

## Lasting Power Of Attorney (LPA)

## FACT SHEETS

A Lasting Power of Attorney is a legal document that allows you to appoint a member of your family or a close and trusted friend to make decisions on your behalf regarding your property and financial affairs as well as personal welfare.

The alternative to a Lasting Power of Attorney, and in some cases the only option, is an application to the Court of Protection. When someone is no longer capable of managing their own affairs and an LPA isn't in place an application to the Court has to be made. This can be a very expensive and lengthy process.

There are two types of LPA:

- **Property and Financial Affairs** (Financial Decisions), which allows your attorney / attorneys to make decisions about how to spend your money and the way your property and affairs are managed. With a Property & Financial LPA you can appoint your attorney / attorneys to help you manage your finances even if you haven't lost capacity should you so wish.
- **Health and Welfare** (Health and Care Decisions), allows your attorney / attorneys to make decisions about your health and welfare. This includes decisions to refuse or consent to treatment on your behalf and deciding where you live. Your attorney cannot make decisions on your behalf unless there comes a time when you're no longer able to make such decisions yourself.

### Attorneys

You can appoint more than one person (known as an Attorney) to act for you either together or as separate individuals.

It is important that you (the Donor) choose your Attorney(s) carefully as you must be able to trust them to make decisions in your best interests.

If you appoint more than one Attorney you should consider whether you wish the Attorneys to act 'jointly' or 'jointly and severally'.

If they act 'jointly' this means that they **must** act together whenever using the LPA. If you choose to appoint the Attorneys to act 'jointly and severally' this means they can act either together or independently of one another.

Should an Attorney need to surrender their role they must:

- Inform the Donor if the LPA hasn't been registered.
- Give formal notice to the Donor & the Office of the Public Guardian (OPG) if the LPA has been registered.

Should one of the appointed Attorneys become bankrupt in the future the LPA would become invalid as a bankrupt cannot act as an Attorney. In this instance the Attorney must notify the OPG.

There may be certain things which you do not wish your Attorneys to deal with. These can be stipulated in the LPA.

An LPA cannot be used until it is registered with the OPG. Once it is registered an Attorney can make decisions for you (even though you still have capacity).

If you do not want the Attorney(s) to be able to use the LPA until you lose capacity then a restriction can be inserted into the LPA to this effect. However you should bear in mind that if you decide to do this then, if/when the time comes that you lack capacity, it would be up to the Attorney to decide when this was. You would need to make sure they have ready access to the LPA.

### Choosing An Attorney

#### **Property and Financial Affairs LPA**

An Attorney:

- Must be over 18 years of age.
- Must not be bankrupt at the time the LPA is made.
- Can be an individual or a trust corporation (e.g. part of a bank).
- Should not be a paid care worker (e.g. a Care Home Manager) unless there are exceptional circumstances such as they are the only close relative of the Donor.

Consider:-

- Do they handle their own money well?
- Do you think they understand your wishes and feelings about how you would spend your money?
- Do you wish to include in the LPA a request that the Attorney(s) should regularly provide you with details of income and expenditure? If you lose mental capacity your accounts could be sent to your Solicitor or another member of your family which would provide an extra level of security.
- Do you want to name a replacement Attorney to take over from the original Attorney (e.g. if the original Attorney were to die)?
- Do you want different Attorneys to be appointed for different things? This can be specified within the LPA.

## Health and Welfare LPA

For a Health and Welfare LPA the requirements are the same, except that the rule on bankruptcy does not apply and the Attorney must be an individual.

Choosing an Attorney is a vital decision. You need to think carefully about who you give the power to. Here are some useful questions to ask:

- Are the people you wish to appoint willing to be appointed?
- Are there likely to be any disagreements or problems between friends and/or family?
- Would it be a good idea to talk it over with your family and tell them what you plan and why?
- Do you want to consider more than one Attorney?
- Do you want to name a replacement Attorney to take over from the original Attorney?
- Do you want different Attorneys to be appointed for different things?
- Do they know you well enough to take your views into account when deciding what is in your best interests? For example, if you have strong views on a particular type of treatment, are they aware of this? Do they understand your beliefs, views or feelings?

If the Attorney is your spouse or civil partner the LPA will automatically be cancelled if your marriage or civil partnership is dissolved or annulled. This is unless you have specifically stated that it is to continue in these circumstances and you have named a replacement Attorney or there is another Attorney acting jointly and severally.

