

Prepare for the future – your guide to financial and welfare matters



Every adult has the right to manage his or her own money and affairs. Sometimes, however, our ability to do this decreases as we grow older or because of an accident, disability or illness. If something goes wrong, for whatever reason, your family is already having to deal with that situation, without matters being made worse by your bank or other asset holder, refusing to talk to your family about your finances.

In this leaflet you will find information on documents which may be of help.

General Power of Attorney

Lasting Power of Attorney – Property and Finances

Lasting Power of Attorney – Health and Welfare

Court of Protection – Deputyship

Appointeeship

General Power of Attorney

This is a way of giving someone else power to manage your financial affairs when it is difficult for you to manage them yourself. You should appoint someone you trust, such as a close relative, friend or solicitor as your attorney. Nobody can “take” a power of attorney – you have to give it willingly to whoever you choose. You can cancel the arrangement at any time.

This type of power of attorney only applies if you are fully aware of the implications of the arrangement. The power of attorney will come to an end if you become mentally incapable of managing your financial affairs.

Lasting Powers of Attorney (LPA)

We encourage all our clients to make a **Lasting Power of Attorney (LPA)** over their **property and finances** and/or welfare matters, and then to store the document safely and hope that it never needs to be used. If, however, your health fails it means that whoever you have chosen as your attorney can then use your money to look after you.

An LPA goes one step further than a general Power of Attorney because it carries on, or ‘lasts’ even after you have become unable to manage your affairs, whether temporarily or permanently. Whilst you have mental capacity you can cancel an LPA.

For an LPA to be valid, you have to fully understand the implications of the arrangement at the time you make it. A certificate provider will need to sign a certificate to say that you are aware of the implications and that nobody is pressurising you into making the LPA. (A certificate provider is someone who has known you for at least 2 years, or someone with specialist skills in assessing mental capacity.) An attorney must be at least 18 years old and must not be bankrupt. You can appoint more than one attorney and replacement attorneys.

An attorney cannot start to make decisions for you until the LPA has been registered at the Office of the Public Guardian. There is a fee for registering the LPA unless your income and capital is below a certain level.

Health and welfare decisions

A separate LPA can be made to give your attorney the right to make welfare and medical treatment decisions for you if, at some time in the future, you are unable to make those decisions for yourself. This can include making end of life decisions if you wish.

Consulting a solicitor is the best way to make sure any LPA is set up and registered, and that it is in the best interests of the person giving the power.

Enduring Powers of Attorney (EPA)

LPAs have now replaced EPAs. However any EPA validly made before 1 October 2007, can still be used but only in respect of your property and finances. If you wish to give authority over your health or welfare you will need to make a Health and Welfare LPA.

What happens if you have not made an LPA or an EPA?

If you lack capacity to make a financial or welfare decision, then it may be necessary for someone to make an application to the Court of Protection for an appropriate order, such as appointing another person (a Deputy) to make decisions on your behalf. This is both costly and time consuming. Where the court appoints a Deputy to manage your property and financial affairs on an ongoing basis, the Deputy has to keep accounts, enter into a security bond, and report to the Court. The Court charges a one off application fee, and an annual fee to cover the cost of supervising the Deputy's work. All the costs will be paid out of your money.

Appointeeship

If a person is incapacitated and is receiving a pension or other state benefits, the Department for Work and Pensions (DWP) can use an “appointee” to receive those benefits on that person’s behalf. The appointee can be a relative, friend or someone such as the local authority social services department. They will be asked to produce some proof that the claimant is incapacitated, such as a doctor’s certificate. There is no fee for this service. An appointee can only deal with DWP payments. The authority does not extend to bank accounts etc.

If you are seeking advice on behalf of an elderly person, we have to see that individual on their own, in person, and receive confirmation from them that they wish to instruct us.

**Remember you have the Power;
exercise it whilst you can and then
hope that you never need to use it.**

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