

# Powers of Attorney

## Give yourself peace of mind

To help answer members' questions, in the second of our series of legal articles, Michelle Gavin, Associate of the law firm, Martineau, explains lasting Powers of Attorney.



● Michelle Gavin

### What is an LPA?

A Lasting Power of Attorney (LPA) is a legal document where a person, known as the Donor, appoints a person(s) to make decisions for them when they are no longer able to. They are known as their Attorney(s).

### Why should I make an LPA?

No one likes to think about there being a time when they are no longer able to make decisions for themselves, but it is estimated that more than 2 million people in England and Wales lack this ability<sup>1</sup>.

Having an LPA in place gives you peace of mind that if and when you can't make those decisions yourself you have already appointed someone that you know and trust to make them for you. If you do not have an LPA and lose this ability, someone would have to apply to the Court of Protection for an order to appoint a Deputy for you. A Deputy has roughly the same powers as an Attorney, but will not have been chosen by you, and the process to appoint one can be very long and expensive to complete.

### What about Enduring Powers of Attorney?

Any Enduring Power of Attorney (the LPAs predecessor), validly made before 1 October 2007, can continue to be used but only in respect of your property and affairs. If you wish to give authority over your health or welfare you will need to make a Health and Welfare LPA.

### There are two different types of LPA:

- **A Property and Financial LPA** This enables your Attorney(s) to make decisions ranging from paying your bills to selling your house. These can be used as soon as they have been registered, whether the Donor has lost capacity or not.
- **A Health and Welfare LPA** This enables your Attorney(s) to make decisions such as deciding on the type of medical treatment that you should receive. These can only be used once the Donor has lost capacity.

### Considerations

You will need to decide on who you want to appoint as your Attorney(s). You can choose to appoint only one but if they are unable to act for some reason your LPA will no longer be valid. Your choice of Attorney is absolutely crucial.

An Attorney **CAN** be:

- a family member, or
- a trusted friend, or
- your professional advisor

An Attorney **MUST** be:

- absolutely trustworthy and possess appropriate skills to make decisions on your behalf
- someone that you have or are likely to have a good relationship with
- fully able to understand the role and their responsibilities and agree to act
- over the age of 18
- not bankrupt

You must ensure that you trust this person(s) absolutely to act with your best interests in mind as they may have complete control over your affairs in the future. The Attorney will only be able to act when the LPA has been signed by you and your Attorney, certified by a person (known as a Certificate Provider) who has checked that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. It must then be registered with the Office of Public Guardian (OPG) before it can be used. The court fee for each registration is £120. You can also name up to five people who are to be notified when your LPA is registered. This acts as a safeguard as these people can object to the registration if, for example, they believe that you were forced into making the LPA.

### How do I go about making an LPA?

The OPG has a detailed website containing a great deal of information about LPAs. You can also access all of the forms required to draft an LPA and guidance notes on how to complete them at: [www.publicguardian.gov.uk/](http://www.publicguardian.gov.uk/) However, drafting LPAs can be complicated and its very important that all of the details are correct, so you may prefer to instruct a solicitor to assist you and act as a Certificate Provider. There are many solicitors who specialise in this area of law such as the ones below:

- **The Law Society** [www.lawsociety.org.uk](http://www.lawsociety.org.uk)
  - **The Society of Trusts and Estate Practitioners (STEP)** [www.step.org](http://www.step.org)
  - **Solicitors for the Elderly (SFE)** [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com)
- <sup>1</sup> figure taken from National Health Service website: [www.nhs.uk/](http://www.nhs.uk/)