

Call Stoke-on-Trent (01782) 639716

## LPAs, EPAs, the OPG and COP - explained

*A Guide provided by Rod Jones of Convenient Wills*

### 1 Welcome

Thank you for requesting this guide. I hope you find it helpful and informative.

This guide aims to equip you with information that will help you understand the relevance and interaction of Lasting Power of Attorney ("LPA"), Enduring Powers of Attorney (EPA), the Office of the Public Guardian (OPG), and the Court of Protection ("COP"). The guide explains why making a LPA is important, and how one can undertake the task.

As the law concerning these documents continues to involve, and the OPG can now vary their fees at fairly short notice this 'guide' is just that: a guide to help you. You will need to undertake additional research by either speaking to a professional will-writer, speaking to the OPG, or reading a specialist book on the topic -- but at least this guide will help you understand these products and organisations a little better before undertaking that research.

This report is provided on that basis. We regret we cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused. In addition, we do not accept any liability for any mistake, error, or omission from this guide.

This guide is one of a number of guides and reports available from our website [www.convenient-wills.co.uk](http://www.convenient-wills.co.uk); they cover a wide range of aspects dealing with estate planning in general, and making your Last Will & Testament and Lasting Powers of Attorney in particular.

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article. Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

If you require further information or clarification on any aspect of this guide then please do not hesitate to contact me. I will be only too pleased to help.

And finally, as you read this guide you may realise that it would be a lot easier, quicker, and simpler for a professional to make your LPA for you. We would like to help. Please [click here](#) to read the full features and benefits of our home visit LPA service, or [click here](#) to register your interest (without obligation) in our services.

*Rod Jones*

Rod Jones A.C.I.B.  
Proprietor of **Convenient Wills**

## 2 Introduction

The purpose of this guide is to:

- ♦ Explain why Lasting Powers of Attorney are important.
- ♦ Provide an overview of an attorney's responsibilities, and direct them to where they can find additional information.
- ♦ Explain the process for creating a Lasting Power of Attorney.
- ♦ Offer additional hints and tips that will make the attorney's task easier.

## 3 Changes to the Law

Most people assume that when they lose their mental capacity a family member can simply 'step in' and make decisions on their behalf. Following the introduction of the Mental Capacity Act 2005 this simplistic view is no longer a safe assumption.

To avoid the potential heartache now often being experienced daily in hospitals and care home across England and Wales every adult should now make a Lasting Power of Attorney - Property and Affairs, and consider making a Lasting Power of Attorney - Health and Personal Welfare.

## 4 Glossary

- ♦ **Lasting Power of Attorney:** A Lasting Power of Attorney is a legal document that enables a person to appoint TODAY the people they trust to make decisions on their behalf IN THE FUTURE should they ever be unable to make decisions themselves in the future.

*To avoid excessive repetition of the phrase 'Lasting Powers of Attorney' or Lasting Power of Attorney' we will refer to multiple or single Lasting Power of Attorney as "LPAs" throughout this document - unless the context is specifically in the singular in which case the document will be called a "LPA".*

LPAs are important, powerful documents.

The LPAs are provided in two forms - 'Property and Affairs' and 'Health and Personal Welfare'.

- ♦ **The Donor:** This is the person who makes the LPA. The donor appoints a third party or parties as their attorney(s), replacement attorney(s), certificate provider, and person(s) to be notified.
- ♦ **The Attorney:** The attorney is the person who makes the decisions on behalf of the donor when the donor cannot. Attorneys can be either 'attorneys', or 'replacement attorneys'.
- ♦ **'Replacement attorney'** can only take up their duties when the nominated attorneys are unable or unwilling to act. They must seek additional guidance from the Office of the Public Guardian at that time before taking on their responsibilities and duties.

Other than not being able to act until the nominated attorney is unable to do so, the duties, responsibilities and obligations of a replacement attorney are the same as an attorney.

*To avoid the repetition of the phrase 'attorneys or replacement attorneys' this fact sheet refers to attorneys and replacement attorneys simply as 'attorneys' - unless there is a need to differentiate the roles.*

- ♦ **The Certificate Provider:** This is a person who certifies that the donor was of sound mind when the LPA was created.
- ♦ **The Person to be Notified:** To reduce the risk of fraud the donor selects a person or persons to be notified at the time the LPA is registered with the Office of the Public Guardian ("OPG")
- ♦ **LPA - Property and Affairs** authorises an attorney to make decisions about the donor's property and financial affairs e.g. Running the donor's bank accounts and finances. Of the two types of Lasting Power of Attorney the Property and Affairs LPA is the more useful if finances are not able to afford to buy both.
- ♦ **LPA - Health and Personal Welfare** authorises an attorney to make decisions about the donor's care, choice of their care home, medication, who is to make the decisions if the donor is in a 'persistent vegetative state', and all other aspects of personal welfare.
- ♦ **The Office of the Public Guardian ("OPG"):** Before any LPA can be used by an attorney the LPA must first be registered with the OPG.

