

What Is a Power of Attorney?

Powers of Attorney have been serving the public for centuries; it is a powerful legal document which allows an individual (Donor) to appoint a person of their own choice (an Attorney), to look after their affairs should they at a later stage no longer wish to make these decisions or lack the capacity to manage their affairs themselves.

From October 2007 two new Powers came into effect

Lasting Power of Attorney for Property & Financial Affairs – This allows the persons appointed (the Attorneys) to make decisions about paying bills, dealing with banks and investments, arranging and collecting benefits and even selling property on behalf of the Donor.

Lasting Power of Attorney for Health & Welfare – This allows the Attorney(s) to make decisions for the Donor such as care issues, where the donor lives, and, where the donor wishes, giving or refusing consent to life sustaining treatment. As the name of the power suggests (lasting) both of these powers continue to be valid even after the Donor loses capacity. When the LPA is registered this can ONLY be used if the donor has lost mental capacity.

Lasting Powers of Attorney have replaced Enduring Powers of Attorney in England, Scotland & Wales, but not Northern Ireland. EPAs made prior to 01/10/07 continue to be valid.

Why do I need a Lasting Power of Attorney?

No doubt you have taken care to ensure that your assets go to the right people when you die by making a Will. If you care enough about what happens to your assets after you die, then you ought to care even more about keeping them and yourself safe whilst you are alive.

If you were to suffer an accident and be confined to bed or hospital, contract an illness or have a more serious accident that permanently incapacitates you or become mentally incapacitated as a result of old age or some other reason, then without an LPA in place, the **ONLY** way your financial affairs can be managed is by an application (by a relative or someone close to you) being made to the Court of Protection for Deputyship.

The application must provide personal information about themselves, their family, their own finances and the relationship with the person they wish to help care for. Medical evidence also needs to be obtained. This process costs a considerable amount of money and can take anything between 12 weeks and 10 months, by which time your finances could be seriously damaged.

Even worse, a Judge will make the final decision as to who is appointed as the Deputy and this may not be who you would have wished to manage your affairs. The appointment **does not even have to be a family member**, preferring to appoint a Panel Deputy, either retired Solicitors or Barristers who work for the Office of the Public Guardian (OPG) or a Local Authority.

Whilst the Court of Protection is important to safeguard the interests of people who don't have close friends or family, if you want your loved ones to be able to care for you and make decisions on your behalf, you should ensure that you make an LPA whilst you are still able to do so. Below are some of the reasons why you should make a Lasting Power of Attorney (LPA) in preference to a judge appointing a Deputy to manage your affairs.

LPA vs Deputyship

Setting up an LPA allows you to plan in advance

The people you want to make those decisions for you (your Attorneys).

The decisions you want to be made on your behalf eg. life sustaining treatments.

How you want your Attorneys to make those decisions e.g jointly.

Once the LPA is registered with the OPG your Attorneys are able to make financial decisions on your behalf and they must follow the principles as set out in the Mental Capacity Act when making these decisions.

Your Attorneys are free to act on your behalf without involvement from the OPG, unless a concern is raised with how the Attorney is acting.

Minimal personal details are required for both the Donor and the Attorney to set up the LPA.

Shorter timescale involved in setting up the LPA.

Deputyship

You have no control over who is appointed as your Deputy; this may not be who you would have wished.

There are also Court fees involved and the Deputy has to take out a Security Bond to cover their actions. This is paid annually and the amount is set by the Court. The more assets a person has, the higher the Bond. Depending on your Supervision Order the Court can also take a retainer. This amount is not disclosed until your application is agreed and is, again, dependent on the amount of assets the person has. Supervision Fees are also applied annually and vary.

The Judge issues a Deputy Order setting out the extent of the powers granted to the Deputy, for example not being allowed to write cheques over £500 without the Court's permission.

Any major decisions, such as selling a property, requires the Court's permission.

The OPG assesses each case and places it in a band where it will receive either a low, medium or high level of ongoing supervision.

The Deputy must report to the Court/ OPG at all times and may have to submit annual accounts for Court approval and receive periodical visits by a Court Visitor.

A Deputy must account for every penny spent and any requests for money must be made to the Court in writing.

The application for Deputyship is complex and the Deputy must provide personal information about themselves, their family, their own finances and the relationship with the person they wish to care for.

It is currently estimated that 55,000 people are registered with the Court of Protection who are deemed mentally incapable to act on their own behalf. Their affairs are placed under the jurisdiction of the Court. This would mean that those seeking to care for you, such as your family, would have the added stress of having to deal with officials every time a decision needed to be made. They would also have no official say in any medical treatment for you even when they knew what your wishes would have been.

This sheet contains only general planning and is not to be construed as advice for any personal planning. Each strategy recommended is based on individual circumstances.