more than one Attorney?

Where more than one attorney is to be appointed for a PALPA or for a PWLPA, they must be appointed to act 'together', 'together and independently' or 'together in respect of some matters and together and independently in respect of others.'

7. What type of authority should I give them?

The donor must be clear whether the LPA is to be a general power, giving the attorney(s) authority to manage all the donor's property and affairs or to make all personal welfare decisions, or whether any restrictions and/or conditions are to be placed on their power.

General authority under a PWLPA will include all healthcare decisions, except: giving or refusing consent to life-sustaining treatment (unless the LPA document expressly authorises this).

8. What is the certificate?

A valid LPA – whether it be a PALPA or PWLPA - must include a certificate completed by an independent third party known as the 'certificate provider' confirming that in his or her opinion:

- the donor understands the purpose of the LPA and the scope of the authority under it;
- no fraud or undue pressure is being used to induce the donor to create the LPA; and
- there is nothing else that would prevent the LPA being created.

Only certain people can make the certificate including someone who knows the donor personally and has done so for the previous two years or someone who has the relevant professional skills and expertise to certify the LPA. Examples include a GP, social worker, and lawyers.

A certificate provider cannot be under 18 or a member of the donor's or attorney's family or certain other persons

9. Does the LPA have to be Registered?

The LPA cannot be used until it has been registered with the OPG.

10. When can the LPA be used?

A PALPA can be used while the donor still has capacity, unless it specifies that it can't.

A PWLPA can only be used when the donor no longer has capacity to make the particular decision affecting their health or personal welfare.

If you wish to prepare an LPA please contact the any member of the Private Client Team:

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Or by telephone on 01904 624185 (York) 01757 708957 (Selby) 01653 600070 (Malton) or 01262 609585 (Bridlington). Alternatively, please call in to any of our offices to arrange an appointment.

This document does not constitute legal advice in its own right. Always seek personal advice direct from a solicitor before you take any action.