

LPA – Lasting Power of Attorney

What is it?

By Marie Paynter

As we all live longer it is an unfortunate fact that you are increasingly at risk of developing dementia. Dementia affects one in every fourteen people over the age of 65 rising to one in every six people over the age of 80.

If you were unable to manage your affairs who would you trust to make decisions for you?

Not many of us are comfortable thinking about, let alone planning, for illness and or capacity later on in life. How many of us will rely on family members for support, drawing out cash, food shopping or paying bills? How much easier would it be for your relatives if they could carry on these errands as if they were you?

They can't, because they don't have the legal authority to act on your behalf, especially where a signature is required. You can give your relative that power by appointing them as your Attorney. As your Attorney they can manage your affairs and once registered the power will continue even if you lose your mental capacity.

We recommend that on appointing an Attorney you also complete a Will along with any Inheritance Tax planning. This ensures that all of your financial affairs have been organised and the role of the Attorney will be to manage and maintain these arrangements.

There are two types of LPA, the first gives the Attorney power to make decisions about the Donor's property and affairs (P&A); the other allows the Attorney to make decisions which will affect the Donor's personal welfare (PW)

Property & Affairs – P&A

Once registered with Office of the Public Guardian (OPG) the P&A LPA can be used immediately to manage finances, even if the Donor retains sufficient capacity. If the LPA P&A is to be used only after capacity has been lost by the Donor, this must be stated in this document.

The Attorney has a duty to keep accounts and to keep the Donor's money and property separate from their own. The level of accounting required will depend entirely on the complexity of the Donor's financial affairs. The types of actions that can be performed include:-

- buying / selling property
- paying mortgages
- investing money
- paying bills
- granting third parties access to financial information
- maintaining / repairing property

In entering into a P&A LPA you will get to choose who your Attorney will be, i.e. who will make decisions on your behalf.

Personal Welfare – PW

The PW LPA can only be used if the Donor lacks capacity, even if it has been registered in advance.

Examples of the types of decisions the PW Attorney can make relate to the Donor's:-

- accommodation
- medical treatment
- diet
- social activities

Where the decision concerns serious medical procedures you must consult an independent mental capacity advocate (IMCAS) trained by the NHS.

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It is recommended to register the LPAs in advance. The Office of the Public Guardian is notoriously slow and registration can take months. Due to the delay in registration a decision regarding medical treatment is likely to be taken from the patients 'next of kin'.

We have all heard of the phrase 'next of kin' but what exactly does it mean? There is no legal definition, and therefore it has been open to interpretation. There should be no reason why your partner shouldn't be treated as your next of kin despite the fact that you are not married. However, many people who are not blood related / married / in a civil partnership, have experienced frustration and distress because hospitals have not considered their relationship to fall within the phrase 'next of kin'. This has been more common with same-sex partners, but can happen to male – female partners too.

Who should you choose to be your Attorney

The most important element in the relationship with your Attorney is trust. The Attorney is required to act in your best interests and conform with the Code contained in the Mental Capacity Act. However you must bear in mind that the Attorney will make decisions for you, and the Attorney must, therefore, be someone who you believe would make decisions you are comfortable with.

Usually you trust people who are closest to you, who know your wishes, understand how you make decisions, and are familiar with your beliefs and values. If you have appointed a P+As Attorney then it is vital that s/he has knowledge of details concerning your personal and business circumstances. Appoint someone who would be confident in dealing and managing your finances.

You must ask your Attorney if s/he is willing to be appointed. If so, ensure you provide and discuss details of your personal and business circumstances. If the Attorney needs to make decisions at short notice, s/he would then have an idea of the actions you would expect them to take.

The Role and duties of an Attorney

The Attorney must firstly investigate whether the Donor is able to make decisions, even if only in part. Attorney's must encourage the Donor to participate wherever possible, in the decision making process, and to help them to improve their decision making skills.

The Attorney's responsibilities and duties are:

1. To presume the Donor has mental capacity to make decisions unless it is established otherwise;
2. To assist the Donor by taking all practicable steps to help him/her make a decision until such time as these are taken without success;
3. If, and when, the Donor does make a decision, not to disregard this decision merely because it is unwise. The Attorney should take account of past and present wishes, feelings beliefs and values;

4. Once capacity is established as lost, the Attorney must act in the Donor's best interest;
5. To consider relevant documents, consult others, and to comply with the Code of Conduct;

Sufficient Mental Capacity and Certificators

The LPA form requires an individual known as a Certicator to certify that the Donor understands the purpose of the LPA and scope of its authority.

The Certicator must ensure that the Donor is not under any undue pressure or coercion, and to check that that the LPA is not being created for fraudulent purpose.

The professional people recommended are:

- Your Doctor
- A Solicitor
- A Barrister
- A registered healthcare professional
- A registered social worker
- An Independent Mental Capacity Advocate

Where there is any doubt over the Donor's capacity, we recommend that your Doctor be the Certicator as s/he will have the requisite medical knowledge and experience to state whether or not the Donor has capacity and to what extent.

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Alternatively, a non-professional can be used. That person must have known the Donor for more than two years. He/she will need to state that they have the requisite skills required to act as a Certificator, and will need to provide examples of skills and expertise they hold to demonstrate their competence.

What if the Donor has already lost capacity

If the Donor has already lost capacity you need to make an application to become the Patient's Deputy. This is achieved by obtaining a court order from the Court of Protection. If you wish to make an enquiry concerning a Deputy application contact Marie Paynter on mp@lzwlaw.co.uk

What has to be done? How long does it take?

Decide whether you need a P&A or PW LPA (or both). Complete the online LPA questionnaire and return to LZW. The LPA will be drafted and sent to you for checking.

The Donor can, should s/he so wish, make an appointment for execution of the LPA at LZW's office. The fully completed and executed LPA is then sent to the Court of Protection for registration. The registration fee is £150 per LPA, so £300 if you are registering both P&A and a PW.

You can register the LPA any time prior to losing capacity or your Attorney can register the LPA after you have lost capacity.

Where a Doctor acts as Certificator a fee will be charged for this service, it is advisable to find out the fee, and the waiting time for making an appointment.

LZW Services

For a standard P&A the legal fee is £400 plus VAT together with the registration fee.

For a standard PW the legal fee is £400 plus VAT together with the registration fee.

Any additional clauses, or circumstances which require bespoke drafting may incur an additional charge. The PW can be complex due to the potential medical content and those types of PW are dealt with on a case by case basis.

For further information please contact us by telephone on 020 7357 9494 or email:

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