



A power of attorney allows an individual (the donor) to authorise someone else (the attorney) to make decisions or act on their behalf if they are no longer able to, say through future loss of mental or physical capacity.

Over the last few years, lasting powers of attorney (LPAs) have received increasing exposure in the press. There are two types: one for financial affairs and one for health and care, both of which must be registered at the Office of the Public Guardian before they can be used. Although traditionally associated with the elderly, an accident or illness could result in mental and physical incapacity at any time and LPAs can provide a valuable safety net should the worst happen.

Covering all bases

Financial decisions LPAs provide the attorney(s) with the authority to deal with the donor's financial affairs (eg. bank accounts, property, bills, insurance, tax returns and benefits). As long as the LPA has been registered it can be used - with the donor's authority - before mental capacity has been lost. The health and care LPA allows the attorney(s) to make decisions on the donor's behalf regarding their health and wellbeing (eg. living arrangements, medical treatment, care and life sustaining treatment). The health and care LPA can only be used if the donor has lost mental capacity.

We recommend that everyone appoints LPAs, particularly property owners, farmers, holders of extensive assets, sole traders and partners in a business. Attorneys must be over 18 years old and a financial decisions attorney cannot be a bankrupt. The emphasis is on trust and if more than one attorney is appointed they can either act 'jointly' (do everything together) or 'jointly and severally' (together or individually).

Some people may still have an 'old style' enduring power of attorney (EPA), which remains valid if made prior to 1 October 2001. However, if you have an EPA, you may wish to check it still complies with your wishes: EPAs only related to property and finance and you might wish to consider putting a health and care LPA in place too.

Ordinary, or limited powers of attorney, are only valid whilst the donor still has mental capacity to make their own decisions regarding their finances, but can be useful if they want to give someone authority to deal with limited assets on their behalf eg. a bank account. They are also used in a range of legal situations, such as to allow someone to obtain a grant of representation in a deceased's estate on behalf of the appointed executor.

A matter of trust

One of the biggest benefits of LPAs is the ability to choose someone you know and trust to act on your behalf if necessary. They offer different options regarding the number of attorneys and the number of ways they can act on your behalf – so you may wish to obtain professional advice if you are considering putting one in place. If mental capacity is lost without an LPA but authority is needed to make decisions, the only option is an application for a Deputyship Order, which can be costly and time-consuming. If correctly executed, powers of attorney can be extremely useful and should save further time and expense for the donor and their family.

This article was written by Sarah Cash, partner and Head of Tax, Trusts & Estates of Hugh James, a long established Top 100 law firm with a dedicated neuro-law team of specialist brain and head injury solicitors. Hugh James is a member of the Brain Injury Group.

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