

* Choosing attorneys

Lasting Powers of Attorney (LPAs) can be drawn up to appoint a person or persons to deal with your finances if you become incapable or unwilling to do so or to make decisions as to your personal health and welfare. Your attorneys are required to act in your best interests and they have the ability to make all the decisions that you could have made had you retained capacity. This means that the identity of your attorney(s) is crucial and it is a decision that requires very careful thought.

Role and responsibilities of attorneys

As stated, your attorneys essentially stand in your shoes. Under a Property and Financial Affairs LPA, your attorneys, subject to any preferences and instructions that you have included in your LPA, have powers to deal with all aspects of your finances including realising and transferring assets and making investments on your behalf. An attorney under a Health and Welfare LPA, as the name suggests, has power to make decisions about all matters relating to your personal welfare, including about where you live and the medical treatment that you receive. Any attorney has to act in your best interests and is subject to the provisions of the Mental Capacity Act 2005 and its Code of Practice. They are required to keep accounts and have limited powers to make gifts. (See our Client Information Sheets on these subjects for further information.) They cannot act until the LPA is registered with the Office of the Public Guardian.

Number and identity of attorneys

You can choose to appoint as many attorneys as you wish and they can act jointly (ie they all have to act) or jointly and severally (ie either one of them can act) or even jointly in respect of some matters but not others as long as this is clearly specified in the LPA. You can also appoint replacement attorneys. An attorney has to be aged over eighteen and it will often be sensible to appoint people younger than you. It is essential that you have complete trust in your attorneys.

Many people would think that their children would be the obvious choice for the role of attorney and, in many cases, children would be ideal. However, when choosing your attorneys you do need to take into account all the circumstances. If there is family dissent (perhaps between siblings) then your children might not be the best choice. In addition, when considering anyone for the position of attorney you should consider whether they are likely to have the time necessary to carry out their duties and, in relation to a Property and Financial Affairs LPA, whether the proposed attorney is sensible with money. If your affairs are complicated this needs to be considered especially carefully and you may like to consider making it a condition that your attorney takes suitable professional advice.

Professional attorneys

Some people may have no-one who they consider suitable to appoint whether because of lack of family, family dissent or because all possible candidates are deemed unsuitable for some reason. In that case you could consider appointing a professional to act as your attorney under a Property and Financial Affairs LPA. For example, this is a role that our Trust Corporation could take on if, after full discussion, it was considered suitable. The advantage of using a Trust Corporation is that it is a

disinterested legal entity which will not die or lose capacity and where established procedures will be in place for dealing with your finances. Fees would be charged on a time spent basis for work carried out under the LPA and this would be discussed and full details provided before you decided to go ahead.

For further information on this or on any other Private Capital matter you may have, please contact us.



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