## 5 Sources of Help and Assistance

If after reading the following pages you would like yet more information regarding the power of a Lasting Power of Attorney, and attorney's responsibilities, or the documents completion please call Convenient Wills in the first instance -- on 01782 639716.

Further information is available from the [Office of the Public Guardian](#) web site Topics covered include LPAs, mental capacity, how to register LPAs, what action to take if you think someone is vulnerable or being abused, and much more. You can also call them on 0300 456 0300.

## 6 Why Make A LPA?

A Lasting Power of Attorney ("LPA") is a legal document that enables a person (The donor) to appoint TODAY the people they trust and who they would want to make decisions on their behalf if ever they were unable to do so themselves IN THE FUTURE.

Under the Mental Capacity Act 2005 the previously common practice of allowing a close relative to make decisions on behalf of their relative [who has lost the mental capacity to make their own decisions] was withdrawn. The Law now provides two options:

- A If you have mental capacity you can make a LPA appointing the people you trust to cover the risk that in the future you may not have mental capacity; or
- B If you do not have the mental capacity then a close relative should apply to the Court of Protection to be appointed as a 'deputy', or the Courts will appoint someone on their behalf. We have also heard of cases where Social Services have applied to be appointed as a deputy.

The second option is more costly, time consuming (it takes around 6 months to register), and very intrusive as very detailed information about the donor and the deputy have to be supplied. It can result in the Court seizing control of the donor's assets. That said, it is still better a better option than allowing a statutory body -- such as Social Services -- to be appointed as a deputy.

The best option is to put into place the appropriate LPAs while you have mental capacity.

Both types of LPA are overseen by the Office of the Public Guardian ("OPG"), and both are governed by the Mental Capacity Act 2005. You are recommended to visit the OPG's [website](#) for more information about LPAs.

Hopefully a LPA will never be required. But should the donor lose their capacity to look after their own financial affairs or personal welfare then both the donor and their family will be grateful the appropriate LPA documents were put into place.

## 7 The Process To Creating a Lasting Power of Attorney

The LPA is a legal document that must be made in a prescribed format. This section describes the procedures and process to make a valid LPA.

- ♦ The donors make their choices as to who they want to appoint as attorneys and replacement attorneys, the powers and restrictions they want to impose upon their attorneys, and the guidance notes they want to give their attorneys. The donor then signs their respective sections of the form - Part A. The certificate provider completes their section too - Part B. Appropriate signatures are witnessed in accordance with the legislation.
- ♦ The attorneys then each complete a Part C. By signing Part C the attorney acknowledges their responsibilities and duties granted to them by the LPA and the Mental Capacity 2005. Their signature has to be witnessed.

This declaration then forms part of the respective LPA document.

- ♦ Once all the attorneys have signed their respective Part 'C's the document will then be compiled together. The LPA can then be stored safely until it is required to be registered, or it can be registered with the OPG immediately.
- ♦ Before an attorney can act under the powers granted by an LPA the LPA has to be first registered with the OPG. Registration takes a minimum of 6 weeks. It can take significantly longer.

- ♦ As part of the process of registration at least one person must be notified of the LPAs' impending registration. This notification is in a prescribed format. The LPA lists the people to be notified. Notification is undertaken by the applicant registering the LPA.
- ♦ Registration can be applied for at any time by the donor while they have mental capacity, or by an attorney (if empowered by the LPA to act 'individually', or 'jointly and individually'), or by all the attorneys (if empowered to act 'jointly').

Replacement attorneys can register the LPA only when the attorneys have failed to do so and are unable to take up their role.

***If the donor loses mental capacity and has not registered their LPA, then the responsibility to register the document rests with their attorneys.***

- ♦ Full details of how to register can be found on the [OPG's web site](#).
- ♦ After successful registration of the LPA the attorney(s) are given formal, legal powers to act on behalf of the donor - within the prescribed powers granted within the registered LPA and by the Mental Capacity Act 2005.

## **8 Restrictions and Guidance Notes For the Attorneys**

- ♦ The donor may, if they wish, place restrictions on their attorneys' powers. The attorney will need to know what these restrictions are to avoid breaching the LPA and its governing legislation.
- ♦ The donor may also give guidance notes to their attorneys and replacement attorneys.

