

# Have you arranged your Power of Attorney?



## A 'how to' guide

You might assume that if you are married or in a civil partnership, your spouse will automatically be able to deal with your affairs if you lose the ability to do so.

Unfortunately, this is not the case. If you want to avoid a lot of hassle for your loved ones at what would already be a difficult time, then it is a good idea to put in place Power of Attorney as soon as you can.

These are legal documents allowing someone else to act on your behalf.

Occasionally a person (known as the 'Donor') might set up a 'General Power of Attorney' for a temporary period, if for instance, they were going abroad for a year. This gives the Attorney specific or general powers to deal with the Donor's property, business or financial affairs and ceases when the Donor becomes mentally incapacitated or at the Donor's request.

This article looks specifically at '**Lasting Power of Attorney**' (LPA), which are designed to be used when a person loses capacity.

It has no time limit, therefore it is often used for the rest of that person's life.

## Lasting Power of Attorney is seen as a 'nice to have' but not a priority

This is especially so if a client is young or even if they are older but feel fit as a fiddle. The trouble is, it can only be put in place when you have full mental capacity.

A professional or a non-family member who knows you well must sign the Power of Attorney to certify that you have full mental capacity at the time it is made.

We know from experience that dementia can sadly come on incredibly quickly, and accidents can of course happen at any time, at which point it would be too late.

Your loved ones would then need to apply via the Court of Protection to be appointed as your deputy, which is often a lengthy and costly affair.

Equilibrium will always recommend to arrange both types of Lasting Power of Attorney, regardless of age or circumstance.

A solicitor can guide you through the process if your affairs or family relationships are particularly complicated, however, many people can arrange them via the Government online service.

## Costs involved

The costs involved are currently £164 per person (as at April 2023) to register both types of Power of Attorney (£82 for each). Should you employ a solicitor, you may have to pay an additional cost of £250-£500.

# Types of Lasting Power of Attorney

There are two types, both of which are vital:

## 1) Property and Financial Affairs

This type of Attorney allows a person to pay your bills and deal with your savings, investments and property.

### Example of importance

Without a property and financial affairs LPA your loved ones will have to apply to the Court of Protection for a 'deputyship' at a distressing time.

Firstly, you would have no say over who should be appointed; and secondly, the applicant would have to disclose everything about their own finances to the Court of Protection and complete a personal statement about why they are the best person for the job.

The cost of this application can be several thousands of pounds which can take months to arrange.

Once in place, the deputy will then have to pay a supervision fee of £320 each year and submit an annual report to the Court of Protection setting out the actions they have taken over the year.

## 2) Health and Welfare

This type of Attorney allows a person to deal with health and social care matters on your behalf and to make decisions on day-to-day healthcare and medical treatment.

### Example of importance

We know of one instance, where a client in a care home was prescribed a liquid-only diet to lessen his risk of choking, even though he could swallow small morsels.

There was no health and welfare LPA, and so when his wife was caught bringing him some cake that she planned to break up and feed to him, she was almost banned from seeing him without supervision. The care home were fearful of the potential legal action if they went against doctors orders.

If this LPA had been in place, the wife would have been able to take this calculated risk on behalf of her husband.

### Important note:

Giving a trusted person Power of Attorney over your property and financial affairs does not mean they get any say in health and welfare matters and vice versa. You can appoint different people for each type if you wish.

# The process

The process is relatively straightforward as shown in the steps below:

## **Decide who you would like to act as your Attorney and speak to them.**

You have the option to appoint an initial Attorney as well as replacement Attorneys. We often see clients appoint their spouse as the initial Attorney with the children stepping up when the spouse is no longer around. We also see clients appoint friends, neighbours and occasionally professionals, such as solicitors.

## **Decide if your Attorneys must act 'jointly or severally'.**

Say you lose capacity and your two children step up to the plate as your Attorneys, would you prefer that they act 'jointly', meaning that both must agree to every decision, or 'severally', meaning that they can act independently without the other's signature?

It sounds like a no brainer. Of course you would want them to act together. However, if they live far apart then the practicalities can be difficult. Even simple errands, like paying a bill on your behalf, will need both of their signatures. There is no right or wrong answer, it comes down to who you are appointing and what you are comfortable with.

## **Complete the forms.**

If you plan to complete the forms yourself without a solicitor then the Government has a helpful online system. Alternatively, you can print the forms and complete them by hand.

## **Arrange for the forms to be signed.**

You, your Attorneys and a 'Certificate Provider' will need to sign the forms. The Certificate Provider verifies that you understand the implications of what you are doing.

This just needs to be someone who isn't related to you and who has known you for at least two years (your planner or client manager are happy to take on this role if they've known you long enough).

## **Submit the completed forms and payment to the Office of the Public Guardian.**

As mentioned above, the cost of registering is currently £82 per Power of Attorney, although low earners can apply for a reduction in cost.

Once submitted, it can take up to 20 weeks to register (if there are no mistakes in the application) and once returned, they will bear a stamp from the Office of the Public Guardian, which means that they can be used.

The power will be effective as soon as the LPA is registered, so the Attorney will be able to start making decisions straight away, unless they specify otherwise on the application.

Alternatively, you can wait and instead have the Power of Attorney registered after you lose capacity. However, registering early allows time to correct errors and means it is ready to use if needed urgently.

It is also worth mentioning that you can easily cancel a Power of Attorney at no cost, providing that you still have capacity.

If you would like to discuss this further, please speak to your planner or client manager, who will be happy to provide more information.