



## Lasting Power of Attorney

To discuss making a Lasting Power of Attorney, our Lifetime Planning and Wills team are available on **01225 755656**.

### What must you consider when making a lasting power of attorney (LPA)?

You need to consider your choice of attorney(s) and how you would like them to make decisions for you. So, this guide sets out things you need to consider. Then, when we meet, we will discuss them with you so we can tailor your power of attorney to reflect your needs and wishes.

### Choosing an attorney

When choosing your attorney(s), you must consider the following:

- They must be over 18.
- They can be a family member (it is common to appoint partners and children), friends or your professional adviser – or a combination of them.
- They should be trustworthy and possess appropriate skills, so you are confident they will make good decisions on your behalf.
- If you are making a property and financial affairs power, they cannot be bankrupt or subject to a debt relief order.

- If you want to appoint more than one attorney, they should get on with each other or are likely to do so.
- You can appoint just one attorney, but it is advisable to appoint more than one. In doing so, you lessen the chance of misuse of the power and ensure continuity in case one attorney cannot act.
- They must agree to be your attorney(s) and understand the role they are taking on.
- They must follow special rules set out in the Mental Capacity Act 2005, make decisions in your best interests, and follow guidance in a Code of Practice. We set out all this information in a guide we provide to your chosen attorney(s).
- They must sign the lasting power of attorney document accepting their role and responsibilities.
- You will need to give us the full name, address, and date of birth of your attorney(s).

### How do you want them to operate in their role as your attorney?

If you have more than one attorney, you can appoint them to act:

- (i) jointly, i.e. always together; or

- (ii) jointly and severally, i.e. together and independently so that they can sometimes sign together and sometimes separately; or
- (iii) a combination of (i) and (ii), so they can make some decisions jointly and others jointly and severally.

Joint appointments reduce the risk of misuse or abuse of power, although they can delay decisions. Further, disagreement prevents a decision from being made. If one of your attorneys dies, loses mental capacity, or becomes bankrupt (if it is a property and financial affairs LPA), the LPA becomes invalid unless the remaining original attorney(s) (or replacement attorney(s)) are reappointed.

If you appoint your spouse or civil partner, dissolution of the marriage or civil partnership terminates their appointment unless indicated otherwise.

### Do you want them to appoint replacement attorneys, and if so, when?

If you want only one person to act, you should consider appointing a replacement attorney in case your sole attorney cannot act.

You can also appoint a replacement when you have more than one original attorney. But you must consider whether you want them to step in immediately if any original attorneys cannot act or when all original attorneys cannot act.

You should consider your choice of replacement attorney(s) in the same way as your original attorney(s).

### Do you want to place any conditions or restrictions on the attorneys you appoint?

You may wish to place conditions or restrictions on when and how your attorney(s) act for you, for example, limiting some

decisions or setting out how they should make decisions.

### Life sustaining treatment decisions

If you wish to make a health and welfare LPA, you can give your attorney(s) authority to give or refuse consent to life sustaining treatment. And if you have already made an advance decision to refuse medical treatment (sometimes called a 'Living Will'), you should bring this to our meeting because we will need to ensure we achieve the desired outcome.

### Do you want to give your attorneys guidance?

It is helpful for your attorney(s) to have guidance about your wishes, feelings, values, and beliefs. And whom you would like them to consult about significant decisions. Doing so ensures they have confidence they are making decisions you would make if you were able. For example:

- In a property and financial affairs LPA, you should include details of anyone you wish to provide for or how you would like your funds invested.
- In a health and welfare LPA, you might want to say where you would like to live if you can no longer safely remain in your own home. Or the circumstances when your attorney(s) should refuse the continuation or giving of medical treatment.

### Do you want your attorneys to be paid?

Generally, family and friends would not expect payment. However, you may wish to allow payment for providing care or if the role is significantly time-consuming because of the complexity of your financial affairs.

If you choose professional attorneys, they must be paid for their work. The LPA will set out the basis of charges.

### Notifying people of the registration of the power

You can choose up to five people to notify when a decision is made to register the LPA with the Office of the Public Guardian, who can raise concerns on your behalf. You must think carefully about the people you choose. In particular:

- The person should be someone with whom you are likely to have regular contact and who is interested in your best interests and well-being.
- You should tell them that you are naming them.
- You might also require your attorney(s) to consult or provide ongoing information, such as financial statements to your chosen person.
- You will need to provide us with their name(s) and address(es).

### Who will be the certificate provider?

An independent person must also sign your LPA. In signing, they confirm that in their opinion, at the time you sign the LPA:

- you understand the purpose of the LPA and the scope of the authority given;
- no fraud or undue pressure was used to induce you to make the LPA; and
- there is nothing else that would prevent your LPA from being created.

### Who can act as certificate provider?

The person you choose to act as your certificate provider must be:

- over 18;
- someone whom you have known for at least two years; or
- someone who, on account of their professional skills and expertise, considers themselves competent to make the judgments necessary to give the certificate. For example, this might be a lawyer or doctor.

They cannot be:

- a member of your family;
- a family member of any of your attorneys;
- your business partner or paid employee;
- any attorney appointed by you under this document or another LPA or Enduring Power of Attorney (whether or not it has been revoked);
- the owner, manager or employee of a care home in which you are living, or their family member or partner; or
- a director or employee of a trust corporation appointed as your attorney.

If we agree to act as an attorney, we cannot act as certificate provider.

### Remember to bring to our meeting:

- the names, addresses and dates of birth of your chosen attorney(s) and any replacement(s);
- the names and addresses of people you would like notified of the registration of the LPA;
- a copy of your advance decision to refuse medical treatment (if you have one);
- the names and addresses of any people you want to provide for financially.