## **9 LPA-Health and Personal Welfare - Option A or B?**

The LPA - Personal Welfare allows the donor to choose who makes the ultimate decision in connection with their medication and care.

- ♦ Option A grants the attorney the authority to give or refuse life-sustaining treatment (and includes the power to override the donor's doctor's recommendation).
- ♦ Option B authorises the doctors to make the decision (taking into account the views of the attorney and others). Your donor's choice is listed in the table above.

This aspect needs to be carefully thought through by the donor.

## **10 Certificate Provider**

You can make your own LPA. You can obtain the documents from the Office of the Public Guardian. Be warned though: your signature must be witnessed by someone who then completes a certificate stating that in their opinion you have sufficient mental capacity to understand the document that you are signing.

Many LPAs are rejected on this point. We understand that not sufficient evidence is retained by the certificate provider to show how they were sure that the donor had sufficient mental capacity; we (Convenient Wills) are sufficiently skilled (and have the certificate to prove it) to undertake the 'certificate provider's role.

If you want us to be your certificate provider and you live local to Stoke on Trent then please [contact us](#).

If you would like to read the details of our home visits LPA service simply [click here](#).

If you would like to register your interest in our services (without obligation) [click here](#).

## **11 Enduring Power of Attorney**

Before 'Lasting Powers of Attorney - Property and Affairs' were available a person could appoint a third party to act on their behalf by making an 'Enduring Power of Attorney'.

A correctly completed Enduring Power of Attorney is still valid today - provided that it was completed in its entirety before October 2007. If the donor (i.e. The person granting the power) loses mental capacity then the attorney must register the EPA with the Office of the Public Guardian before they can act on to the EPA. Fees may be payable for registration.

If you already have an Enduring Power of Attorney ("EPA") then, generally, there is no need to upgrade to a Lasting Power of Attorney - Property and Affairs ("LPA - PA"). If the EPA was not completed correctly however, or the donor wishes to update their attorneys then it will be necessary to now make a LPA - PA.

## 12 Living Wills / Advance Directive

Do you regard your quality of life as more important than life itself?

If the answer is 'yes', then you might be interested in making a 'living will'.

In the UK you can still create a 'Living Will' even though the document has supposedly been replaced by the LPA Personal Welfare.

The Living Will sets out that if ever you are unable to communicate your wishes - as a result of say a serious illness or a set of circumstances that remove your ability to communicate - then you do not wish to be kept alive for the sake of being kept alive [simply because medical technology can do so]; you prefer to die with dignity.

The same wishes can be expressed in a Lasting Power of Attorney (Personal Welfare) ("LPA - PW"), but sometimes it is more practical to create a Living Will than an LPA - PW.

If you would like to know more about the Living Will and our service please [contact us](#).

## General Powers of Attorney - differences with a LPA - PA

The difference between a 'general power of attorney' and a 'Lasting Power of Attorney - Property and Affairs' is that if the donor (i.e. The person granting the power) loses their mental capacity then the General Power of Attorney also ceases to be valid. A Lasting Power of Attorney - Property and Affairs however continues to allow the attorney to act.

There are times and circumstances when a General Power of Attorney is more applicable than a Lasting Power of Attorney.

If you would like to know more about the General Power of Attorney and our service please [contact us](#).

## 13 The Office of the Public Guardian and The Court of Protection

The Office of the Public Guardian is the government department that handles Enduring Powers of Attorney, Lasting Powers of Attorney, and Deputyship orders.

The Court of Protection is the law court responsible for overseeing the operation of LPAs, EPAs, and deputyship orders. It is a very powerful law court.

There are accounts of this Government department seizing and freezing the assets of people who are deemed to have lost mental capacity and have not appointed someone to act on their behalf in such situations - creating immense hardship for their spouse, their other family members, and their business.

## 14 This Makes Shocking Reading

The Mental Capacity Act 2005 was designed to protect the vulnerable people in our Society. In theory, it has good intentions.

The reality however is far different for many people.

The law in the UK is straightforward. If you lose your mental capacity to make your own decisions then someone should make those decisions for you -- but that person or persons must have the legal authority to do so. That authority is given by the Office of the Public Guardian ("OPG") in certain cases, or by the Court of Protection ("COP") in others.

In theory, the process of appointment is simple. The reality is often different.

Both the OPG and COP became operational in 2007. Since then there have been many complaints about them. The Daily Mail produced an article claiming many 1000's of complaints, the fact that the Courts had taken control of the vulnerable people's financial affairs (Some £3 Billion), the horrendous time delays

applicants were experiencing, and the fact that applicants were made to feel like the thieves themselves rather than carers trying to help.

