

## LASTING POWER OF ATTORNEY FACTSHEET

### **Q** What is a Lasting Power of Attorney (LPA)?

**A** LPAs allow you to appoint someone you trust to make decisions on your behalf, if either you lack physical or mental capacity to manage your affairs, or if you no longer wish to make decisions for yourself.

### **Q** What is mental capacity?

**A** Mental capacity means being able to make your own decisions.

Someone lacking capacity - because of an illness or disability such as a mental health problem, dementia or a learning disability - cannot do one or more of the following four things:

- Understand information given to them about a particular decision.
- Retain that information long enough to be able to make the decision.
- Weigh up the information available to make the decision.
- Communicate their decision.

For large numbers of people their capacity to make certain decisions about their life is affected either on a temporary or on a permanent basis, and could be due to:

- A stroke or brain injury.
- A mental health problem.
- Dementia.
- A learning disability.

### **Q** Why should I have a Lasting Power of Attorney?

**A** Making a LPA enables you to plan how your health, wellbeing and financial affairs will be looked after at a time when you can no longer make decisions yourself.

This is particularly important for beneficiaries of the Thalidomide Trust because you will receive money from the Trust for the whole of your life and may have complex health issues which are often misunderstood. It is important that someone you trust knows what your wishes would be and is able to make the right decisions for you.

A LPA gives you the ability to choose:

- The decisions you want to be made on your behalf if you lose capacity to make them yourself;
- The people you want to make these decisions; and
- How you want those people to make these decisions.

If you do not have a LPA in place and you become unable to deal with your affairs yourself, then a relative or other appropriate representative would have to make an application to the Court of Protection to be appointed to make decisions on your behalf as your “Deputy”. This can be a costly and time-consuming process and means that you have no control over who is appointed to be your Deputy or what decisions he or she can make.

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It can be reassuring for you to know that, if you are unable to make a decision for yourself in the future, the person you choose will make these decisions for you. Making a LPA ensures that the person you want to make decisions for you will be able to do so. This prevents a stranger, or someone you may not trust, from having this power.

Without a LPA your loved ones will find it very difficult to manage your financial affairs for you effectively as they will not have the legal authority to do so.

### **Q Are there different types of LPA?**

**A** Yes, there are two types of LPA that you can choose:

- Health & Welfare
- Property & Financial Affairs

You can choose to make one type, or both types.

### **Q What is a 'Health & Welfare' LPA?**

**A** This LPA can be used to give an attorney the power to make decisions about things like:

- Your daily routine, eg: washing, dressing, eating
- What medical care you receive (including life sustaining treatment)
- Who cares for you
- Where you live

This LPA can only be used when you lack the mental capacity to make your own decisions.

### **Q What is a 'Property & Financial Affairs' LPA?**

**A** This LPA can be used to give an attorney the power to make decisions about money and property for you, either when you have mental capacity or if you lack mental capacity, for example:

- Managing a bank or building society account
- Paying bills
- Collecting benefits or a pension
- Selling your home or investments

This LPA can be used as soon as it is registered, with your permission.

LPAs give you more control over what happens to you if, for example, you have an accident or an illness and can't make decisions at the time they need to be made.

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### Q How do I set up a LPA?

- A You must have the requisite mental capacity (i.e. the ability to make a decision to appoint someone to act on your behalf) when you make LPAs.

You can choose to give your attorney(s) the authority immediately or only when you lose the capacity to make decisions.

**Please note:** There is a slightly different process in Scotland & Northern Ireland. Please visit the websites below:

- **Scotland:** <http://www.publicguardian-scotland.gov.uk/power-of-attorney>
- **Northern Ireland:** <https://www.nidirect.gov.uk/articles/managing-your-affairs-and-enduring-power-attorney>

### Q How do I make a LPA?

- A You can make a LPA online or by using paper forms. Either way, you will need to get other people to sign the forms including your chosen attorney(s) and witnesses. A solicitor can provide more information, guidance and practical advice on how the LPAs should be set up and what options you have for the powers that you give to your attorneys.

