

Lasting Powers of Attorney (LPA's)

Two in three people will lose their mental capacity at some point. For many this is the result of an illness such as a stroke; coma; Alzheimer's or dementia, although often capacity is lost following an accident.

In any situation where you lack capacity unless you have already signed a 'Lasting Power of Attorney' (LPA), your loved ones will need to apply to become your 'Deputy' through the Court of Protection. Deputyship is a time consuming and costly court process that can cost thousands of pounds, even once a deputy is appointed significant supervision and insurance fees are payable each year. Furthermore whilst a deputyship application is pending all accounts (including joint assets) are frozen, in many cases this can be for several months.

In order to avoid the costs and time involved in deputyship, clients are advised to make their LPA's whilst they still have mental capacity. LPA's are legal documents in which you 'the Donor' appoint 'attorneys' (often friends and family members) to make decisions on your behalf if you are ill or lose capacity, because you are giving the attorneys authority to act, the courts need not be involved.

WHAT ARE THE BENEFITS?

KEEP CONTROL

Without an LPA it is the courts that ultimately decide who may or may not deal with your financial affairs. Equally with medical matters, it is doctors who will have the final say.

REDUCE COSTS

In the absence of an LPA, your loved ones instead need to apply for 'Deputyship, this process entails up-front and on-going costs often running into thousands of pounds.

PROTECT YOUR FAMILY

People often sign LPA's to protect their families from the stress and delays involved in dealing with the courts, in what would be a particularly difficult time.

SIMPLIFY ADMINISTRATION

Attorneys appointed under a LPA have fewer administrative responsibilities than Deputy's appointed by the Court of Protection. Supervision is also much simpler.

AVOID FROZEN ACCOUNTS

Many assets, including funds in bank and building society accounts can be frozen on the incapacity of their owner, LPA's will avoid this.

How do they work?

Making a Lasting Power of Attorney (LPA) is a relatively simple process whereby a person known as the 'Donor' appoints people they trust known as 'Attorneys' to make decisions on their behalf.

Attorneys are duty bound to act in the Donor's best interests when making decisions. In practice they will have to deal with everything that would have otherwise been dealt with by the donor. This could include significant decisions such as selling the family home, and more trivial matters such as cancelling a mobile phone contract.

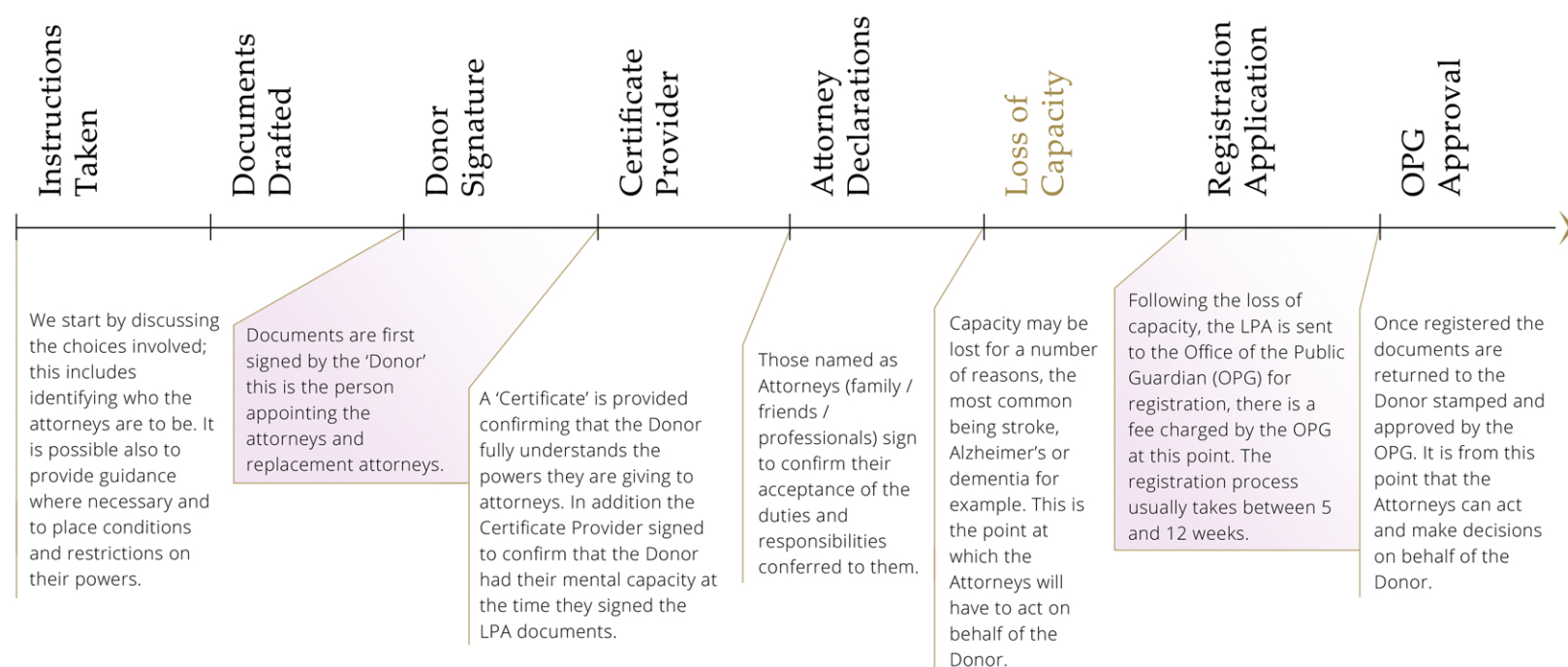
There are two types of LPA, one for 'Property Decisions' and another for 'Health Decisions'. To the right are examples of the decision attorneys might be involved in making for each type of LPA.

