

## Lasting Powers of Attorney

### **The Mental Capacity Act 2005**

The Mental Capacity Act 2005 has introduced a number of changes regarding decision making for adults who have lost their mental capacity. The main changes concern Enduring Powers of Attorney (EPAs). It is no longer possible to make an Enduring Power of Attorney, although those made before 1 October 2007 continue to be valid. Instead, the new Act introduces Lasting Powers of Attorney (LPAs) which will perform the same functions as EPAs by allowing you to appoint another person or persons to make decisions about your financial affairs or health on your behalf and which will remain valid even if you lose your mental capacity.

There are two types of LPA available to individuals:

#### **Property and Financial Affairs LPA**

This is similar to the old Enduring Power of Attorney (EPA). It enables you to choose individuals or a trust corporation to make decisions about your finances and property on your behalf.

You can decide whether the power is to operate solely from the onset of mental incapacity or whether your attorney can manage some or all of your affairs while you still have capacity. It is also possible to limit the powers that your attorney acquires and place conditions and restrictions on how those powers are exercised.

Some examples of things that can be dealt with under this type of LPA include; making investment decisions; signing your tax return; operating your bank accounts; and selling and purchasing property on your behalf.

#### **Personal Health and Welfare LPA**

This is a new option introduced by the Mental Capacity Act 2005. This form of LPA allows you to choose a person or people (but not trust corporations) to make decisions on your behalf in relation to your personal welfare and healthcare.

Unlike Property and Financial Affairs LPAs, Personal Health and Welfare LPAs only become effective if your attorney believes that you lack the capacity to make the decision yourself. The decision as to whether you lack the mental capacity must be assessed on a case by case basis. Attorneys are obliged to act in your “best interests” and must consider your age, your past wishes, your beliefs and your values. Your mental capacity may fluctuate, meaning that you remain capable to make certain decisions in relation to your future care, but not others.

Any limits, restrictions or conditions that you wish to place on how these powers are exercised by your attorneys must be set out in writing in the LPA document.

Some examples of issues that can be dealt with under this type of LPA include; deciding where you live; deciding with whom you have contact; and giving or withholding consent to medical treatment.

### **Who can be your attorney?**

Anyone over the age of 18 can be appointed to act as your attorney provided they are of sound mind. It is your choice whether you appoint the same or different people to act as your attorneys under the Property and Financial Affairs LPA and the Personal Health and Welfare LPA. You are also free to revoke your LPA at any time provided that you still have mental capacity.

### **Registration of LPAs**

All LPAs must be registered at the Court of Protection, for which there is a small fee, as soon as they have been signed by all parties. You must also obtain a certificate from an authorised person (the list as to who can sign one of these is yet to be finalised) that confirms that you have understood the nature and scope of the LPA and that there has been no fraud or undue pressure on you. The powers under an LPA cannot be exercised until registration is complete.

### **Existing Enduring Powers of Attorney (EPAs)**

If you have executed an EPA before 1 October 2007, this will continue to be valid and enforceable in relation to your property and financial affairs. However, an EPA cannot be used by your attorneys to make decisions regarding your health and welfare. If you do wish to make provision for your future health and welfare needs, it is advisable to make a Personal Health and Welfare LPA that will exist parallel to your EPA.

**If you would like more information about LPAs or would like to prepare one, please contact Ian Bradshaw, Clare Jeffries or Diana Rawstron in our Private Client Department.**