

## Lasting Powers of Attorney (LPAs)

### What are Lasting Powers of Attorney?

LPAs are legal documents used to appoint another person or persons to make decisions for you if you cannot make the decision for yourself at the time the decision needs to be made.

There are two types of LPA- one covers property and financial decisions and the other covers health and welfare decisions such as consent to medical treatment, nursing care and where you live and who visits you. You can appoint one or more attorney and replacement attorneys.

It is essential to remember that the health and welfare decisions are covered only if you lack the mental capacity to make the decision for yourself, for example through sudden illness such as stroke; longer term illness such as Alzheimer's disease or accident. In your health and welfare LPA, you are able to give your attorneys authority to give or refuse consent to life sustaining treatment.

### What happens if I don't make the LPAs and I lose capacity to make my own decisions?

The answer is different depending on whether the decision is finance or property or concerns your health and welfare.

**Let's look at an example: Jane has a stroke and is incapable of making decisions.** She owns a house and has her own pension and her widow's pension; Jane lives alone and has three children and six grandchildren. Jane made a Will but did not make LPAs.

**Jane's bank accounts and assets are frozen.** Her children need to use her money to pay for care but have no legal authority to gain access to the money. Her children must now decide who will apply to the Court of Protection for a Deputyship Order which will provide legal authority to deal with Jane's assets. The application is complex and expensive. After four months, the Order is made and the Deputy is able to manage Jane's finances and property under the strict auspices of the Court of Protection.

**There is an issue regarding Jane's future care and treatment and where she should live.** The multi-disciplinary team meet to discuss Jane's circumstances and to take a best interests decision regarding these issues. The medics involved with Jane's care meet including her doctor and the physiotherapist and speech therapist and social worker. They manage to involve one of the children and seek her views but there is a problem because they don't contact the other two children who live a little further away. The family's views are not properly taken into account but they don't have any authority and feel frustrated and powerless to protect their mum.

**Note that even if Jane's husband had been alive, he would not have legal authority.**

### What happens if I make LPAs and I lose capacity to make my own decisions?

The LPAs must be registered at the Office of the Public Guardian which body is responsible for the supervision and regulation of LPAs. It is advisable to register the LPAs when they are made and then they can be used without any delay (it takes approx. two months to register them).

**The LPAs can then be used by the attorneys without any delay at all.**

Let's return to Jane. In her finance LPA she appointed two of her children as the attorneys with the third child as replacement. In her health LPA, Jane appointed the third child as first named attorney with the other two acting as replacements.

The appointments had been considered carefully by Jane and discussed and agreed before making the documents. The two children appointed as finance attorneys are both good with figures, they have full time jobs which makes it more difficult to organise care. The child appointed as the health and welfare attorney has more time, spends more time with Jane and has a gentle and caring nature.

The Court of Protection is avoided and the multi-disciplinary team acting alone is avoided.

### **Summary**

**If you wish to take control about who makes decisions when you can't make them for yourself, you should make LPAs.**

### **Why should I use a Solicitor to make LPAs?**

It is the era of do-it-yourself, everyone is their own expert, professionals such as doctors, teachers and solicitors aren't always relied on for their experience and expertise. The internet and all things digital have empowered the individual. It is possible to make LPAs yourself but I caution against it.

LPAs are incredibly powerful legal documents basically they provide the key to money and life and death decisions. It is difficult to say that such matters are simply a question of administration.

As a solicitor with many years' experience in dealing with these matters, I have a wealth of knowledge which would benefit you regarding LPAs. It is essential that you understand fully the extent of the decisions covered by LPAs, how they work in practice and the important safeguards available for your protection. The choice of who should act as your attorney is crucial. You should be advised about the duties attorneys are under regarding record keeping, consultation and how they must help and support you to make decisions and the important rule about acting in the least restrictive manner yet at the same time protecting your best interests.

Similarly, the attorneys need to know the nature of their duties and responsibilities.

Over the years, I have developed a practical way of you letting your attorneys have information not only about the nuts and bolts of your financial and digital worlds but also the relevant issues which would enable your attorneys to make a best interest decision for you. This is a further reason for instructing a solicitor to make your LPAs. The fee is modest and proportionate in other words it is good value for money.

### **And finally...**

It is essential to make your LPAs while you have capacity so don't put it off, no-one knows what's round the corner and it's important to protect yourself and make things easier for the people who care about you.

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