

CSHS AND HOUSING LIN SEMINARS

Lasting Powers of Attorney and Applications to the Court of Protection



Caveat

- This presentation has been built up from information from the OPG, but is summarised and simplified.
- It should not be seen as formal or official guidance
- The Office of the Public Guardian can give advice and information on the processes – but not legal advice

Public Guardian

- Appointed by the Lord Chancellor and provided with officers and staff to:
 - Keep the register of LPAs and deputies
 - Supervise LPAs and deputies through requiring reports
 - Direct Visitors to visit LPAs, deputies and people without capacity and report back
 - Deal with representations about how LPAs or deputies are exercising their powers
 - Report to Court
 - Publish information
- Supported by the Office of the Public Guardian (OPG)

Lasting Power of Attorney 1

- A person with capacity can appoint someone e.g. a relative, friend or solicitor, to act on their behalf if they should lose capacity in the future. This replaces the Enduring Power of Attorney.
- Two types of LPA
 - Property and Affairs – includes things like control and management of bank accounts and investments, sale or acquisition of property, carrying out of any contract, financial transactions
 - Health and Welfare Decisions – includes things like deciding where someone should live, consenting to or refusing medical treatment
- To be used the power has to be registered with the Office of the Public Guardian

Lasting Power of Attorney 2

- The donee can only act in those areas specified by the donor
- In Property and Affairs LPA, the donee has the power to act before the donor loses capacity unless specified otherwise
- In relation to personal welfare decisions, the donee
 - can only act where the donor has lost the capacity to decide/act for themselves
 - Can only give or refuse consent to health care treatment if specific authority has been given, and is subject to any advance decision on the matter

Terms

- Donor – the person who makes the LPA
- Attorney(s) – the person or people who will make the decisions on Donor's behalf
- Named people – those named in LPA to be notified when LPA registered
- Certificate provider – Two types:
 - Knowledge certification
 - Skills certification

LPA Process

- Application Form (Instrument) completed – with legal advice as necessary
- Signed
- “Certificate provider” to confirm LPA not being made under duress
- Registration with the OPG – at which point pay fee of £150 (currently)

Timing of registration

- Any time after LPA made but:
 - If welfare LPA, does not take effect until capacity lost
 - If Property and Affairs LPA takes effect immediately unless specified otherwise
- LPAs cannot be used until registered

Registration Process

- Donor or attorney(s) can apply to register
- Applicant must use form LPA001 (Notice of intention to apply for registration of an LPA) to notify “named” people
- Applicant must complete LPA002 (Application to register an LPA) and send to OPG
- OPG will contact applicant if any problems
- OPG will notify applicant of registration date – usually 6 weeks after it has notified all parties to allow for any objections

Changes

- LPAs can be revoked by Donor assuming s/he has capacity
- Changes cannot be made to any part of a signed and certified LPA.
- Bankruptcy of Donor or Attorney terminates a property and affairs LPA but not a welfare one

Court of Protection

- The *New Court of Protection* will deal with all aspects of the new Act. The Court can:
 - Make a single order or decision - for example, where a person should live, consent to treatment or withholding of treatment
 - Make a declaration on
 - whether a person has capacity to make specific decisions or class of decisions
 - the lawfulness of any act done or yet to be done by someone with a duty of care
 - any course of conduct or omission
 - Appoint a deputy to
 - make the decision instead of the court
 - implement the court's decision
 - Make decisions about EPAs and LPAs

When to apply to the CoP

- When Informal decision-making inappropriate:
 - Particularly difficult decisions
 - Disagreements that can't be resolved
 - Situations where ongoing personal welfare decisions must be made about someone who lacks capacity
- For matters relating to property and affairs of people who lack capacity to make specific financial decisions for themselves – when there isn't a valid property and affairs LPA in place

Permission to apply

- Some applications to the Court need permission
 - others don't
- Generally not needed in property and affairs issues, but needed for welfare applications
- Not needed if:
 - Application by person who [may] lack[s] capacity
 - Donor or attorney of LPA/EPA
 - Deputy
 - Person named in existing court order
- Who might apply? – family or local authority; could be others with legitimate interest

Process

- Forms and guidance on website
- Permission and Application forms – various, depending on
 - Whether permission needed or not
 - Whether welfare issue, property and affairs issue or both
 - Various other specific situations
- Complete and return forms to the Court of Protection (same address as OPG) – original and one copy of all forms and supporting documents
- If permission needed, usually decision in 14 days
- If situation urgent, interim order can be made – mark ****urgent**** and follow up proactively

And then...

- Court will “issue” the application – stamp it and return to applicant with additional forms and guidance
- Applicant then to tell various people about the application within 21 days using specific forms
- Applicant to return a form that confirms this has been done
- Court may
 - Make a decision without a hearing
 - Give further directions and steps to be taken
 - Fix a date for a hearing
- If no objections lodged re application, decision usually made without a hearing

Possible outcomes

- Court is bound by Act's principles
- Where possible court will make a decision rather than appoint a Deputy
- If Deputy appointed, scope should be as limited as possible
- The Public Guardian supervises Deputies at three possible levels – significant, low level and minimal – based on amount of capital involved

Fees

- Application fee - £400
- Hearing fee - £500
- Appointment of a Deputy fee - £125
- Deputy supervision fees
 - I Highest level - £800 p.a.
 - II Lower level - £175 p.a.
 - III Minimal – no charge
- Application to search the register - £25
- People on means-tested state benefits e.g. IS, Housing or Council Tax benefit usually exempt
- Others can apply for “remission” (reduction or exemption) if income under £16,000

Forms and Guidance

- Available on-line at:

<http://www.publicguardian.gov.uk/forms/Making-an-LPA.htm>

- Phone: 0845 330 2900

- E-mail: customerservices@publicguardian.gsi.gov.uk

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