Gaby Hardwicke SOLICITORS

Briefing Note: Lasting Powers of Attorney (LPAs)

Introduction

This Briefing Note provides general guidance about Lasting Powers of Attorney (LPAs). This Briefing Note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note

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What is a Lasting Power of Attorney (LPA)?

A Lasting Power of Attorney (LPA) is a legal document that you (the donor) make using a special form. It allows you to choose someone **now** (the attorney) that you trust to make decisions on your behalf about things such as your property and financial affairs or health and welfare at a time in the future when you no longer wish to make those decisions or lack the mental capacity to make those decisions yourself.

The types of LPA

There are two types of LPA:

- a Health and Welfare LPA
- a Property and Financial Affairs LPA.

Who can make an LPA?

Anyone aged 18 or over, with the legal capacity (i.e. competence) to do so, can make an LPA appointing one or more attorneys to make decisions on their behalf. You cannot make an LPA jointly with another person; each person must make his or her own LPA.

People involved in making an LPA

The people involved in making an LPA are:

- **The attorney(s)**

An attorney is the person(s) you choose and appoint, using an LPA form, to make decisions on your behalf about either your health and welfare or property and financial affairs or both. It is an important role and one that the person you choose has to agree to take on.

You can appoint one or more attorneys. If you appoint more than one, you may require them always to act:

i) together (jointly)

ii) separately (severally); or

iii) both jointly and severally.

You may even appoint them to act jointly for some things and severally for others, although this should only be done after taking legal advice as it may cause practical problems.

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You may also appoint a successor to your attorney in case they die or otherwise cannot serve as your attorney.

- **Donor**

A donor is someone who makes an LPA appointing an attorney(s) to make decisions about his or her health and welfare, property and financial affairs or both.

- **People to notify**

The donor may choose for someone to be formally notified when an application is made to register (i.e. put into force) their LPA (Section 6). They have the right to object to the registration of the LPA if they have concerns about the registration. The people to notify are specified in the LPA form. Selecting people to notify of an application to register is one of the key safeguards to protect you if you make an LPA.

- **Certificate provider**

A certificate provider is a person the donor must select to complete a certificate in the LPA form (Section 10). The certificate provider must confirm that the donor understands the LPA and that the donor is not under any pressure to make it. The certificate provider is another important safeguard.

- **Witness**

A witness is someone who signs the LPA form to confirm that they witnessed:

  - the donor (the person making the LPA) signing and dating the LPA form; or
  - the attorney(s) (the person appointed by the donor) signing and dating the LPA form.

It is an important role and acts as a further safeguard.

When can the attorney act?

Only when the LPA has been:

- signed by you and your attorney(s)
- certified by a certificate provider confirming that you understand the nature and scope of the LPA and have not been unduly pressured into signing it; and
- registered with the Office of the Public Guardian.

The Property & Affairs LPA can be used whether or not you have the mental capacity to make financial decisions for yourself.

The Welfare LPA can only be used if you lack the mental capacity to make your own welfare or medical decisions.

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The Health and Welfare Lasting Power of Attorney

A Health and Welfare Lasting Power of Attorney (LPA) allows you to plan ahead by choosing one or more people to make decisions on your behalf about your personal healthcare and welfare.

These health and welfare decisions can only be taken by somebody else when you lack the capacity to make them yourself; for example if you are unconscious or because of the onset of a condition such as dementia.

The attorney(s) you appoint to make health and welfare decisions can only use this power once the LPA has been registered and only if you cannot make the required decisions yourself.

You can decide to give your attorney the power to make decisions about any or all of your health and welfare matters, including healthcare matters. This could involve some significant decisions, such as:

- giving or refusing consent to particular types of healthcare, including medical treatment decisions; or
- whether you continue to live in your own home, perhaps with help and support from social services, or whether residential care would be more appropriate for you.

If you want your attorney(s) to have the power to make decisions about 'life-sustaining treatment', **you have to** expressly give your chosen attorney(s) the power to make such decisions.

You can also give your attorney(s) the power to make decisions about day-to-day aspects of your health and welfare, such as your diet, dress or daily routine. It is up to you which of these decisions you want to allow your attorney to make.

This type of LPA does not allow the person(s) you have chosen as your attorney(s) to make decisions about your property and financial affairs. If you would like someone to be able to make property and financial affairs decisions on your behalf, you will need to make a Property and Financial Affairs LPA.

The Property and Financial Affairs Lasting Power of Attorney

A Property and Financial Affairs Lasting Power of Attorney (LPA) allows you to plan ahead by choosing one or more people to make decisions on your behalf regarding your property and financial affairs.

You can appoint a property and financial affairs attorney to manage your finances and property whilst you still have capacity as well as when you lack capacity. For example, it may be easier for you to give someone the power to carry out tasks such as paying your bills or collecting your benefits or other income.

This could be for lots of reasons: you might find it difficult to get about or talk on the telephone, or you might be out of the country for long periods.

You can decide to give your attorney(s) the power to make decisions about any or all of your property and financial affairs matters. This could include paying your bills, collecting your benefits or selling your house.

This type of LPA does not allow the person(s) you have chosen (your attorney) to make decisions about your health and welfare. If you want someone to be able to make Health and Welfare decisions on your behalf you will need to make a Health and Welfare LPA.

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Existing Enduring Powers of Attorney (EPA)

The Enduring Power of Attorney (EPA) was replaced by the Financial Affairs Lasting Power of Attorney in October 2007. Please bear in mind:

- If you made an EPA before 1 October 2007 it is still valid in respect of property and affairs, but you may wish to cancel it and set up a Property and Financial Affairs LPA.
- If you wish to give authority over your health and welfare you will need to make a Health and Welfare LPA.

If you would like to know more about this topic or our legal services, please contact:

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