



## The Lasting Power of Attorney

Dealing with money and paperwork can be difficult if you become unable to manage your own affairs for any reason, and in ill health it may be impossible.

Before that happens it might be easier to appoint a trusted representative – known as an Attorney – who can look after your finances and welfare for you should the situation arise. The Lasting Power of Attorney or LPA is a legal document which allows you to do this.

### What types of LPAs are there?

A Property and Financial Affairs LPA allows your Attorney to make decisions about your personal affairs including: collecting your income and benefits, paying your bills and selling your home if necessary.

A Health and Welfare LPA allows your Attorney to give or refuse consent to medical treatment and to decide where you live. These decisions can only be taken on your behalf when you are unable to make them for yourself, for example, if you are ill, unconscious or suffering from a condition like dementia.

### What happens if I don't have an LPA?

If you become incapable of making decisions for yourself and have not appointed another person as an attorney, your personal affairs would become the responsibility of the Office of the Public Guardian and it may be necessary for the Court of Protection to become involved. The Court will appoint a person, (called a Deputy) to make decisions on your behalf. The major disadvantages of not having a Lasting Power of Attorney in place are firstly the possible delay in dealing with your affairs and secondly the cost of making a Deputyship application, which is likely to be much more expensive than making a Lasting Power of Attorney and registering it and there are on-going yearly costs payable to the Court of Protection.

### Who might need an LPA?

Most of us will be fortunate enough to live long lives, but we may not always be able to manage our own affairs. If you were to suffer physical or mental incapacity, an LPA could make your life much easier and less stressful for your loved ones, as well as protecting your interests.

### What can my Attorney do?

You can give the Attorney general authority to manage all your finances, including paying your bills, signing cheques, dealing with your bank and buying or selling property and making decisions on medical treatment. However, you are free to restrict the Attorney's powers if you wish. For example, a business owner might wish for different attorneys for their personal affairs and business affairs.

### When do my Attorney's powers become effective?

An LPA must be certified and then registered with the Court of Protection before you can receive help from the Attorney. You can continue to handle your own financial affairs if you wish, even after a Property and Affairs LPA has been signed. With a Personal Welfare LPA decisions can only be made on your behalf when you are unable to do so yourself.





## A CASE HISTORY

### On the receiving end...

*"Anne's life changed after an accident left her husband David in a coma; and, thanks to the Court of Protection, three years of pain and misery followed. This is her story ..."*

In December 2004, David suffered a stroke. In hospital he collapsed into a coma and never stood up or spoke again. He had critical illness cover so I thought our financial position was secure but my three-year nightmare was only about to begin.

Both of us were independent working people but to continue living in the way that we had always done, I needed access to the money in David's account (which included the payout from his critical illness policy). As David couldn't sign I was told that I had to deal with the Court of Protection. However, rather than being the answer to all my prayers it brought me anger, grief and frustration. Over the years that followed David's stroke I had to learn to accept a new reality, to settle into a different way of life. But parallel to this I had to come to terms with the Court of Protection: an alien, intrusive, time-consuming and costly institution which was completely out of tune with what we were going through.

We are advised to take out life assurance and critical illness cover but hardly anybody tells us to take out a Lasting Power of Attorney. Yet, in a case like ours, this is the only way to avoid the Court of Protection.

As I was to find out, if someone hasn't granted Power of Attorney to anyone, their affairs are placed under the jurisdiction of the Court. It appoints a Receiver to act on their behalf in the everyday running of his or her affairs and the Receiver is answerable to the Court.

In its treatment of Receivers the Court does not distinguish between spouses, close family members or complete strangers. So, despite being married, I had to apply to the Court to be appointed his Receiver.

Who is the court protecting and from whom? As the months went by it became apparent that the Court's primary role was to protect my husband from me! The Court was doing all it could to place a wedge between him and me, apparently. From day one, the Court stepped into my life away and took away my adult independence.

Here are two examples:

1. The Court fees were horrendous: commencement fees, appointment fees, administration fees, account fees, wind up fees. Over 3 years over £3,000 was spent on Court fees and accountant's fees.
2. Even though I was now David's Receiver I had to get the Court's permission to spend over £500 in any one transaction, even to pay my son's university and accommodation fees.

The Court of Protection, no doubt, has a role to play in some family situations, but in our case it was a terrifying, interfering body using legal forms and archaic terminology to protect itself at huge cost to us. Yet all of this could have been avoided if only I had known how!

