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Power of Attorney

The essentials



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Since 1889

expert, professional, friendly...

About Judge & Priestley Solicitors

For over 130 years, Judge & Priestley have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service. We also recognise the need to move with changing times.

Today, Judge & Priestley is a modern and progressive firm providing constructive and effective legal advice to meet our client's requirements. Whilst we are proud of our tradition, we have continually evolved to ensure that Judge & Priestley today meets the new

challenges affecting our clients and their requirements for legal services.

Whatever your needs, our specialist solicitors are on call to ensure you have the best legal advice to hand. If you would like to speak to an expert, please contact us and we will be pleased to assist.

We are accredited with the Law Society's Wills and Inheritance Quality Scheme (WIQS) providing a best practice quality mark for wills and estate administration advice that consumers can trust.

What our clients say:

"They managed the process of putting a PoA in place from initial meeting with the whole family to explain the implications right through to preparing the documents and lodging them with the office of the public guardian."

"The solicitor met with our family on a couple of occasions and took us through the process very clearly answering any concerns we had."



The Lasting Power of Attorney is not to be confused with a Will.

The provisions of a Will come into effect when you pass away. The Lasting Power of Attorney (LPA) is a document that is applicable during your lifetime.

The Lasting Power of Attorney allows you to specify, in advance, whom you wish to appoint as your Attorney, to assist and make decisions on your behalf. For example, you may lose capacity through illness, injury age or infirmity and consequently require assistance to manage your affairs. You could suffer a physical impairment say from a stroke or accident and require assistance with your day to day routine.

The Lasting Power of Attorney is therefore vital and in some respects allows you to plan ahead for the unknown.

There is a misconception that only the elderly or unwell require the Lasting Power of Attorney.

Unfortunately we do not know when we will need or require assistance.

It is therefore important to prepare the Lasting Power of Attorney sooner rather than later. If one has already lost capacity then it is no longer an option to prepare the Lasting Power of Attorney.

What is a Lasting Power of Attorney?

It is a legal mechanism by which you ('the Donor') can appoint one or more persons ('Attorney') to act on your behalf. The 'Lasting' element of these Powers means that you can appoint someone to make decisions on your behalf should you lose the mental capacity to make such decisions at some future time. There are two types of Lasting Powers of Attorney:

- **Health & Care LPA**
- **Property & Financial LPA**



Why should you prepare the Lasting Power of Attorney?

Attorney v Deputy

If you are not able to manage your affairs or make decisions and you have not prepared the Lasting Power of Attorney, then an application will have to be made to the Court of Protection ('the Court') so a Deputy can be appointed to act on your behalf.

- *The Lasting Power of Attorney allows you to choose whom you want to assist with your affairs.*
If you do not have the Lasting Powers of Attorney and require assistance, then in most cases, the Court will appoint a Deputy to manage your affairs. This may not necessarily be the same person whom you would have chosen if you had capacity.
- *The Lasting Power of Attorney allows you to safe guard your wishes and in theory your Attorney should carry them out.*
There is no certainty that this would be the case if the Court appoints Deputy. Your proposed deputy will have to convince the Court of your specific wishes and proof that it is in your best interest for the wish to be carried out.
- *In almost every case, it is more cost effective to prepare a Lasting Power of Attorney compared to making a Deputyship application to the Court of Protection.*

As a guideline, the cost of applying for a Deputyship order is at least twice as much.

- *Your Attorney will be able to act and assist as soon as the Lasting Power of Attorney has been registered.*

Quite often, it takes about 4-6 months to obtain a Deputyship Order. This can give rise to complications and inconvenience particularly if decisions have to be made and you are not able to make them yourself.

- *It is unlikely there will be ongoing Court fees and disbursements when your Attorney acts.*

If a Deputy is appointed to act on your behalf, the Deputy will be supervised by the Court. A Court Visitor will visit at least once a year. The Court will charge a fee for such supervision. The Deputy will also have to submit accounts to the Court once a year.

In addition, the Court often insists that an insurance protection bond is purchased and this can cost hundreds of pounds per year, depending on the value of the assets.

- *Your Attorney will have more flexibility and wider discretion when exercising powers.*

If the Deputy does not have sufficient powers to make a decision then the Deputy will have to make a separate application to the Court of Protection every time the situation arises. This is particularly important if the decision relates to your health and care (e.g. life sustaining treatment, do not resuscitate instructions etc.)

What types of decisions can your Attorney(s) make under a Health & Care LPA?

Personal welfare decisions are those that pertain to your welfare, such as:

- Medical decisions (giving or refusing consent to medical treatment)
- Decisions as to where you live and with whom;
- Accessing personal information such as medical records;
- Deciding what you wear, what you eat and how you spend your day.

