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HERE FOR YOU AND YOUR FAMILY



# Your Guide To

## Lasting Powers of Attorney

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# Welcome To Timbrell Law

Every adult has the fundamental right to make decisions for themselves. Whether these decisions relate to the management of their finances or their health.

Sometimes, however, our ability to make decisions can be compromised. For example, mental capacity can be lost through illness, disability or an accident. Where you are no longer able to make decisions for yourself, you will need someone to speak for you.

To secure the best possible outcome for you and your family, there are steps you can take to prepare for this. Making a Lasting Power of Attorney allows you to grant the legal authority to make decisions on your behalf to individuals you trust. The individuals you appoint will be known as your 'attorneys'.

If something should happen to you, your attorneys will be able to act immediately to protect you and your estate.

Planning ahead also gives you the opportunity to communicate your wishes. If your attorneys understand what you would have wanted if you had capacity, they will be more confident in their decision making. They will also be able to help secure a quality of life which is in line with your wishes.

Preparing for loss of mental capacity is as relevant for young families as it is to those in retirement. Our aim in producing this booklet is to help individuals and families better prepare for the loss of mental capacity and explain the planning options available.

Alice Timbrell  
**Solicitor**



# What You Need To Know About Lasting Powers Of Attorney



## What is a Lasting Power of Attorney?

Lasting Powers of Attorney are commonly known as LPAs.

An LPA is a legal document that allows you to appoint individuals you trust to make decisions on your behalf. Those individuals will be known as your attorneys. Naming an attorney means that if you become ill or are involved in an accident and lose mental capacity, you know exactly who will be making decisions for you.

## What types of decision can be made?

There are two types of Lasting Power of Attorney:

### The Property and Financial Affairs LPA

A Property and Financial Affairs LPA allows your attorneys to make financial decisions; for example, paying your bills, dealing with your savings and investments, operating your bank accounts, collecting any income, benefits and pensions due to you, maintaining your home and even buying and selling property. They should ensure that your finances are in order, so your best interests are protected.



## The Health and Welfare LPA

A Health and Welfare LPA allows your attorneys to make decisions concerning your health and wellbeing. It includes decisions about your medication and treatment and where you live. You also have the option of allowing your attorneys to make decisions regarding life-sustaining treatment. You don't have to have existing health problems to make an LPA.

### What happens if I don't have an LPA?

Without a Property and Financial Affairs LPA, your loved ones will have to make an application to the Court of Protection to be granted the authority to manage your financial affairs (this is called a "deputyship order"). In the interim, the bank will freeze your accounts and potentially leave your affairs in limbo.

Securing a deputyship order is time-consuming and more expensive than preparing an LPA. The Court also places ongoing obligations on those appointed; for example, deputies must submit a report every year enclosing financial accounts and details of decisions made on your behalf.

If you lose mental capacity without a Health and Welfare LPA, decisions about your health will be made by the medical professionals involved in your care or the local authority. While it is usually the case that these authorities act respectfully and consult your family, there are instances where the medical professionals and family members disagree.

### How is mental capacity assessed?

A capacity assessment should be carried out when an individual is having difficulty making decisions. A person's ability to understand the information relevant to the decision, to retain and use that information and communicate their decision will be relevant to whether they have capacity. It is important to remember that capacity is decision specific. This means that a person may have capacity to make some decisions, but not others. Your attorneys should support you to act independently wherever possible.

If you would like any further assistance in planning for your future, please don't hesitate to get in touch. We offer free initial consultations for all matters to help you decide how to proceed. We are available on **01242 420744**, or you can email us at **[contact@timbrell-law.com](mailto:contact@timbrell-law.com)**.



# Six Of The Worst Misconceptions About LPAs



**We have set out to expose the most common misconceptions surrounding Lasting Powers of Attorney (“LPAs”) that stop people from planning ahead.**

## **Misconception 1 – LPAs are only for the elderly**

People usually identify being unable to manage their affairs with the onset of old age. However, there are other ways to lose mental capacity. What happens if you have an accident? Similarly, who will speak for you if you are unconscious or in a coma?

Using an LPA to plan for the unknown is important for families of all ages.

## **Misconception 2 – If you have limited assets you do not need a Property and Financial Affairs LPA**

You don't need to own property or have significant savings to prepare an LPA. Almost every aspect of day to day life is facilitated by a financial decision or payment.

Your attorneys may need to make decisions about paying for accommodation, household expenses and holidays for you. They may also need to claim benefits and allowances on your behalf.



Thinking further ahead, if you later receive an inheritance, having an LPA in place will ensure that there is someone to manage your inheritance if you lose capacity.

### **Misconception 3 – Jointly held assets are not affected by mental incapacity**

This is a common misconception, especially where bank accounts are concerned.

It is normal for high street banks to freeze all withdrawals from a joint account upon discovering that one of the account holders has lost mental capacity. If you share an account with your spouse, they will lose access to the account unless they can prove they have authority to act for you. Your spouse may be unable to meet their own needs during this period or pay for your expenses.

### **Misconception 4 – Your Will also covers the position if you lose mental capacity**

Your LPA and your Will never operate at the same time. This is because your Will only comes into force on your death.

### **Misconception 5 – Next of kin can make health decision without an LPA**

Next of kin is a title usually given to your nearest blood relative. The title does not confer any legal authority to make health or medical decisions for an incapacitated adult.

If you appoint a health and welfare attorney, they will be able to talk to doctors and other medical professionals as if they were you. They will be able to step into your shoes and make decisions about your treatment, where you live and the support and help you receive.

