



LPAs Witnessed by Attorney Cancelled by Court

A recent Court of Protection decision has highlighted the importance of following the correct procedure when signing a Lasting Power of Attorney (LPA).

In *OPG v PGO, MAB, MJD [2019] EWCOP 13*, the Court heard that an 84 year old woman (referred to in the case as “BGO”) had prepared two separate LPAs in 2016. One dealt with her finances (known as a ‘property and affairs’ LPA) and the other dealt with her health and welfare. Both LPAs were then registered with the Office of the Public Guardian.

When a financial institution received a copy of BGO’s property and affairs LPA, they noted that BGO’s signature had been witnessed by one of her attorneys. This does not comply with the rules which govern how LPAs can be made and it called the validity of the LPAs into question.

If an error is made in a document, this can sometimes be rectified by a new document being prepared and signed. However, an LPA can only be made whilst someone has the mental capacity required to do so. Once they lose that capacity, making a new LPA to correct a problem is not an option. In BGO’s case, by the time the issue was noticed and the Office of the Public Guardian was notified about this in 2018, BGO had lost the capacity required to make new LPAs.

This resulted in the Office of the Public Guardian making an application to the Court of Protection, to determine whether BGO’s LPAs should be cancelled. If so, the only option then available would be for the court to appoint deputies.

Deputyship involves the court appointing someone to deal with a person’s finances or health and welfare decisions. This is not always ideal, because it can incur costs and the Court’s choice of deputy may not always align with a person wishes about who should make decisions on their behalf in the event that they lose capacity.

Health and welfare deputyships are also granted less frequently than those for property and affairs, so there is a risk that a health and welfare deputy won’t be appointed at all.

Even if a health and welfare deputy is appointed, they cannot refuse to consent to life sustaining medical treatment. In BGO’s case, her health and welfare LPA indicated that she wanted her attorneys to have such powers, so, if BGO’s health and welfare LPA was invalid, this would mean that her wishes about life sustaining

treatment could not be carried out.

The Court held that the requirements for signing the LPAs had not been met and the Public Guardian was therefore directed to cancel the registration of BGO's LPAs.

The reason why such emphasis is placed upon correctly signing an LPA is to reduce the risk of someone abusing the LPA system. The court explained;

"...it should be borne in mind that Lasting Powers of Attorney are powerful documents and inevitably therefore there will be those who seek to obtain powers wrongfully. There is no suggestion of such wrongful intent in the matter currently before me but, in different circumstances, insistence on an independent witness to the Donor's signature is itself an important safeguard for the expression of genuinely autonomous decisions."

Things to consider when making an LPA

If you are making an LPA, some important points to consider include:

- An LPA must be signed and witnessed in an LPA in a particular way, [click here](#) for more information.
- Attorneys, replacement attorneys or an employee of a trust corporation that is your attorney/replacement attorney (under a property & affairs LPA) should not witness the donor's (person who is making the LPA's) signature.
- Witnesses to an LPA must be aged 18 and over.
- Check that the LPA has been signed and witnessed correctly before it is registered with the Office of the Public Guardian. In *OPG v PGO*, registration occurred some time before the problem was discovered.
- Once you have checked your LPA, remember to register an LPA with the Office of the Public Guardian.

Our specialist [Court of Protection solicitors](#) can provide advice about deputyship or the validity of an LPA. Contact us by calling 01202 786161 or emailing online.enquiries@la-law.com.