

Solicitors for you

# Lasting Power of Attorney

## How can JMW Solicitors LLP help?

- Your Lasting Power of Attorney shall be prepared by a qualified solicitor, giving you peace of mind.
- We will ensure that your Lasting Power of Attorney is appropriate to your circumstances and meets with your wishes.
- We can ensure that your attorneys act in your best interests by including appropriate preferences and instructions within the Lasting Power of Attorney document.
- We will answer any questions that you may have and ensure that you fully understand your Lasting Power of Attorney before we ask you to sign it.
- We will ensure that the document has been correctly signed by all parties and is valid. Our solicitors shall be happy to act as your Certificate Provider should it be appropriate and convenient to do so.
- We can assist with the registration of the document with the Office of the Public Guardian either at its creation or at a later date. We will ensure to advise you of the best time to register the document and the costs involved.
- We shall store the original Lasting Power of Attorney free of charge.

## Contact us

Please feel free to contact one of our Private Client Solicitors to discuss making a Lasting Power of Attorney:



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# Lasting Power of Attorney

## What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document with which you can give to a person or persons of your choosing the authority to make decisions on your behalf. There are two forms of Lasting Power of Attorney; Health and Welfare and Property and Financial Affairs.

## Who can make a Lasting Power of Attorney?

To make a Lasting Power of Attorney you must be over the age of 18 and have sufficient mental capacity to make the document. It is not possible to make a Lasting Power of Attorney on another person's behalf. If you have any queries regarding the law and mental capacity you should speak with one of our solicitors.

## Who can I appoint as my attorney(s)?

You should only appoint people who you know are trustworthy and who you know will make all decisions in your best interests. It is possible to appoint your spouse and/or children should you wish to, and you are able to appoint replacement attorneys.

## What is a Lasting Power of Attorney (Health and Welfare)?

This type of Lasting Power of Attorney authorises your attorney(s) to make decisions concerning your health and your welfare. Effectively, this document covers you on a personal level rather than on a financial level.

## What decisions can my attorney(s) make under a Lasting Power of Attorney (Health and Welfare)?

If you lack sufficient mental capacity to make such decisions yourself, your attorney(s) can:

- give or refuse consent to medical treatment (including life sustaining treatment);
- discuss your medical records and requirements with doctors and other healthcare professionals;
- make decisions concerning dental or optical treatment;
- make decisions concerning where you live; this can include decisions as to whether you remain living

in your own home, whether you receive care in your own home or whether you move into a care home that is appropriate for your needs.

- make decisions concerning your day to day life including decisions on your daily activities, your diet and your appearance.

## What is Life Sustaining Treatment?

Under a Lasting Power of Attorney (Health and Welfare) you must decide whether or not you wish your attorney(s) to have the authority to make decisions relating to treatment that can sustain your life if you are unable to. Examples of life sustaining treatment decisions include whether a life support machine is kept on or turned off, whether a potentially life saving operation or organ transplant proceeds, or whether to proceed with treatment such as chemotherapy.

## When can a Lasting Power of Attorney (Health and Welfare) be used by my Attorney(s)?

This document can only be used by your attorneys at a time when you lack sufficient mental capacity to make such decisions yourself. The Mental Capacity Act 2005 is clear that if you are able to make a decision concerning your health and welfare then you have the right to do so – you cannot be forced into a care home or forced to have medical treatment against your will!

## Can I limit the authority that I give to my attorney(s)?

Yes, it is possible to place restrictions within the document to limit what your attorney(s) can do on your behalf. It is also possible to offer written guidance to your attorneys should you wish to.

## What else should I consider before making a Lasting Power of Attorney?

Under the Mental Capacity Act 2005 there are certain safeguards in place for your protection:

- you must appoint a Certificate Provider. This person (who can be your solicitor, doctor or a person who you have known for two or

more years) must sign to confirm that you have sufficient mental capacity, that you understand, and that you are under no pressure to make the Lasting Power of Attorney;

- the Lasting Power of Attorney must be registered with the Office of the Public Guardian before it can be used by your attorneys;
- you may select at least one person to receive notification of registration of the document with the Office of the Public Guardian.

## Am I able to cancel the Lasting Power of Attorney should I wish to?

Yes, provided that you have sufficient mental capacity to do so you can cancel the Lasting Power of Attorney at any time.

## What happens if I lose mental capacity without having made a Lasting Power of Attorney (Health and Welfare)?

A Doctor or healthcare professional responsible for your care will inevitably make a final decision in accordance with their professional duty of care. Typically this person will seek the views of your 'next of kin' but this is only to ascertain what is in your best interests. For all major decisions, an appropriate person will need to make an application to the Court of Protection for a Court Order authorising the decision sought. This is a very time consuming and costly procedure. The only way to give a general authority in this regard is by making a Lasting Power of Attorney (Health and Welfare). Alternatively, and in relation to medical treatment decisions only, you may wish to consider making an Advance Directive (commonly known as a 'Living Will'). There are advantages and disadvantages of such a document - for more information please speak with one of our solicitors.

## What about a Lasting Power of Attorney for my Property and Financial Affairs?

Please see our leaflet entitled Lasting Power of Attorney - Property and Financial Affairs for more information.