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PRIVATE CLIENT DEPARTMENT

# LASTING POWER OF ATTORNEY FACT SHEET

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## Lasting Power of Attorney (LPA)

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This is a way of planning now for the future when you may not be able to make your own decisions.

- **The Mental Capacity Act 2005** is a law that governs what happens when people cannot make their own decisions about all or some parts of their lives.

The Mental Capacity Act creates a way to plan now for the future, when you may not be able to make your own decisions either through accident, illness or age related issues.

- This is called a **Lasting Power of Attorney**.
- When you set up a Lasting Power of Attorney (LPA), you choose someone to make decisions and sign legal documents for you. They are called your '**attorney**'.
- Lasting Power of Attorney gives your attorney/s the right to make decisions on your behalf about things like your personal welfare and healthcare and your money.
- Anyone who is over 18 years old can make a Lasting Power of Attorney, as long as they understand what this means. The person making the Power is known as the 'Donor'.
- LPAs are intended to provide better protection for the donor and create a framework to enable the donor to make decisions and give instructions to the attorney while still mentally capable.
- There are two types of LPA: The first gives the attorney authority to make decisions relating to the donor's property and financial matters (called a **Financial Decisions LPA**) and the other to the donor's personal welfare and healthcare (called a **Health & Care Decisions LPA**). Different people can be appointed for each, and it is not necessary to make both types of LPA although we generally recommend that you do.
- **Financial Decisions LPAs** can cover the operation of bank accounts or the purchase of a house for the donor but do not enable the attorney/s to make gifts using the donor's property unless the gifts are made to the donor's friends or relatives on 'customary occasions' (such as birthdays and Christmas) or to charity. In both cases the size of the gift must be reasonable.

A **Health & Care Decisions LPA** can only be used once the donor lacks capacity or where the attorney reasonably believes that the donor lacks capacity. There are some restrictions on the ability of an attorney/attorneys to make decisions about the donor's personal welfare and the authority is subject to valid 'advance conditions' made by the donor concerning the carrying out or continuation of medical treatment. An attorney has the power to decide on issues relating to the donor's medical treatment, unless the decisions are contrary to the opinion of medical professionals and/or not in the best interests of the donor. The attorney/s will not, however, be able to make end of life decisions unless the donor has given express authority in the LPA.

## Registering Lasting Power of Attorney

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- An LPA cannot be used until it has been registered with the Office of the Public Guardian. This is regardless of whether the donor retains or lacks mental capacity. Before an application to register an LPA is made, notification must be given to any interested parties (e.g. relatives or friends) nominated by the donor.
- The donor does not have to nominate anyone to be notified prior to an LPA being registered.
- To be valid, an LPA must contain a certificate by someone who has known the donor for two years (other than a relative or the attorney) or, by a “prescribed person”, confirming that the donor understands its purpose and the scope of the authority being granted. The category of “prescribed persons” includes solicitors and doctors who are entitled to charge a fee for confirming the capability of the donor.
- Unless either LPA or its predecessor (Enduring Power of Attorney – EPA) is in place, an application to the Court of Protection for the appointment of a Deputy is required in the event of mental incapacity. This process can be both expensive and time-consuming.
- Even if an EPA is already in place, it will still be possible to make an LPA.

## Enduring Power of Attorney

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- This is the predecessor to the LPA.
- New EPAs cannot be made but any existing EPAs made before 1<sup>st</sup> October 2007 remain valid
- EPAs only relate to property and finances. For decisions in relation to health and care a **Health & Care Decisions** LPA would be required.
- Attorneys under EPAs have a duty to register the EPA with the Court of Protection if they reasonably believe the donor of the power has lost or is losing the mental capacity to manage their affairs.