Please visit the web link below to find out more information about creating a LPA:

<https://www.gov.uk/power-of-attorney/make-lasting-power>

### Q How do I officially register a LPA?

- A Once you've made your LPA you will need to register it with the Office of the Public Guardian (OPG). This can take up to 10 weeks.

It costs £82 to register each LPA unless you get a reduction or exemption (for example, if you're on means tested benefits or low income).

For more information on registering a LPA please visit the gov.uk website:

<https://www.gov.uk/power-of-attorney/register>

### Q Who can be your attorney?

- A
- A relative (including your husband, wife or partner)
  - A friend.
  - A professional, for example a solicitor.

You must appoint someone who has the mental capacity to make their own decisions. They must not be subject to a Debt Relief Order and they must be over the age of 18 years and must not be bankrupt.

### Q How do I choose an attorney?

A The role of an attorney involves a great deal of power and responsibility so it's important that you trust the person you choose.

Think carefully about who you believe would be able to carry out the role and make decisions in your best interests. Give the person you ask time to think about the role, to make sure that they are making the right decision.

When choosing an attorney, think about:

- How well they look after their own affairs, for example their finances.
- How well you know them.
- If you trust them to make decisions in your best interests.
- How happy they will be to make decisions for you.

### Q What happens if I have more than one attorney?

A If you're appointing more than one person, you must decide if they'll make decisions:

- Separately or together - this is known as 'jointly and severally' - which means attorneys can make decisions together or alone.
- Together - this is known as 'jointly' - which means all the attorneys have to agree on the decision. Attorneys who are appointed jointly must all agree or they cannot make decisions on your behalf.

You can also choose to let your attorneys make some decisions 'jointly', and others 'jointly and severally'.

### Q Do I need 'witnesses' to sign for a LPA?

A Yes. Somebody must act as a witness when you and your attorney(s) sign the LPA form. This means they must watch you sign and then they themselves must also sign the form. The person who witnesses your signature can be different to the person who witnesses your attorneys' signature.

The person who witnesses your signature must be over the age of 18 and cannot be one of your attorneys.

**Please note:** There are risks attached to using anyone as a 'LPA witness' who has any strong connections with any of the attorneys. It would be far more difficult to defend a claim of "undue influence" where the LPA witnesses are not totally independent of the attorneys. It is recommended that you use a friend or independent third party to act as a LPA witness.

### Q What is an Enduring Power of Attorney (EPA)?

A Following the changes to the law in 2007 when the Mental Capacity Act 2005 was enacted, it was no longer possible to prepare an EPA. This document was similar to a LPA for property and financial affairs, however, it did not need to be registered unless and until the person making the EPA began to lose the mental capacity to manage their affairs.

If you have an EPA that was prepared before 1 October 2007, this is not invalid and can still be used. Please note if you wish to make changes to your attorneys or any other aspect of the document, you would need to make LPAs.

### Q Where can I find help to decide if I should make an LPA?

A You can contact the Office of the Public Guardian by phone (0300 456 0300) or text phone: (0115 934 2778). They are open from 9am to 5pm on Monday, Tuesday, Thursday and Friday and from 10am to 5pm on Wednesday.

You can also email: [customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk) or visit their website <https://www.gov.uk/power-of-attorney>

Lodders Solicitors LLP, who attended the NAC Annual Conference back in 2015, can provide you with further information about power of attorney. You can contact Jessica Beddows (Senior Associate Solicitor) on 01789 206142 or 01242 229087 or email her on [jessica.beddows@loddors.co.uk](mailto:jessica.beddows@loddors.co.uk)

**Please note:** Lodders Solicitors LLP are not an official partner of The Thalidomide Trust. They have provided support to a number of Trust beneficiaries and would be happy to answer any questions you may have about setting up a power of attorney. Of course, you can also contact any reputable solicitor that specialises in lasting power of attorney. We would advise that you use a solicitor that is authorised and regulated by the 'Solicitors Regulation Authority'.

### Q Where can I find further information about Power of Attorney?

A You can also contact Jeff Prevost (Finance Co-ordinator – Beneficiary Support) at the Thalidomide Trust on 01480 474 074 or email [jeff.prevost@thalidomidetrust.org](mailto:jeff.prevost@thalidomidetrust.org)