

EXPLANATORY NOTES

**LASTING POWERS OF ATTORNEY
(PROPERTY & FINANCIAL AFFAIRS)**

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Lasting Powers of Attorney (LPAs) are documents where you appoint people as your attorneys to look after your affairs should you either want them to do so, or should you no longer be able to look after your own affairs due to the lack of mental capacity. They are extremely important documents to both protect you (and your family) and also to provide you (and again your family) with peace of mind.

What is a Property and Financial Affairs LPA?

A Property and Financial Affairs LPA is a legal document where you authorise a named person (or persons) – your attorney(s) – to act on your behalf in relation to your personal property and financial affairs.

The LPA would normally remain in force until your death and can be used by your attorneys if you become incapable of looking after your affairs, or simply if you require their assistance in the future. A Property and Financial Affairs LPA is an insurance policy against problems that might arise in the future.

It is advisable for all adults to consider preparing a Property and Financial Affairs LPA and not just at the post retirement stage as many people believe.

What happens if I do not have an LPA?

If you become mentally incapable for whatever reason – and this could be at any age due to an accident or ill health, or due to an illness such as dementia – and you do not have an LPA, your finances may be frozen until the Court of Protection appoints a deputy to look after your affairs on your behalf.

A Deputyship application can take months, it is more expensive than an LPA, there are ongoing annual charges and it can be more restrictive than an LPA. During this time your affairs are not looked after and bills may not be paid. Also, no-one can look after your financial affairs until the deputyship order has been granted – this includes any planned sale of your house if, for example this was necessary to pay towards care fees. Having an LPA in place avoids these issues.

What is the position if I have a Property and Financial Affairs LPA?

You choose who will look after your personal property and financial affairs. Your attorneys are able to act for you once your LPA has been registered with the Office of Public Guardian, which we would normally carry out once the LPA has been completed.

By preparing an LPA you are not restricting your right or ability to carry on looking after your own affairs for as long as you feel able – it simply means that there is someone to take over, if you want them to, or if they need to.

Who should you choose as your Attorney?

You should choose someone you trust, and who will be able to deal with your affairs in a business-like manner. The person needs to be over 18, of sound mind and not bankrupt when they sign the LPA. You should bear in mind that it is a considerable responsibility so if you wish to appoint a family member or friend (and they also have to sign the LPAs agreeing to act as an attorney), it would be sensible to ask them beforehand if they will act.

You may appoint more than one attorney, which we would normally recommend. If you do, the Property and Financial Affairs LPA must state whether they are to act “jointly” or “jointly and severally”.

If appointed “jointly”, they must always act together and cannot act independently – for example, all their signatures would be required on a cheque. Similarly, if any of them died or were unable to act, for whatever reason, the Property and Financial Affairs LPA would be ineffective.

If attorneys are appointed to act “jointly and severally”, they can all act together, but they can also act separately if need be. Any of them could individually sign cheques and if one of them died the others could continue to act on your behalf. I would normally recommend that attorneys are appointed to act “joint and severally” as this offers more flexibility and you would be appointing people you trust.

(You can also choose whether you wish your attorneys to act “jointly” in some decisions and “jointly and severally” in other matters. However, it is important to make sure your choices will actually work in practice and I do not normally recommend this option.)

What authority can I give my Attorney?

You are required to state whether your attorney has general authority to act on your behalf, or if you wish to restrict their authority. You can also say whether your attorney can deal with all your personal property and affairs, or only certain specific assets.

Unless you choose to impose restrictions, your attorney will have full unrestricted powers to deal with all of your property and financial affairs as if they were you. However, they can only act in your best interest. This means that, for example, the attorney could sell your house and sign cheques on your behalf.

Are there any restrictions to what my Attorney can do?

An attorney under a Property and Financial Affairs LPA can essentially do anything you can do, except:

- remake or alter your Will;
- make substantial gifts – or a gift that would be out of keeping with what you would normally give;
- make decisions about your medical or health care (please see our handout on Health and Welfare Lasting Powers of Attorney);
- do anything prohibited or restricted by the Property and Financial Affairs LPA; and
- act on your behalf in your capacity as a trustee.

Trusteeship

If you already act as a trustee (in other words holding land or other assets for a third party) it may not be possible for your attorney to act on your behalf in your additional role as a trustee unless you specifically grant them extra powers to do so. If you are not sure whether you act as a trustee or have any queries in relation to trusteeship and Powers of Attorney, please do not hesitate to contact me.

Named Persons

A Named Person is someone chosen by you who is to be notified when an application is made to register the 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, but I would not normally

include this provision now as procedures have changed since LPAs were first introduced in 2008 and Named Persons are no longer normally seen as being necessary. However, please discuss this with me if you have any questions, or wish to discuss this further.

Certificate Provider

When completing the LPA, it is necessary for a person to sign the LPA providing a certificate as to your mental capacity and to confirm that you understand and approve the contents of the LPA, and also that you are not under any pressure to make it. The Certificate Provider must be an independent person and can either be:

- a person who has known you personally for more than two years; or
- a person with suitable qualifications and expertise to certify the Property and Financial Affairs LPA.

If I am preparing the LPA for you then I would often be able to act as your Certificate Provider.

What happens if my attorney needs to use the LPA – Property and Financial Affairs?

Before the Property and Financial Affairs LPA can be used by your attorney, it must be registered at the Office for the Public Guardian (OPG). It should be noted that the registration of the LPA does not mean that you have lost, or are losing, mental capacity, as was the case with earlier legislation (Enduring Powers of Attorney).

The application for registration can take place at any time once the LPA has been completed by you and your attorney(s). As the Property and Financial Affairs LPA cannot be used until the registration has taken place, you can choose whether to apply for registration as soon as the LPA has been completed, or to wait until you or your Attorney feels it necessary to begin helping you manage your financial affairs. I normally recommend registration once the LPAs has been completed.

If your attorneys are acting on your behalf, either because you have asked them to, or because they need to due to your no longer having the mental capacity to manage your own affairs, they need to act in your best interest at all times, as noted above. I will happily discuss matters with your attorneys if they wish.

Summary

From both a practical and financial point of view, it makes sense for **everyone** to consider preparing a Property and Financial Affairs LPA, **whatever their age**. Once somebody has become unable to manage their affairs it is often too late to be able to make a valid LPA.

This handout is for information purposes only and covers the basic principles and should not be relied upon. If you would like to discuss LPAs or related matters, please contact me and I will be very happy to discuss this with you further.

This booklet deals in general terms with a complex subject. While we believe the contents to be correct, 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 any situations referred to in this booklet and Wanstall Consulting or its author can accept no responsibility for any loss suffered by any person as a result of acting in reliance upon the contents of this booklet.

(October 2021)