What is a Lasting Power of Attorney?

A Lasting Power of Attorney ("LPA") allows an individual to confer on another person authority to make decisions on their behalf. An attorney will have authority to make decisions regarding the individual's property and affairs and/or health and welfare and must make decisions in their best interests.

LPAs assign significant authority to attorneys. In relation to property and affairs, the attorney is given the power to deal with all aspects of an individual's financial affairs, for example selling property and managing bank/building society accounts. A LPA for the individual's health and welfare confers the power to make important decisions such as admitting the individual to a care home and deciding whether a "do not resuscitate order" should be in force.

A LPA allows the individual to plan for who they wish to make decisions on their behalf when they are no longer able to. The individual can specify preferences and instructions for how the attorneys should make decisions.

Who can be an attorney?

The attorney must be over the age of 18. Attorneys for an individual's property and affairs cannot be bankrupt. More than one attorney may be appointed and the individual may specify whether the appointment is joint (where all Attorneys have to agree about a particular decision) or joint and several (where Attorneys can take decisions separately).

How is a LPA created?

The individual must be an adult with *mental capacity* within the meaning of the Mental Capacity Act 2005. If the individual is deemed to lack capacity to appoint an attorney, they cannot make a LPA and instead consideration should be given to whether a deputyship is required.

When making a LPA the individual should complete the prescribed form. The most recent versions of the forms to be completed are known as LP1F for property and affairs and LP1H for health and welfare. The individual and the proposed attorney(s) must sign the LPA in the presence of a witness. The LPA must also be signed by a certificate provider. The MCA specifies that a certificate provider must confirm that the individual understands the LPA, that no fraud or undue pressure was used to induce the individual to create the LPA, and there is no other reason why the LPA cannot be executed. The certificate provider is not required to be present during the execution of the LPA.

The LPA application form states that the attorney should be somebody the individual trusts and knows well and provides information regarding the individual's legal rights and responsibilities. The attorney's signature indicates that they have read the relevant section concerning their responsibilities. The signature does not take effect as an undertaking, although the LPA is completed by deed.

The current fee payable to register a LPA (unless a discount or exemption applies) is £82. The Office of the Public Guardian ("OPG") introduced a digital tool in 2013 to allow LPA forms to be completed online, although the final stages of the process must be completed on paper as the form must be printed and signed in wet ink and then posted to the OPG. The OPG has issued a detailed guide to making and registering an LPA (Form LP12).

When can an LPA be used?

A LPA must be registered with the OPG before use. Attorneys for property and affairs may make decisions whilst the individual has mental capacity within the meaning of the MCA if the LPA allows for this, and the individual gives the attorney permission. Attorneys for the individual's health and welfare can only make decisions once the individual has been assessed as lacking mental capacity to make those decisions themselves.

The Office of the Public Guardian's remit

The OPG has the responsibility of applying to the Court of Protection if it concludes that the LPA cannot be given legal effect. The OPG has the power to require attorneys to provide information and produce documents where there are concerns. For example, if the attorney is not exercising their authority in the individual's best interests or if they have failed to comply with a court order or direction. The OPG does not have powers of enforcement and therefore cannot revoke a LPA. An application to the Court of Protection is required to achieve this.

Can I object to a LPA?

A LPA can be challenged on a factual basis or on prescribed grounds, for example because the LPA is not legally correct. Legislation expressly refers to objections by the attorney, the individual and a named person. A named person is somebody who is notified of the application for a LPA. If a person who is not notified wishes to object, they must complete a separate application and pay a fee of £371 to the court.