



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 happens if I don't have an LPA?

If you have a stroke, an accident or illness, you could become incapable of making decisions for yourself or carrying out your decisions (even temporarily). If you have not appointed another person to make those decisions on your behalf it will 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 which may take many months to resolve. A Deputy's role is limited and monitored by the Court of Protection who will charge fees for this service. 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 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. Also, someone you don't know may end up managing your affairs.

Finally the Court of Protection will rarely sanction an application for a Health & Welfare LPA (see below) so without one of these in place there is no substitute.

What types of LPAs are there?

A Property and Financial Affairs LPA allows your Attorney(s) to make decisions about your financial affairs including: running your bank and savings accounts, making or selling investments, collecting your income and benefits, paying your bills and buying or selling your home if necessary. These can be used for loss of physical capacity such as loss or impairment of eyesight or the ability to produce a valid signature after a stroke or arthritis for example.

A Health and Welfare LPA allows your Attorney(s) manage your day-to-day matters such as your diet and daily routine, decide where you live and to deal with and challenge decisions made by health professionals, social services and care homes, for example. It also allows your Attorney(s) to decide on what treatment you received and even to give or refuse consent to medical treatment. These decisions can only be taken on your behalf when you are unable to make them for yourself, for example, if you are unconscious or suffering from a condition like dementia.

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.

If you are unmarried and have a partner then they are not legally your next of kin and you are not theirs so you are not legally able to make any financial or even medical decisions for each other without LPAs in place.

However, even if you are married this can also be the case – please refer to the case study overleaf.

If you have Critical Illness Cover, then it would seem logical to also have an LPA drafted to cover the scenario where you are unable to manage the account into which the policy proceeds are paid when you become ill.

If you are travelling abroad you might need someone to manage things for you whilst you are away and an attorney can do that for you.

Any provider of a bank or building society account, ISAs or even utilities will want to speak only to the account holder, if they are unable to do so then they will require a LPA before they will deal with anyone else. Even with joint accounts if the provider knows that one of the joint holders has lost capacity has the right to receive to freeze the account unless there is a LPA in place.

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 Office of the Public Guardian 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 registered. 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 and David had done their Wills in the event of their death(s) but they had not set up Lasting Powers of Attorney for each other.

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 "Deputy" to act on their behalf in the everyday running of his or her affairs and the Deputy is answerable to the Court.

In its treatment of Deputies 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 Deputy.

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 and the cost of a "security bond". Over 3 years over £3,000 was spent on Court fees and accountant's fees.
2. Even though I was now David's Deputy 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 by setting up a LPA if only I had known.

