

lasting powers of attorney

health and welfare

Lasting Power of Attorneys (LPA's) were created by the Mental Capacity Act 2005. An LPA can be made by someone aged 18 or over (the Donor) to appoint another person or persons (the Attorney) to act on their behalf to assist them in relation to the management of their financial affairs and/or decisions in relation to their medical welfare.

information and facts

- These can be used 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, who the donor may have contact with, the donor's personal correspondence and papers, amongst other things.
- It is important to remember that the Personal Welfare LPA can be a very powerful document because of the wide ranging decisions that could be made on behalf of the donor.
- As your solicitor, we must be satisfied that on the balance of probabilities you, the donor, have the mental capacity to make an LPA. We may have to confirm the position with your GP or Consultant and you by signing our client care letter give us authority to do this unless you state in writing otherwise. If we are going to approach your GP we will inform you.
- We are required to complete a Certificate confirming you understand the purpose and scope of the LPA and that no undue pressure or fraud is involved in your decision to make an LPA. In order to do this we will require full details of your connection with your chosen attorney(s).
- You must consider the appointment of your Attorneys very carefully. Appointing Attorneys under a Personal Welfare LPA means that they will have legal power to deal with all personal aspects of your day to day life.
- A Personal Welfare LPA can only be used once you no longer have mental capacity. This means that you will have no influence or part in the decisions made about your personal welfare. The choice of attorney is, again, therefore extremely important.
- The choice of Attorney is your decision but you must make sure they are absolutely trustworthy for reasons set out above. If you chose to appoint a sole attorney then the risk of abuse is greater and you may therefore consider a joint appointment is more advisable.
- You can appoint more than one attorney. In addition you can give restricted powers to one attorney and other restricted powers to your other attorney. A general power under a Personal Welfare LPA will include all healthcare decisions except giving or refusing life-sustaining treatment unless the LPA document expressly authorises this.
- Further you can appoint your attorneys so that they must act jointly on all matters, jointly on some matters or so that they can independently of each other in relation to all or some matters.
- In relation to a joint appointment the LPA will terminate if any one of the jointly appointed Attorneys dies, disclaims, or lacks mental capacity. If you have appointed your Spouse or Civil Partner and you subsequently divorce them or enter into a dissolution of the civil partnership then the LPA will terminate in so far as that appointment is concerned.

- You can choose to appoint a replacement Attorney when you enter into the Deed to act if one of your first chosen Attorneys cannot continue to act. We will have asked you for details of any such person or persons you may wish to act as replacement Attorney.
- You can place restrictions or conditions on your Attorneys. We will have discussed this with you during the consultation. If you chose to include any restrictions, conditions or guidance these will appear in the draft LPA which we send to you for your approval.
- You are also able to set out your wishes and preferences for personal care, including healthcare which are not legally binding but which their attorneys will take into account in deciding best interests.
- Your LPA cannot be used at all until it has been registered with the Office of the Public Guardian and you no longer have mental capacity. There is currently a fee of £120 per LPA payable to the Court in addition to our fees. We recommend that the Power be registered as soon as possible after it has been signed and completed otherwise, when it is needed, your attorneys will not be able to use it for some weeks until they have gone through the registration
- As advised, you can choose to name up to 5 people to be notified when an application to register the LPA is made but this cannot include the attorneys.
- We advise you to name at least one person to be notified on registration as this is an important safeguard if you lack capacity at the time of registration. You will be relying on this person to raise concerns if registration is not appropriate.

life sustaining treatment

- Life sustaining treatment is defined as 'treatment which in the view of a person providing healthcare for the person concerned is necessary to sustain life.'
- A decision to give or refuse life sustaining treatment can only be made by the attorney if the donor has specifically confirmed this in the form and in the presence of a witness. The witness must be over 18 and cannot be the attorney.

your will

- We recommend that you authorise your solicitor to disclose the contents of your will to your attorney only if the solicitor deems it necessary. The reason for this is that it may prevent your attorney acting contrary to the intentions you have expressed in your will and provide valid guidance at a difficult time when you are unable to do so. We will have discussed with you whether you want such a power given to your solicitor in the LPA.