

## **LASTING POWERS OF ATTORNEY FACT SHEET**

There are 2 different types of lasting Powers of Attorney, one that will apply to an individual's Property and Affairs and the other will apply to an individual's Personal Welfare. They allow a person making an LPA (a "Donor") to delegate decision making powers to one or more Attorneys.

### **Who can make a Lasting Power of Attorney?**

A donor must be over the age of 18 and have the capacity to understand what they are doing.

### **How do you make a Lasting Power of Attorney?**

The document must meet with the prescribed form set out by legislation.

It must set out any restrictions or conditions or guidance the donor wishes to include and must state that the Attorneys have authority to act when the donor no longer has mental capacity to make decisions for themselves.

The donor can appoint any number of Attorneys for each LPA. Too many Attorneys will, however, be cumbersome and can lead to practical problems.

If more than one Attorney is appointed for either role the donor must state if they are to act "jointly" or "jointly and severally", or "jointly" in relation to some things and "jointly and severally" in relation to others.

The LPA needs to be signed by the donor, all the Attorneys and have a Certificate signed by an authorised person. The purpose of the certification is to confirm the donor understands the purpose and scope of the LPA and that there has been no fraud or undue influence. Once the LPA is completed it needs to be registered with the Office of the Public Guardianship before it can be used.

The donor can name in the LPA up to five people who are to be notified of the registration. It is completely up to the donor who they want to know they have an LPA and it is being registered. They do not have to name anyone if they don't wish to.

### **Can a Lasting Power of Attorney be revoked?**

Yes, at any time as long as the donor has capacity to revoke it.

### **Does a Donor have to appoint Attorneys to deal with both their property and affairs and their personal welfare?**

No. The donor can make an LPA that only appoints Attorneys to deal with their property and affairs or their personal welfare. If they do make both types, the Attorneys can be different or the same.

### **Who can be an Attorney?**

An Attorney must be over the age of 18 years and must not be a bankrupt.

### **What property and affairs can be covered?**

All financial affairs relating to the donor. It can cover operating a bank account, making investment decisions, signing tax returns, together with buying and selling property.

The Attorneys can use the donor's money to make gifts on "customary occasions", i.e. birthdays, marriages and Christmas. They can also make charitable gifts to charities that the donor did make gifts to or might reasonably be expected to make gifts to. The value of any gift must be reasonable having regard to the donor's financial circumstances. If gifts of a substantial nature are contemplated prior authority of the Court of Protection is required.

### **What can an Attorney not do?**

Certain acts are too personal by their nature to be delegated to an Attorney. These include the following:

- Signing a Will
- Taking on the role as a life tenant under a trust
- Acting as a Personal Representative/Executor
- Acting as a Trustee
- Appearing in court as a witness

### **When can a property and affairs LPA be used?**

At any time once it has been registered with the Office of the Public Guardian. The donor does not have to have lost mental capacity.

### **What personal welfare decisions can an Attorney make?**

The scope of the powers that can be given are matters such as:

- decide what care is needed, including the level of care appropriate
- make decisions about dress, diet and personal appearance
- choose social and cultural activities
- arrange to undertake work, education or training
- take the donor on holiday or arrange for another to do so
- decide where the donor lives, what care and medical treatment the donor is to receive and what medical care the donor is not to receive

### **Is the Attorney restricted in any way?**

An Attorney authorised to deal with a donor's personal welfare will not be able to do the following:

- restrain the donor unless to prevent harm
- go against any valid advance conditions made by the donor
- request no life sustaining treatment is given to the donor unless the LPA expressly permits them to do so

### **When can a Personal Welfare LPA be used?**

Only when the donor has lost mental capacity.

### **What are the costs of preparing an LPA?**

The cost of preparation of a Lasting Power of Attorney differs depending upon the particular circumstances. Please ask for our costs sheet if you need it.

Whilst this document has been prepared to assist with general information, it cannot possibly cover every single situation as inevitably one case is different to the next. Accordingly, if you have any questions or your particular case is not covered fully by these notes, please ask.