What types of decisions can your Attorneys make under the Property & Financial LPA?

An Attorney under this type of LPA can make any decision you can make regarding your property and financial affairs, such as:

- Buying or selling property
- Managing investments
- Running a business
- Accessing and using your bank accounts, and obtaining financial information.

Who can you appoint as Attorney(s)?

- You can appoint up to a maximum of four Attorneys.
- Your Attorney(s) must be over the age of 18 years and of sound mind.
- Your attorney must have good character and no criminal convictions (unspent).
- You should ensure that the persons you choose are individuals whom you trust completely and will act in your best interests.
- You can appoint a professional Attorney (e.g. solicitor or accountant) as it may be advantageous to do so.

What are your Attorney's duties and responsibilities?

- The primary role of your Attorney(s) is to help you make decisions in the least restrictive way.
- Your Attorney(s) have a duty to act in your best interest at all times.
- Your Attorney(s) must comply with the principles of the Mental Capacity Act and Code of Practice.
- Your Attorney(s) must act within the scope of their authority as set out in the LPA.
- Your Attorney(s) should keep proper records and accounts when exercising their powers.

Can I restrict my Attorney's powers?

Yes. You can specify in your LPA matters which you do not wish your Attorney to have the power to make decisions about. You can also place additional duties on your attorneys, e.g. under a Property and Financial Affairs LPA, you may wish your Attorney(s) to provide annual accounts to you. There are some restrictions placed on your Attorney(s) by law. For instance, an Attorney can never consent to your marriage.

Can I cancel or change the Lasting Power of Attorney once I have made it?

Yes. You can change or revoke your LPA at any time, provided you have the mental capacity to do so.

How can Judge & Priestley assist?

- We can prepare and assist in the registration of your Lasting Power of Attorney.
- We can advise on all aspects of your Lasting Power of Attorney.
- If you are already appointed as an Attorney, we can advise you as to your duties, responsibilities, obligations and powers.
- We can assist in applying to the Court of Protection for consent or additional powers.
- We can act as your trusted professional Attorney if you wish for us to do so.
- We can act as your professional certificate provider for the purposes of the Lasting Power of Attorney.
- We can assist in post-registration matters such as notifying the institutions and organisations of the attorney(s) interest.
- We offer home visits and out of office appointments.

The cost

In most cases, our charges will be made on a 'fixed fee' basis. This offers transparency and you will be made aware of the cost from the outset.

In a nutshell, the fees are dependent on your requirements and circumstances. For example, you can prepare one Lasting Power of Attorney or both types. You may not want to register the Lasting Power of Attorney immediately. Please contact us if you require a cost estimate.



Taking the next step...

Please contact us to make an appointment so we can discuss your requirements and take instructions from you.

We will forward a Lasting Power of Attorney Pack for you to read and complete

We will meet you and take instructions.

We will draft the Lasting Power of Attorney and forward to you for approval

We will have another meeting to finalise the Lasting Power of Attorney

We will submit the application to register your lasting Power of Attorney

Once registered, we will forward a certified copy to you.

We're here to help

David Chandra is a Partner and Head of Private Client. David has extensive experience in elderly client services and acts as a professional attorney and deputy.

David also has a distinct interest in mental capacity issues and continues to act for a variety of clients. These include individuals, local authorities, charitable organisations, financial institutions and pension administrators. David is a dedicated and highly regarded Private Client practitioner and a member of the Society of Trust and Estate Practitioners. David has published several articles and participated in a number of seminars throughout his career.

David Chandra

Partner

T: 020 3928 7090

E: dchandra@judge-priestley.co.uk



Office Locations

Bromley - Head Office

Judge & Priestley LLP
Justin House, 6 West Street
Bromley, Kent BR1 1JN

T: 020 8290 0333

F: 020 8464 3332

E: info@judge-priestley.co.uk

www.judge-priestley.co.uk

 @JudgePriestley

Beckenham Office

Judge & Priestley LLP
108 - 110 High Street,
Beckenham, Kent BR3 1EB

T: 020 8290 0333

E: info@judge-priestley.co.uk

www.judge-priestley.co.uk

 @JudgePriestley

Blackheath Office

Judge & Priestley LLP
9 Tranquil Vale,
Blackheath, London SE3 0BU

T: 020 8290 0333

F: 020 8464 3332

E: info@judge-priestley.co.uk

www.judge-priestley.co.uk

 @JudgePriestley

Sidcup Office

Judge & Priestley LLP
100 Station Road,
Sidcup, London DA15 7DT

T: 020 8290 0333

F: 020 8464 3332

E: info@judge-priestley.co.uk

www.judge-priestley.co.uk

 @JudgePriestley



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