



Lasting Powers of Attorney (LPAs) Fact Sheet

As presented by Paul Hillier on BBC Three Counties Radio "The Afternoon Show" with Lorna Milton. 02.08.2010

Q. What is a Lasting Power of Attorney?

A. An LPA is a legal document you use making a special form. It allows you to choose some one now whilst you are in good health, you trust to make decisions on your behalf about your:

- 1) Property & Financial Affairs*
- 2) Health & Welfare*

Q. How and when can a LPA be used?

A. Only after it has been registered with the Office of the Public Guardian.

Q. Where is the best place to get more information about LPAs?

A. There is an excellent website with full details, explanations and forms for downloading at www.publicguardian.gov.uk

LASTING POWERS OF ATTORNEY – PROPERTY & AFFAIRS FREQUENTLY ASKED QUESTIONS (FAQs)

Q. Can I appoint my children to be my Attorneys?

A. Yes. You can appoint anyone just so long as you believe them to be trustworthy and to act in your best interests.

Q. What if I decide that I no longer want the LPA?

A. The LPA can be revoked at any time. This is quite a simple procedure; you notify your Attorneys in writing that you wish to revoke their appointment and then notify the OPG, also in writing, giving the date that you notified the Attorney and requesting the LPA is cancelled.

Q. Can I still have control of my money and finances even after the Attorneys have been dealing with these matters?

A. Whilst you have mental capability you can deal with your own affairs at any time, even if the Attorneys have been dealing with most matters on your behalf.

Q. Does the LPA continue after my death?

A. No. The LPA ceases upon your death.

Q. Who is the Office of the Public Guardian (OPG)?

A. The OPG is a government body and one of their roles is to protect vulnerable and elderly people from financial abuse.

Q. Why does the LPA have to be registered with the OPG?

A. All LPAs are registered with the OPG before they can be used. This is so that the OPG are aware who has access to your property and money and they may from time to time ask your Attorneys to produce records of all financial dealings.

Q. Are the OPG intrusive?

A. The OPG are not intended to be intrusive but of course, if abuse is suspected they can and will intervene. Otherwise, it can be said that they are not intrusive at all.

Q. Can the LPA be used before it has been registered with the OPG?

A. No. The LPA must be registered with the OPG before it can be used legally.

Q. Does the LPA have to be registered as soon as it is signed by me?

A. No. The LPA can be registered at any time after it has been completed. However, the registration period can take up to between 12 and 14 weeks and we would always advise that it is registered as soon as possible so that it is ready to be used at any time.

Q. Why does somebody have to be notified that the LPA is being Registered with the OPG?

A. This gives the person who is being notified the opportunity to raise any concerns they may have with the OPG. For example, if they believe that you are being put under pressure or forced in any way to give the power, or if it is believed that the Attorney you are appointing is not appropriate or trustworthy.

Q. I have an Enduring Power of Attorney (EPA), is this no longer valid?

A. Enduring Powers of Attorney are still valid and can be used in the same way as the LPA. The only difference is that the EPA does not have to be registered with the OPG until you are losing or have lost mental capacity.

Q. If I have neither EPA or LPA and I lose capacity, what would happen?

A. An application would then need to be made to the Court of Protection for a Deputy to be appointed. A Deputy is in essence the same as an Attorney. However, before their appointment, they must be approved by the Court of Protection. This is a very lengthy and expensive procedure and this is why it is advisable to make an LPA whilst you have the ability and can choose your Attorney.

LASTING POWER OF ATTORNEY – HEALTH & WELFARE FAQs

Q. Do I have to do both types of LPA?

A. No, it is entirely your choice but we would recommend both types to ensure all possible situations are covered.

Q. Can I have the same Attorneys as in my Property & Affairs LPA?

A. Yes, but you could also choose to appoint someone different.

Q. What are the main benefits of having a Health & Welfare LPA?

A. This type of LPA means if you are unable to make decisions for yourself, your Attorneys can for example, have a say in the type of care you receive; where you receive that care; if you have to go into a care home, which home you go into. They can also discuss your medical records and requirements

with doctors and other health professionals in order to express any specific wishes you may have. Within the LPA you can also decide whether or not to give your Attorney's authority over life sustaining treatment; you may prefer someone who knows you to be responsible for making this decision instead of a doctor.

Q. Don't my next of kin have to be consulted for these types of decisions anyway?

A. Yes, in normal circumstances your family will be consulted in any decisions regarding your welfare, as a way of assessing what is in your best interests. However, if your family were to disagree with the decision of a doctor or the local authority, the LPA means that they can enforce your wishes.

Q. Can the LPA be used straightaway?

A. No. The Health & Welfare LPA has to be registered in the same way as the Property & Affairs. Furthermore, this one only has effect once you are unable to make a decision for yourself. This is on a strict decision-by-decision basis, as you may be in hospital and unable to make a decision one week, but have recovered and be back home in a month's time.

Q. Can I notify the same people as I chose for my Property & Affairs LPA?

A. Yes, or you can choose someone different.

Q. If I have an EPA to cover my finances can I have the Health & Welfare LPA?

A. Yes.

Q. Can I wait and make the LPA at some point in the future?

A. Yes, this is of course an option. However, we recommend putting both types of LPA in place whilst you are fit and well. Should you decide to wait until perhaps you become unwell or go into hospital, having to go through legal documents can be an unnecessary added burden. Furthermore, neither LPA can be used until it has been registered and this can take up to three months if the Office of the Public Guardian have a backlog of work.

Q. What happens if I do not have a Health & Welfare LPA and become unable to make my own decisions?

A. It is possible to apply for a deputy order to cover Health & Welfare, in a similar way to Property & Affairs. However, the Court does not like granting a 'blanket power' for Health & Welfare. This can mean that your relatives may have to make repeat applications to the Court over a number of different decisions if they are not in agreement with the local authority/medical professionals. This results in unnecessary long delays and high costs, all of which can be avoided by putting an LPA in place.

If you have any other query not covered in the fact sheet or would like more detailed advice or assistance, please contact:

Cathy Eaton, HilliersHRW Solicitors, The Old Vicarage, Bedford Road, Kempston MK42 8BQ
Telephone: 01234 858000

Fiona Nash, HilliersHRW Solicitors, Mindenhall Court, High Street, Stevenage SG1 3UN
Telephone: 01438 346000