



## Lasting Powers of Attorney (Personal Welfare)

Lasting Powers of Attorney (LPAs) were created by the Mental Capacity Act 2005. The Act introduced a new type of power of attorney – a Personal Welfare LPA (PWLPA).

### What is a PWLPA?

A PWLPA enables you to appoint someone to make decisions for you that affect your personal welfare, including decisions regarding medical treatment and healthcare. However, it only comes into effect once it is registered with the Office of the Public Guardian (OPG). It can only be used when the person making it (the donor) no longer has capacity.

### What kind of personal welfare decisions can I delegate to my attorneys?

You can choose; you might like to authorise your attorneys to decide where you should live and who with, or to consent to or refuse medical treatment on your behalf – even to decide on details, such as diet or dress for you, or who can visit you. You can authorise your attorneys to make any decisions about your personal welfare that you wish.

### This gives my attorneys very wide powers; in what circumstances can it be used?

First, it cannot be used until it is registered with the Office of the Public Guardian (OPG). Second, it cannot be used while you are still capable of making decisions about your healthcare or personal welfare.

### Are there safeguards against abuse?

You choose what decisions the attorneys can make on your behalf when you make the power. You can add whatever conditions and restrictions you want.

You can also nominate certain people (up to five) to be notified when an application to register the power is made. You will be notified by the OPG. This puts you and your nominees on notice that an application to register is being made.

After you have signed the power, you have to obtain a certificate by someone independent that you understand the nature and scope of the PWLPA, that you are not being put under pressure to sign it and that there is no other reason to prevent it being granted. The certificate provider can either be someone who knows you well or a professional, such as a doctor or solicitor.

It is sometimes helpful to let your family know that you have signed a PWLPA, even if they are not the individuals you choose to be notified of an application to register the power.

### Who should I appoint as an attorney?

Because you are giving your attorneys such wide powers to make decisions on your behalf if you lose capacity, you must choose someone you can trust absolutely. You should normally appoint more than one attorney. You should choose someone with the right skills to make the right decisions about your personal welfare. You might, for instance, appoint a family member (who knows you well) and someone independent (who can be objective).

### How many attorneys should I appoint, and do they all have to agree?

You can appoint as many (or as few) attorneys as you like. Two or three is usual. You can also appoint a substitute attorney who can step in if an original attorney dies or cannot act for some reason. You do, however, need to be very specific about who the substitute attorneys will replace and in what circumstances.

You can provide that all your attorneys must agree, although this can be inflexible and causes problems if one of them dies. Alternatively, you can appoint your attorneys so that they can act “together and independently”. This means that they can act separately – they do not all have to agree. You can also provide that your attorneys can act together in some matters but independently in others.

You must think very carefully about the practical implications of giving your attorneys power to act independently of one another.

#### Should my attorneys under PWLPA be the same as my attorneys under a Property and Affairs power?

Not necessarily. Different skills may be needed and there could be a safeguard against abuse if you have different attorneys. Your attorneys will be expected to consult one another. For instance, the choice of a nursing home may have welfare and financial implications for you.

#### Can I limit the attorneys' powers?

A general PWLPA will include all healthcare decisions, with one or two important exceptions. However, you can add restrictions or conditions, or simply limit the attorneys' powers to certain specific decisions.

You might include decisions about whether your attorneys can:

- Consent to or refuse medical treatment
- Decide where you live and who with
- Make arrangements for your day-to-day care

You can also give your attorneys guidance, although this guidance is not binding upon them.

#### I already have a Living Will – is this affected?

A very important point to note is that your attorneys under a PWLPA may not make decisions regarding life sustaining treatment unless you specifically authorise them to do so.

A living will allows you to refuse specified medical treatment at a time in the future when you can no longer make that decision for yourself. A PWLPA allows you to give general authority to your attorneys to consent to or refuse life sustaining treatment; it is not necessary to specify a particular treatment.

If you have made a living will, and then make a PWLPA and give your attorneys such a general authority, the living will is revoked. However, it will continue if you do not give your attorneys this general authority in your PWLPA.

#### Is the form very complicated?

It is long and there are some very important and difficult decisions to be made. It is vital that you discuss these with your prospective attorneys, and it will often be wise to talk to your solicitor as well, especially about the choice of attorneys, the decisions you want to enable them to make, who is to be notified, and who is to be the certificate provider.

For further information, or to discuss LPAs, please contact David Parkhouse or Melanie Sweeting of our Tax Trusts and Wills team who will be pleased to help you.