

* Health and Care Lasting powers of attorney

What are they and why should you consider making one?

A Health and Care Lasting power of attorney (LPA) is a legal document that enables anyone aged 18 or over to choose people that they trust to make decisions on their behalf as to their health, care and general welfare if they become incapacitated. The person making the LPA is known as the donor and the persons appointed to act are called "attorney(s)".

What powers can be granted under a Health and Care LPA?

A Health and Care LPA can grant your attorneys powers to deal with all matters related to your personal welfare. This includes important decisions such as the type of medical treatment that you receive and where you live. It also governs day-to-day matters such as your daily routine and your diet. It does not, however, give your attorneys power to deal with your finances, pay your bills or make decisions as to whether your property should be sold. If you wish your attorneys to be able to make decisions relating to your finances, as well as your health and care, then you will need to draw up a Financial Decisions LPA. We would always advise that you enter into a Financial Decisions LPA at the same time as a Health and Care LPA.

Can a Health and Care LPA give my attorneys power to decide whether I should receive life sustaining treatment?

Yes. You have the ability to indicate in the LPA whether or not your attorneys are to have power to refuse life sustaining treatment or to consent to such treatment. It is also possible within the LPA to express your preferences as to this or other matters affecting your health and care. You could, for example, express the preference that if you have a degenerative illness that your attorneys should refuse medical treatment that would prolong your life. Your attorneys would not, however, be able to compel your doctors to give you treatment specified by them.

If you wish to make your wishes as to medical care known, but do not wish to appoint a Health and Care attorney, then an Advance Decision (often referred to as a "living Will") may be the best option for you. Please ask us for our Information Sheet on Advance Decisions.

You should advise us if you already have an Advance Decision in place as this might be affected by a Health and Care LPA.

How is a Health and Care LPA created?

There are strict formalities around the creation of any LPA. They have to be created on the specified forms and someone known as a "certificate provider" is required to certify that you understand what you are doing and have the necessary mental capacity to enter into the LPA. Once the LPA has been created it must be registered with the Office of the Public Guardian, a process that takes some weeks.

What happens if I do not have a Health and Care LPA?

In those circumstances, in so far as you are not able to make a particular decision because you lack mental capacity, most decisions as to your care and welfare will be made by the professionals looking after you (for example, social workers or medical staff) having taken into account the views expressed by your family. In some very limited circumstances an application might need to be made to the Court of Protection for an order in relation to a particular aspect of your care.

If you have particular views as to your care if you were to become incapacitated, have no family who could express those wishes to your carers, or you are doubtful about their ability to make your views known then it is particularly important that you consider a Health and Care LPA.

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



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