

## \* Capacity to make an LPA

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A Lasting Power of Attorney ("LPA") is a legal document that gives a person or persons of your choice power to deal with your financial affairs or power to make decisions on your behalf concerning health and welfare matters. If you do not have an LPA, and lose capacity, then a court application may be necessary for the appointment of a Deputy. If you wish to make an LPA you must have the mental capacity to do so. This Information Sheet looks at how that capacity is assessed.

The Mental Capacity Act 2005 states that in order to have capacity to make a LPA:

- you must have all the relevant information;
- you must be able to retain that information; and
- you must be able to weigh it up to arrive at the decision to make the LPA.

You must also be able to understand the foreseeable consequences of making or not making the LPA or making it in different terms. For example, someone who has recently been diagnosed with a degenerative condition such as dementia should be able to understand that if an LPA is not put in place, and they subsequently lose capacity, it might be necessary for a court application to be made for a Deputy to be appointed to deal with their affairs.

The Office of the Public Guardian's rather lengthy booklet ("[Guidance for people who want to make a Lasting Power of Attorney](#)") confirms that you should be able to understand at the very least:

- what an LPA is;
- why you want to make it;
- who you are appointing as attorney;
- why you have chosen that person or those people to be appointed; and
- what powers are being given to the attorney.

Every LPA has to be signed by a certificate provider who has to certify that you understand what you are doing and so he or she will need to be satisfied that you can understand this information. If the certificate provider feels unable to provide the necessary certificate, or you are unsure about the capacity of a relative who wishes to make an LPA, then it would be advisable to ask a medical professional, social worker or other suitably qualified person to assess your or your relative's capacity to make an LPA.

## **What if the person wishing to make the LPA does not have capacity?**

If an application is required to the court for a Deputy to be appointed, a family member can apply to be appointed as the Deputy. Deputies have some additional duties that do not apply to attorneys, for example, filing an annual report with the Office of the Public Guardian, and it will be more expensive than an LPA, but if this is the only route available it can be less complicated than you may think. It is possible to appoint more than one person which can often reduce the burden on one family member dealing with everything.

If there are more tricky issues to be managed, such as family members who do not get along or technical issues regarding property or finances, then the appointment of a professional as the Deputy may be more appropriate.

### **Informal arrangements**

If you are acting for someone with dementia on an informal basis because you are not sure whether he or she would be able to make an LPA, or indeed whether this is needed, it is advisable to take advice as quickly as possible both so that an LPA can be drawn up whilst the person concerned still retains capacity and to safeguard yourself as well as your loved one.

### **Further information**

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

[See key contacts](#)

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