



Overview of Lasting Powers of Attorney

Lasting Powers of Attorney replaced enduring powers of attorneys (EPA) as an instrument for those who want to plan ahead and appoint another person or persons to act on their behalf in the event they are unable to do so because they lack mental capacity or incapacity due to being physically unable to do so, age or infirmity.

It should be noted that if you do not have a Lasting Power of Attorney in place and you suddenly need assistance due to unforeseen circumstances, it would be necessary for someone to apply to the Court of Protection on your behalf to be your Deputy. This process takes a considerable amount of time and is considerably more expensive initially and on an ongoing basis as the court charges an application fee of £400 and there are supervision fees charged each year of approximately £350.

The Mental Capacity Act came fully into force in England and Wales on 1 October 2007 and introduced Lasting Powers of Attorney.

Lasting Powers of Attorney (Property and Finances)

A Lasting Power of Attorney for property and finances can be used by an Attorney as soon as it is registered. It can be restricted to only be used when the person has lost capacity but this is not advised as certain financial institutions would wish to see sight of evidence of lack of capacity which is not always a simple exercise to diagnose or obtain proof of. This could cause delay which defeats the object of putting a Lasting power in place in the first instance.

The following are the types of decisions that can be made using an unrestricted property and affairs power:

Buying and selling property;

Opening, closing or operating any bank, building society or other account;

Giving access to the Donor's financial information;

Claiming, receiving and using (on the Donor's behalf) all benefits, pensions, allowances and rebates;

Receiving any income, inheritance or other entitlement on behalf of the Donor;

Dealing with the Donor's tax affairs;

Insuring, maintaining and repairing the Donor's property;

Dealing with the Donor's investments and savings, buying and selling, reviewing and receiving and dealing with dividends and income produced;

Making limited gifts on the Donor's behalf;

Paying for private medical care and residential care or nursing home fees;

Applying for any entitlement to funding for NHS care, social care or adaptations;

Using the Donor's money to buy a vehicle or any equipment or other help they need;
Repaying interest and capital on any loan taken out by the Donor.

Lasting Powers of Attorney (Health and Welfare)

The Donor must choose to give or not to give his or her attorney authority to give or refuse consent to life sustaining treatment. Life Sustaining treatment is defined in s4(10) of the Mental Capacity Act 2005 as treatment that in the view of the person providing health care is necessary to sustain life.

A Health and Welfare LPA is only operative when the Donor (the person giving the power) has lost capacity.

- Where the Donor should live and who they should live with
- The Donor's day to day care, including diet, dress and who the Donor can have contact with
- Consenting to or refusing medical examinations and treatment on the Donor's behalf
- Arrangements needed for the Donor to be given medical, dental or optical treatment
- Assessments for and provision of community care services
- Whether the Donor should take part in social activities, leisure activities, education or training
- The Donor's personal correspondence and papers
- Rights of access to personal information, such as health and social care records about the Donor; or
- Complaints about the Donor's care or treatment (including care funding issues and disputes)

It is possible to include preferences and instructions to the Attorneys.