

Legal Matters

Everyone is entitled to look after their own finances, and many do even though they may need to rely on someone else ("an Appointee/Agent") to help. However, some people find it increasingly difficult and would like to ensure that if at some point they cannot manage their affairs then someone who they trust will take on that task. Previously this has been by means of an Enduring Power of Attorney, but in October 2007 this changed to a Lasting Power of Attorney as a result of the Mental Capacity Act 2005.

Enduring Power of Attorney (EPA)

Those EPAs already drawn up before October 2007 are still valid. An EPA does not authorise the attorney to make decisions concerning your welfare or health.

Lasting Power of Attorney (LPA)

The Lasting Power of Attorney is intended to give better protection by enabling the 'donor' (you) to give separate instructions on financial and welfare issues whilst still mentally capable.

Consequently the LPA comes in two parts

- Appointment of an attorney to look after your assets, property and financial affairs
- Appointment of an attorney to deal with treatment, care and personal welfare issues.

A Power of Attorney can only be drawn up when the donor is sufficiently lucid to understand and agree to the arrangement. You will be able to appoint the same or different people for each part, and you are not obliged to create both documents. Any Power of Attorney must be signed and witnessed by a solicitor when it is drawn up, and the solicitor should explain and resolve any variations or issues that are relevant to your specific circumstances at that time.

The LPA must be registered with the Office of the Public Guardian before the attorney can act and the solicitor should provide enough certified copies to present to banks, insurance companies, local authorities and pension providers etc to give legal authorisation to the attorney to act on your behalf.

The Property and Affairs LPA

Intended to be broadly similar to the EPA. Can be used as soon as registered with the Office of Public Guardian, or at some specified later time or event. Your attorney will be able to deal with your bank, investments and pension providers, and the sale and purchase of property in your name. Any benefits paid by the Benefits Agency or other income to which you may be entitled will be paid to the attorney. The attorney is responsible for ensuring that bills are paid and that money is available for maintenance costs, clothing, food and extra comforts. They are also responsible for ensuring that fees are paid on time. It is important that the attorney keeps all records and bills to account for the way in which monies have been used.

If your health deteriorates to such an extent that you might qualify for another benefit, or a higher rate of an existing benefit, the care home should let the attorney know as soon as possible so that new claims can be made.

The attorney also has a responsibility to ensure that you are receiving all the benefits to which you are entitled - this includes notifying social care services when the your capital is about to fall below £23,250, so that contributions from that agency can also be assessed.

The attorney must act at all times in your best interests, and you can limit the authority of the attorney to whatever extent you wish; for example, you can allow the attorney to operate your bank account but not put your house up for sale.

The Personal Welfare LPA

Can only be used when you have lost mental capacity. The attorney is empowered to make decisions about medical treatment, place of residence, and provision of care services. However, the attorney cannot decide against the advice of medical professionals or against your best interests – in particular, if you have previously expressed your wishes and feelings about any matters. Their authority is also subject to any ‘advance conditions’ made by you and they can only make ‘end of life’ decisions if consent has been expressly given by you - usually in the form of an “Advance Decision to Refuse Treatment”.

Court of Protection (part of the Office of the Public Guardian)

Should no action such as described above have been taken before you eventually lose mental capacity then the control of your affairs will be transferred to a **Deputy** appointed by the court. This process can be both expensive and time consuming.

Information, forms and continuing updates can be found on the Public Guardianship website at www.publicguardian.gov.uk