Without an LPA, decisions about your health will be made by the medical professionals or local authority involved in your care. They are bound by law to make whatever decision they consider to be in your best interests; even if this overrides the wishes of your family.

### **Misconception 6 – There is no oversight of LPAs**

An LPA must be registered with the Office of the Public Guardian ("OPG") before it can be used. This means that there is a public record of the appointments you have made in your LPA.

The OPG is responsible for maintaining this record and investigating reports of abuse by attorneys. If the OPG suspect financial abuse, they will take steps to apply to the Court of Protection to cancel or revoke the LPA to prevent further harm.



# Six Tips For Choosing Your Attorneys

One of the significant advantages of the Lasting Power of Attorney (“LPA”), is that it enables you to choose people you trust to act as your attorneys and make decisions on your behalf.

You can choose:

- the people you want to act; and
- if you appoint more than one person, how you want them to make decisions.

On the other hand, if you lose mental capacity without an LPA in place the Court of Protection will decide who should take control of your affairs.

Having that choice over your future is empowering, but you must choose your attorneys wisely.

## Who can act as an attorney?

You can appoint anyone over the age of 18 to act as an attorney. However, whether you are appointing an attorney to make decisions about your finances or your health, you should be confident that they are the best person for the role.

## Our top tips for choosing your attorneys

### 1 - Make sure you have the right number of attorneys

You will need at least one attorney; although, you may wish to consider naming more than one or at least a replacement attorney.

Naming more than one attorney will ensure that if your original attorney dies, or loses mental capacity themselves, there is another person ready and willing to act on your behalf.

### 2 - Choose attorneys that will work as a team

If you are appointing more than one attorney, it is essential that they can work together as a team.

If you appoint your attorneys to act jointly, they will need to agree on all decisions unanimously. Where they cannot work together to make decisions, your LPA will fail.

Where you appoint attorneys jointly and severally, so that they can make decisions independently, you will want to know that your attorneys will communicate with each other to prevent conflicts arising.





### 3 - Choose attorneys with the appropriate skills

It is important to consider whether the person in question has the appropriate skills to act as an attorney. For example:

- How good are they at managing their own money?
- Are they well organised?
- Will they have time to help you?
- Do they have enough life experience?
- Are they comfortable making medical decisions?
- Will they be able to understand and weigh the pros and cons of various treatment options?

### 4 - Check your attorneys are happy to act

It makes sense to take the time to speak with your chosen attorneys and explain why you want them to act and what the role will involve. You should give your attorneys sufficient information and time to make an informed decision about whether they want to accept the role.

You do not want to appoint an attorney who later refuses to step up.

### 5 - Make sure your attorneys understand your wishes

When making decisions on your behalf, your attorneys must act in your best interests. In determining what is in your best interests, they will need to consider your past and present wishes.

You want to appoint attorneys who either understand what your wishes are or are willing to find out.

### 6 - Choose attorneys you trust

Finally, it is crucial that you trust your chosen attorneys to respect your wishes and act in your best interests at all times.

If you would like any further assistance in planning for your future, please don't hesitate to get in touch. We offer free initial consultations for all matters to help you decide how to proceed. We are available on **01242 420744**, or you can email us at **[contact@timbrell-law.com](mailto:contact@timbrell-law.com)**.



# Communicating Your Wishes

Once you have signed your Lasting Power of Attorney, you are in a perfect position. You now have the chance to discuss your wishes with your attorneys, so if the time comes, they are prepared.

## The Best Interests Principle

If your attorneys need to make a decision on your behalf, they must comply with the duties and responsibilities set out in the Mental Capacity Act 2005 and the accompanying code of practice.

One of the core principles of the Act is that any decision made on behalf of a person who lacks capacity must be made in that person's best interests.

Working out what is in your best interests might be difficult. However, your attorneys should take into account:

- a) your past and present wishes and feelings;
- b) the beliefs and values that would be likely to influence your decision if you had capacity; and
- c) any other factors that you would be likely to consider if you were able to do so.

It is, therefore, crucial to communicate your wishes, feelings, beliefs and values with your attorneys. It may be uncomfortable, but they will thank you for it in the long run.

### Example: What should I discuss with my Health and Welfare Attorneys?

The wishes you express to your attorneys will be personal to you. You can talk about anything to do with your future care. This might include:

- Where you want to be cared for
- Any religious beliefs or values that you want reflected in your care
- Your views on particular treatments or types of care
- Your preferences for your personal care and diet
- Hobbies and interests you would like to maintain if possible
- The types of music and books you like
- If there is anyone you want your attorneys to consult when making decisions on your behalf
- Where you want to die



# How Can Timbrell Law Support You?

Timbrell Law solicitors deliver a range of private client services, including Wills, Probate and Lasting Powers of Attorney. We provide flexible home visits across Gloucestershire and offer free initial consultations. Our goal is to provide a responsive and trustworthy service that supports our clients in all stages of life.

If you would like to be kept up to date with legal news and receive helpful insights about Lasting Powers of Attorney and more, follow us on social media.

## Preparing a Lasting Power of Attorney

We are experts in preparing and registering Lasting Powers of Attorney (LPAs) and can guide you through the entire process.

Our service includes:

- Discussing your wishes for the future, including who would be best placed to act as your attorneys, how and when they should be permitted to make decisions on your behalf and preparing suitably drafted LPAs.
- Advising on or assisting you with the signing of your LPAs.
- Where requested, acting in our professional capacity as your certificate provider.
- Registering your LPAs with the Office of the Public Guardian.

If you are unhappy with your existing powers of attorney, we can also help you revoke the powers you have granted.

**Contact us to set up your free initial consultation today.**



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