## Attorney's Powers

### Property and Financial Affairs LPA

An Attorney can –

- Sell your house (they may liaise with your Welfare Attorney if you have one). If selling below market value or if the Attorney wants to buy the property himself or sell it to a family member, he/she may need to apply to Court for authorisation.
- Sell Stocks & Shares
- Make gifts on your behalf

An Attorney cannot make decisions about –

- Making a Will on your behalf. However the Attorney can have access to your Will if you specifically state

that you wish for them to have access. Your Will may be useful in helping the Attorneys carry out their role.

- Voting on your behalf

## Health and Welfare LPA

An LPA for Health & Welfare (unlike the LPA for Property and Financial Affairs) can only be used when the Donor has lost mental capacity.

An Attorney can make decisions on behalf of the Donor regarding:-

- Day to day care
- Whether to go into a care home
- Accept/refuse life sustaining treatment

## Choosing a Certificate Provider

A Certificate Provider is someone you choose to confirm that in their opinion, you (the Donor) understand what an LPA is; what powers you are giving to the Attorney(s) and that you have not been pressured into making an LPA.

Both types of LPA require a Certificate Provider. This is a vital part of the LPA form and without one the LPA is not valid and cannot be registered.

## Who can act as a Certificate Provider?

You have two options:

1. **Knowledge certification** – someone who has known you personally for 2 years or more. This must be an independent person, it cannot be anyone who is already involved in the process (i.e. not an Attorney) and cannot be a family member or someone who is related to you by marriage.
2. **Skills certification** – someone chosen by you who has the relevant professional skills and expertise to certify the LPA. For example a GP, registered social worker or Solicitor.

## Proceeding with an LPA – The Process

You have made the decision to put an LPA in place. In order for us to draw up the legal document we will ask you to complete our LPA questionnaire which requires the following information from you:

- Full name, address, date of birth and contact details for the Donor and proposed Attorney(s).
- Whether the Attorneys are to act 'jointly' or 'jointly and severally'.
- Whether you require any restrictions entering into

your LPA.

- You may, if you wish notify a family member or friend that you are making the application and if you wish KBL to do this on your behalf, please provide the name and address of said family member. The Office of the Public Guardian used to insist that a family member or friend was notified as part of the process, by way of a safeguard ; a safeguard in the sense that that family member/friend could object to the application being processed if they believed that the Donor (i.e. you) were being unfairly influenced into making the application.
- The name and address of a Certificate Provider and their relationship to you.

### **The LPA Forms**

The forms are split into sections A, B & C.

**Section A** confirms the Donor and is signed by the Donor. This also details who is to be notified of the application.

**Section B** is for the Certificate Provider to sign.

**Section C** is for the Attorney(s) to sign. Their signature needs to be witnessed by someone over the age of 18 who is not a named Attorney on the form.

### **Registration**

Only when the LPA has been registered by the Office of the Public Guardian will it come into force.

The registration fee is currently £82 and the process takes approximately 6 weeks.

### **Storage of LPA's**

KBL can store your original LPA free of charge.

We will be happy to supply up to 3 certified copies for you before the LPA is placed in storage. Alternatively, if you do not wish anyone to have access to the LPA, we can store the same until such time as the certified copies are needed. There will be a nominal administrative charge for this service.

### **Certified Copies of your LPA**

Technically you, as the Donor, can certify an LPA under the provisions of the Power of Attorney Act 1971 s.3 (1) by writing on each page –

*“I certify this is a true and complete copy of the corresponding page of the LPA”*

You must then sign and date each page. You would need to check with the relevant institution if they will act on a certified copy.

The Office of the Public Guardian can provide ‘Office Copies’ (i.e. their official copy of the document) at a cost of £35 per document but this is only if original registered LPA has been lost or in other exceptional circumstances.

### **Revocation**

You may cancel or revoke an LPA at any time provided you have mental capacity. However, if it is registered, an LPA cannot be cancelled without an order of the Court of Protection once you have lost mental capacity to cancel it yourself. If you wish to cancel an LPA you should:

- Write to the Attorney(s) advising them that the document has been revoked.
- If the LPA has been registered at the Office of the Public Guardian you must write to the Public Guardian asking that it be removed from the LPA register.
- For a Property & Affairs LPA you should inform all banks, building societies and other institutions where you have invested money that the document has been revoked.

For further information please contact:

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