

**A guide to  
Health and Welfare  
Lasting Powers of Attorney**

**What is a Health and Welfare Lasting Power of Attorney?**

An Ordinary Power of Attorney is a legal document which allows you to appoint an individual to manage your affairs. This person is known as your attorney. This type of Power of Attorney is only valid whilst you have mental capacity.

If you lose your mental capacity, for example you may develop dementia or lose consciousness, your Power of Attorney becomes invalid and your attorney can no longer act for you.

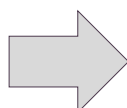
To prepare for this situation you can create a Lasting Power of Attorney ('LPA') whilst you have mental capacity. As its name suggests it 'lasts' after you have lost your mental capacity. This means that your attorney can continue managing your affairs.

There are two types of LPA. One deals with your property and finances and the other deals with your health and welfare. This briefing looks at the health and welfare LPA.

The health and welfare LPA allows your attorney to make decisions about your health and welfare when you are no longer able to make these decisions for yourself.

For example your attorney could make the following decisions

- Where you should live and who you should live with.
- Your day-to-day care, including diet and dress.
- Who you may have contact with.
- Consenting to or refusing medical examination and treatment on your behalf.
- Making arrangements for you to be given medical, dental or optical treatment.
- Arranging assessments for and provision of community care services.
- Whether you should take part in social activities, leisure activities, education or training.
- Looking after your personal correspondence and papers.
- Deciding who has the rights of access to your personal information.
- Complaints about your care or treatment.



**Your attorneys must assume that you can make your own decisions unless they establish that you cannot do so, after taking all practicable steps to help you do so without success. Equally, they must help you make as many of your decisions as you can, however unwise they may think a decision is.**

### Why should I make a Health and Welfare Lasting Power of Attorney?

It is important to consider what care and treatment you would like if you have lost mental capacity. Although medical and social care professionals will normally ask your family and friends what they think you would want, medical and social care professionals do not have to do as they say. In addition you may not have friends or family members who live close by, or who are able to advise on how you would like to be looked after.

By appointing a health and welfare attorney you are ensuring that there will be someone who will be able to speak for you when you are not able.

### When should I make a Health and Welfare Lasting Power of Attorney?

A health and welfare LPA must be set up **before** you lose mental capacity. When you make the LPA, you need to choose an independent person to act as your **certificate provider**. Their job is to confirm that you have understood the purpose and the scope of the authority the LPA gives to the attorney and that no fraud or undue pressure is being used to induce you to make the power. This is an important safeguard.

You can choose your certificate provider. There are two types:

- **A knowledge-based certificate provider** who is someone that has known you personally for at least two years (and not just as a passing acquaintance).

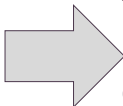
- **A skills-based certificate provider** who has relevant professional skills and expertise.

#### **A skills based certificate provider must be one of the following -**

- A registered health care professional, such as a General Practitioner.
- A registered social worker.
- A barrister, solicitor or advocate.
- An independent mental capacity advocate.
- Someone who considers they have the relevant professional skills and expertise to be a certificate provider.

## Who should be my Attorneys?

Your attorney could be making vital personal decisions about your life such as where you live and what medical treatment you should be given, so it is of the upmost importance that the attorney or attorneys you choose are people who you trust. **Consider the following when choosing your attorney.....**



**You are also able to nominate replacement Attorneys in case your initial choice of Attorney is unable or unwilling to act**

- They must be over 18.
- They must be absolutely trustworthy and possess appropriate skills to make decisions on your behalf.
- They should be people with whom you have a settled and easy relationship and, if more than one, who get on with each other well, or who are likely to do so
- You can appoint one attorney, but it is advisable to appoint more than one to lessen the chance of abuse of the power and to ensure continuity in case one attorney cannot act.
- They can be a family member (it is common to appoint partners and children) or friends or your professional adviser, such as your solicitor.
- They must agree to be your attorney and should understand the role they will be fulfilling.
- They must always act according to the principles laid down in the Mental Capacity Act 2005 and in your best interests as set out in the Act, and they must follow the guidance contained in the Code of Practice.
- They will need to sign the LPA to accept their appointment and responsibilities as attorneys.
- You will need to supply the full name, address, date of birth, telephone number (landline or mobile) and e-mail address of your attorneys.

## Can I impose limits on the decisions my attorneys can make?

When you create your LPA you are able to give your attorneys guidance as to how you want to be treated and any medical treatment you would want to refuse. You can also impose formal limits on your attorneys' authority to make decisions relating to your medical or social care if you wish. Many people decide that because they have chosen people they trust, they want to give their attorneys unrestricted powers so they can make whatever decisions are necessary. You should be careful that if you impose restrictions they are workable in practice.

## How will my attorneys operate?

- If you have more than one attorney, consider how you want them to act. Do you want them to act **jointly** i.e. always together, or **jointly and severally** i.e. together and independently, so that they can sometimes make decisions together and sometimes separately? The latter choice works well when the attorneys do not live near to each other, or (see below) if one were to retire or die or decline to act (in which case the other attorney could still act).
- If the attorneys are appointed to act jointly, they **MUST** sign and act together. This can be difficult in practice and if one dies, declines to act or loses mental capacity the remaining attorney cannot act alone and the document can no longer be used.
- You can state that some decisions must be made jointly and others can be made jointly and severally.
- Whatever you decide you need to be careful that what you set up is both clear and practical.
- If you appoint your spouse or civil partner, be aware that dissolution of the marriage or civil partnership terminates the appointment of your spouse/civil partner, unless you have indicated otherwise.

### What about life sustaining treatment?

An important section in the health and welfare LPA relates to life sustaining treatment. Life sustaining treatment means any treatment a doctor considers necessary to keep you alive. Whether or not a treatment is life sustaining will depend on the specific situation.

You can choose whether you want to give your attorneys authority to give or refuse consent to life sustaining treatment on your behalf.

### Do I need to pay my attorneys?

You do not need to pay your attorneys. However, if you appoint a professional attorney, such as your solicitor, they will expect to be paid.

### Registering my LPA

Your health and welfare LPA cannot be used by your attorneys until you have:

1. Registered the LPA with the Office of the Public Guardian; and
2. Lost mental capacity.

Registration with the Office of the Public Guardian usually takes around 6 weeks. This means if you lose mental capacity and the LPA is not already registered, it may be sometime until your attorneys can act. Because of this it is sensible to register your LPA as soon as you have created it.

There is a fee which has to be paid to the Office of the Public Guardian on registration. This is currently £110.

When you register your LPA you must send out a standard notice to people who you would like to be notified. This is a safeguarding exercise to ensure that people that care about you can raise an objection if they have concerns about the actions of your attorneys.

Once your LPA is registered it will lie dormant unless you lose mental capacity. At this point your attorneys will be able to make decisions for you.