



# A GUIDE TO MAKING LASTING POWERS OF ATTORNEY

## Why make a Lasting Power of Attorney?

This leaflet explains how arrangements, which can be made by you now, can protect any future decisions relating to financial matters and your personal welfare, if you should become unwilling or unable to make those decisions for yourself.

## Informal arrangements

You could make informal arrangements to deal with your pension and your bank account. If your pension is paid into a Post Office Card Account, then you can arrange for your regular carer or someone else that you trust to have his/her own card and Personal Identification Number (PIN) so that he/she can access your account and withdraw money for you. Banks and Building Societies will have their own systems so that someone else can operate your account. Both these arrangements are useful if you are mentally capable of dealing with your own affairs, but have physical problems that prevent you from going to the bank or the post office yourself.

## Lasting Powers of Attorney

You can make formal legal arrangements using Lasting Powers of Attorney (LPA's). There are two separate Lasting Powers of Attorney that you can make: one to deal with your property and financial affairs, and one to make decisions regarding your personal welfare (including medical treatment). These documents authorise one or more people chosen by you to make decisions on your behalf. Different people can be chosen for each different LPA. The people you choose are known as Attorneys or Donees. It is your decision whether you make one LPA to cover either Property and Affairs or your Personal Welfare, or choose to do both.

## Mental capacity

Only you can instruct solicitors to prepare an LPA for you. Solicitors cannot accept instructions on your behalf. This is because we have to be certain that you have mental capacity, are able to understand and retain information, and fully understand the nature and effect of the LPA. As part of the LPA you are required to have a certificate provided by either someone who has known you for over two years or someone professional who can make judgements about your mental capacity at the time of making the LPA. There are restrictions as to who can provide this certificate, on which we can advise you. You cannot make an LPA if you lack mental capacity.

## Choice of attorney

You need to choose your Attorney(s) carefully. You may have more than one Attorney, who can act together or separately. Your Attorneys must be people that you trust completely. An LPA is a very powerful document. For example, your Attorneys could sell your home in order to pay for your care if you had to go into a nursing home. Your Attorneys could be your spouse and/or one or more of your children or could be a close friend. You could appoint your solicitor who would be entitled to charge for all work done as your Attorney.

## Use of LPA's

Your LPA cannot be used until it has been registered with the Office of the Public Guardian (OPG). Once stamped and returned from the OPG a Property and Affairs LPA becomes valid immediately. A Personal Welfare LPA can only be used however if you lack the mental capacity to make decisions on your own. There are positive and negative sides to registering your LPA's before you become incapacitated and our

experts will be happy to discuss this with you. Most people only want their Attorneys to act if they are unable to do so due to physical or, more usually, mental incapacity. Your solicitor will advise you about limiting the scope of your Attorney's authority and when the LPA is to be used and will explain how your Attorney uses the LPA once you have agreed that he/she should do so.

## **Mental incapacity**

If you do become or start becoming mentally incapable of dealing with your affairs, then you or your Attorney must register the LPA with the Office of the Public Guardian (OPG), if this has not already been done. When you make your LPA you can nominate certain people to be notified of the registration. When an application to register the LPA with the OPG is made, your nominated people will be informed, as well as yourself and your Attorneys. Notification allows you and your Nominees an opportunity to object to the registration of the LPA for certain reasons.

## **Termination of EPA**

An LPA remains valid until you die or until you revoke it, which you can only do if you still have mental capacity or your Attorney is incapable of acting. If this is done before registration of the LPA with the Office of the Public Guardian then it is a relatively straightforward process, but if changes or cancellations are required after registration it is a more complicated procedure.

## **Receivership**

If you do not make an LPA, and you become unable to manage your financial affairs, then no one can make financial decisions on your behalf without applying to the Court of Protection (through the OPG) to be appointed as a Deputy. This is a time consuming and expensive procedure.

In many ways an LPA is like an insurance policy – if all goes well, it may never be needed, but if your physical or mental health suffers, then its existence can make it much easier for someone to look after your affairs at a difficult time.

Useful booklets are available from [www.guardianship.gov.uk](http://www.guardianship.gov.uk) and there is also a comprehensive guide on the Age Concern Website

This is just a short guide. If you would like more information, please contact any of our offices.

## **How to contact us**

If you would like to make an LPA, we welcome enquiries and consultations by telephone, letter and e-mail, or why not call in to one of our offices and ask for further information.

We will then send you full details of the service we offer and let you have a Questionnaire for you to complete and bring with you to our first meeting (or if you do not like filling in forms, we can complete it together when we meet)



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