

# Health & Welfare Lasting Powers of Attorney and Deputyships

## What is a Lasting Power of Attorney for Health & Welfare (LPA)?

It is a document that enables a person with capacity to appoint attorney(s) to make decisions for them that affect their personal welfare, including decisions regarding medical treatment and healthcare. It only can be used once it has been registered with the Office of the Public Guardian (OPG) and if the person making it (the donor) cannot make decisions of this nature for themselves.

## What if a person has lost capacity?

The fundamental principle is that a person must be assumed to have capacity unless a lack of capacity is established. If an assessment determines a person lacks capacity, that person cannot appoint attorney(s).

## What kind of decisions can a Health & Welfare Attorney make?

- Where a person should live to receive care.
- Day to day care arrangements such as a person's diet or daily routine.
- Consenting or refusing to medical treatment.

## Who can be an Attorney?

Anyone aged 18+ with mental capacity. Often attorney(s) will be a spouse, family member or close friend. It is important to choose someone with the right skills to make decisions about your personal welfare in your best interests.

You choose what decisions the attorney(s) can make on your behalf when you make the LPA, and whether their decision-making should be subject to certain restrictions or conditions.

## I have heard that someone must act as a Certificate Provider – what is their function?

An impartial person aged 18+ must confirm, by signing the LPA that the donor understands:

- The significance of the LPA.
- That the person has not been pressurised to make the LPA and there is no fraud.
- That there is no other reason for concern.

## Who can be a Certificate Provider?

- A friend, colleague or someone the person has known well for at least 2 years, but not a family member.
- A doctor, lawyer or someone with the professional skills to judge whether the person understands the purpose of the LPA and to ensure that the donor is not being unduly influenced into making an LPA.

## How much does it cost to register an LPA with the OPG?

The current fee is £82.00.

## Can an Attorney be removed?

Yes. If anyone believes that attorney(s) are not acting in a person's best interests, concerns should be raised with social services, the OPG, and/or the police, depending on the severity of the situation.

## What if an Advance Decision has been made before a Health & Welfare LPA?

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

An Advance Decision allows you to refuse specified medical treatment at a time in the future when you can no longer make that decision for yourself. A Health and Welfare LPA 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 an Advance Decision, and then make a Health and Welfare LPA and give your attorneys this general authority, the Advance Decision is revoked. However, it will continue if you do not give your attorneys this general authority under a Health and Welfare LPA.

## What is a Health & Welfare Deputyship?

If a person lacks capacity (P) to make health and welfare decisions, and an LPA is not in place, it is possible to apply to the Court of Protection (Court) to request a Deputy be appointed to manage P's health and welfare decisions.

However, health and welfare deputyships are only granted in cases where there is a clear need for a deputy to make a series of linked welfare decisions regarding P's health and welfare and it would be impractical to apply for the Court's approval for each decision.

## The Court Application Process for a Health & Welfare Deputyship

Applications of this nature are inherently complex. It is essential to obtain legal advice before an application is made.

Various forms must be completed. These include:

- Application;
- Permission to make the application;
- Supporting information;
- Assessment of Capacity;
- Deputy's Declaration

The application, supporting information and declaration provide the Court with the necessary information in order for a judge to decide whether it is appropriate to appoint a deputy. These should be completed as fully as possible to avoid requests for further information by the Court, which will lengthen the application process.

The Assessment of Capacity should be completed by an appropriately qualified medical professional and is required to establish that P lacks capacity to make decisions regarding their health and welfare.

The Court will consider your application and:

- make an Order without a Court hearing;
- give directions about your application and the next steps to be taken; or
- hold a hearing to decide your application.

### **If Health & Welfare Deputyships are rarely granted, how are health and welfare decisions made for P?**

The Court prefers to deal with health & welfare decisions on an issue by issue basis. In the first instance decisions should be made by the parties, collectively, in P's best interests, but in a way which promotes P's participation in the process. If a decision cannot be reached, the issue may need to be referred to the Court.

As with a Deputyship application, it is often necessary to obtain permission of the Court to apply. The Court must agree that the application will benefit P.

### **How much does a Health & Welfare application cost?**

There is a £365 application fee.

### **What is the Court's role in a Health & Welfare application?**

To decide whether it would be in P's best interests for a Deputy to be appointed to manage P's health and welfare or to decide whether a proposed course of action (such as P's placement in residential care) is in P's best interests.

If a Health & Welfare application has been made by a Local Authority, can P's family be involved or object to the application?

Yes. If a member of P's family has been named as a Respondent in the application, the person will automatically become a party to the proceedings once the relevant form (COP5) is returned to the Court. Any objections should be noted on the COP5.

The COP5 can also be used by a person notified to request to be joined as a party, or to lodge an objection.

### **How is legal representation funded?**

The costs of P's representation by the Official Solicitor may be met partly by the person bringing the application (for example a Local Authority) with the remainder from public funds. Family members are responsible for their own legal costs.

### **How can Lester Aldridge assist?**

We can provide:

- An initial, free consultation to discuss the circumstances of the case and the most appropriate way forward.
- Access to independent Experts qualified to assess an individual's capacity to make specific decisions.
- Support throughout the Lasting Power of Attorney or Deputyship application process.
- Advice with regard to how and when to object to an application for a Lasting Power of Attorney, Deputyship, or Health & Welfare decision.
- Representation throughout Court of Protection proceedings.
- If mediation or Court proceedings are required, we can recommend expert Barristers whom by virtue of their profession, can provide top tier advocacy to ensure your views and the evidence is clearly articulated to the Court.
- On-going advice and support at each key stage.