Personally I (as proprietor of Convenient Wills) have witnessed the MCA Act 2005 in action. My mother was refused the return of my father's watch and wedding ring when my father was admitted to hospital with severe dementia; the nurse's argument being that my mother did not have the legal capacity to request the return of these items. To prove the point, when we returned with my father's Enduring Power of Attorney ("EPA") (The EPA was the forerunner to the LPA, as previously stated) an hour later the jewellery was handed over to my mother without further question.

Some of my clients tell me horror stories of Social Services applying directly to the OPG and COP for them to take control of a vulnerable person's affairs, rather than letting the family undertake this role.

Public and private sector staff are being trained up on the Mental Capacity Act -- so the problem is likely to get worse.

### **Unstoppable Bills ... Help**

The Banks have a confused view about what actions are required when a registered LPA is presented to them, with the result that some banks act differently to others in the same situation.

There are stories of people losing their mental capacity and going into care, but the Banks refuse to accept instructions to cancel direct debits and standing orders for rent, rates, TV licence etc from their loved ones. And with applications taking 15 weeks to 26 weeks to go through the OPG and COP for formal approval to be given to family members, these costs continue to be paid, week in week out.

### **Two Solutions. Do you gamble?**

There are two solutions. One is do nothing and chance it. If you don't lose your mental capacity then you win. If you do lose capacity though then you lose, and big time. The only solution for your family is then to apply to the Court of Protection directly, and on your behalf. The application is very lengthy, and in most cases very costly. If you have significant assets the application fees can run into the £1000's.

The second solution is the recommended solution. This is the solution recommended by the Government too. This is to put into place a Lasting Power of Attorney - Property and Affairs. And do it today. Yes it will cost you a little bit (well, it will if you use a professional, which I would recommend for various reasons -- although you can do it yourself.). The document allows you to appoint some one you trust just in case it might be needed.

## **15 Convenient Wills would like to help you**

Making your LPA can be time consuming and relatively stressful. You will need access to quality paper, a quality printer, a significant amount of time to produce the master LPAs, good typing skills to ensure that all the 25 pages or so (of typing required per LPA) is completed with 100% accuracy. and you will need time to research and understand the process required to ensure that the documents are submitted correctly to the OPG.

On reflection you may feel using the services of a professional provide a better use of your time. The full features and benefits of our comprehensive home visit LPA service are contained on our [web site](#). If you would prefer to register your interest in our service without any obligation) then please [click here](#).

**Convenient Wills** is the only home visit, specialist Lasting Powers of Attorney & will-writing business located in Newcastle-under-Lyme that covers North Staffordshire, South Cheshire and North Shropshire.

**Convenient Wills**, as a specialist home-visit will-writing service, offers you:

- ♦ **convenience:** we come to your home, thereby saving you travel costs, and time;
- ♦ **flexibility:** our appointments are held at times convenient for you, including daytime, evening, and at the weekend. There is no need for you to take time out from work;

- ♦ **a relaxed atmosphere:** the discussions are held in the comfort and relaxed atmosphere of your own home -- and not in an 'oppressive' office in your local (or not so 'local' in some cases) town;
- ♦ **time saving:** our experienced and friendly consultant will advise and guide you through all the options you should consider -- thus eliminating the need for you to undertake any prior research, such as searching the Internet or library to see what you should include;
- ♦ **a bespoke document:** your LPA will be legal and personalised to match your exact wishes;
- ♦ **registration service:** we can arrange registration of these documents at the OPG on your behalf, and will deal with any correspondence from them;
- ♦ **a fixed transparent fee:** you will be advised of all the costs before being asked to commit to our service; and
- ♦ **protection:** our processes (which includes visiting you twice) ensure your LPA can be defended from claims of lack of capacity, undue influence, and fraud.

For a full list of the features and benefits of our LPA drafting service please [click here](#) or [click here](#) to register your interest (without obligation) in our services.

Not all LPA producing services are the same.

No one likes to consider their failing health in the future; we though make the task relatively simple. If you would like to join our existing and growing group of satisfied customers please call Rod on:

(Stoke) **01782 639716** or click on

[info@convenient-wills.co.uk](mailto:info@convenient-wills.co.uk)

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We hope you have found this fact sheet informative. If so then please feel free to share it with others.

More information and helpful, informative guides are available from our web site, or by calling us direct.

## Convenient Wills

01782 639716 or 0800 072 5510.

[www.convenient-wills.co.uk](http://www.convenient-wills.co.uk)