Health Decisions

- Make decisions about medical treatment and on-going care;
- Give or refuse consent to life sustaining treatment;
- Choose the most appropriate nursing or residential home for the donor;

Property & Financial Affairs

- Buy and sell land, property and other assets including the family home;
- Maintain and manage land and buildings and businesses;
- Open, close and operate bank, building society and other accounts;
- Claim benefits, pensions, insurances and allowances;
- Deal with utility companies and other service providers;
- Invest and manage savings and other wealth;



Q & A

Can anybody make an LPA?

Anybody with capacity, over the age of 18 is capable of making a LPA. Where the Donor (the person making a LPA) has an illness such as dementia it may still be possible for them to make a valid LPA provided they had enough capacity to understand and comprehend the purpose and effect of making a Lasting Power Attorney.

What is loss of capacity?

In accordance to the Mental Health Act 2005 s 2 (1) a person lacks capacity in relation to a matter if at the time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

It does not matter whether the impairment or disturbance is permanent or temporary. Capacity is fluid; a person may lack capacity on a particular day, at a particular time, but be perfectly capable of making decisions the next day. This is especially true where medications are involved that may help or exacerbate a person's state of mind.

Common conditions that affect capacity include stroke; coma; concussion; mental health problems; neuro-disability/brain injury; Alzheimer's and other forms of dementia. Someone can also lose mental capacity because of an injury, such as a car accident.

Who can be Attorneys?

Almost anybody can be named as an attorney, although attorneys must not be bankrupt or subject to a debt relief order. But they too must be at least 18 years and have mental capacity to make decisions on your behalf.

Clients typically name their spouses, children and other close family as their attorneys. Also in many cases professional attorneys are named, solicitors or accountants for example.

What are an Attorneys duties?

Fundamentally Attorneys must act in your best interests whilst dealing with that things that you would have dealt with yourself had you not lost capacity. Whilst discharging their duties The Mental Capacity Act 2005 imposes specific responsibilities on Attorneys to:

- act in accordance with the Act's principles;
- have regard to the guidance in the Code of Practice;
- act only within the scope of the authority given;
- carry out instructions as required by the LPA;
- to keep records of decisions made and transactions;
- not delegate powers unless authorised to do so.

The role of Attorney is hugely important, a great deal of care and consideration should be taken when deciding who to appoint to the role.

When can Attorneys act?

You can allow your attorneys to make decisions even if you have mental capacity. However, your attorneys can only act with your consent under these circumstances. However, if you later lose the ability to make informed decisions due to disturbance or impairment of your mind whether this is on a temporary or permanent basis then your attorneys can continue to act on your behalf covered by the LPA.

How many Attorneys can I appoint?

Usually between one and four attorneys are appointed although more than four can be appointed where necessary. It is also possible to appoint 'Replacement Attorneys'; these are your second choice, and can only act if the first named attorneys cannot act (if they have lost capacity or passed away for example). By way of example a client might appoint Jack and Jill together or Jack as a first choice and Jill as the replacement.

What are notified persons?

Some clients wish to have particular people notified if their power of attorney is registered, traditionally this was a safeguard to ensure the document is not used without the Donors knowledge.

Do Attorneys have to act jointly?

Three options apply here. Firstly attorneys could be allowed to act jointly and severally, this is the most practical, if one attorney makes a decision; this has the same effect as if all the attorneys had made the decision.

Instead the document could allow attorneys to act only jointly. However, this has the potential to raise difficulties in operation as attorneys must agree unanimously on every decision, no matter how big or small, thus making simple decisions time consuming. Also if a decision cannot be agreed by all attorneys, the only remedy is to apply to court for consent. Furthermore, if one attorney dies or can no longer act on your behalf, this effectively stops your LPA working.

The third option is jointly for some decisions and severally for other decisions.

What is a 'Certificate Provider'?

This person signs to confirm they have discussed with the donor what a LPA is and confirmed they have a full understanding of what they are doing by passing autonomy to their attorneys. It is used as a fail-safe to prevent any adverse inferences presumed such as being forced in to applying for LPA.

When do I register my LPA?

Your LPA can be registered at any time either by yourself or by your Attorneys. Ideally it should be registered before you lose capacity, in case there are difficulties which can be sorted out whilst you remain capable.

What is the OPG?

The Office of the Public Guardian (OPG) protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as about their health and finance. They are responsible for overseeing Attorneys appointed under LPA's.

They are responsible for taking action where there are concerns about an attorney; registering LPA's; maintaining the public register of people who have been given LPA's and looking into reports of abuse against registered attorneys.

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