Lasting Power of Attorney (LPA)

This is all about 'peace of mind' and not leaving things to chance with an unholy mess for others to sort out.

It relates to the time when an individual is judged not to have cognitive ability / mental capacity to make decisions. It is vitally important because a spouse or partner in that situation cannot make decisions for their spouse or partner. That means inability to access their bank account, deal with their credit card business, savings, investments, and the sale of any asset in their name such as the family home. Joint ownership of an account or property is a step along the way to help but not necessarily a complete safeguard. Furthermore, an existing Power of Attorney ceases to be valid once the maker loses mental capacity.

Something must be done and that means appropriate paperwork completed while that person still has cognitive ability / mental capacity. If not then a more expensive and prolonged process through the Court of Protection would have to be followed.

In essence, this is all about the Appointment of people that can be trusted to manage your personal finances and welfare aspects when the time comes. However, the correct paperwork needs to be in place before that can happen.

There is a different process in Scotland and Northern Ireland.

Formal documentation

An existing Enduring Power of Attorney (EPA) – covering money matters might be valid but if the Attorney/ Attorneys need to be changed then it would not be valid, and an LPA would be required. An EPA would need to be registered before it could be used.

There are two types of LPA: -

- one deals with money matters – '**Property and financial affairs'**
    - power to make decisions about money and property for you, for example: -
        - managing a bank or building society account
        - paying bills
        - collecting benefits or a pension
        - selling your home
- the other concerning welfare / care for the individual – **'Health and welfare'**
    - power to make decisions about things like: -
        - daily routine, for example washing, dressing, eating
        - medical care
        - moving into a care home
        - life-sustaining treatment

Later in life it is more appropriate to have the two but for younger family members then the one for money matters alone might be sufficient.

Some key aspects: -

- must be made while the person concerned still has cognitive ability
- the people appointed through the LPA can be different for the two aspects
- a decision must be made as to how it is operated. How the individuals appointed (Attorneys) will act if two or more people are appointed. Will they make decisions: -
    - separately or together - sometimes called 'jointly and severally' - which means Attorneys can make decisions on their own or with other Attorneys
    - together - sometimes called 'jointly' - which means all the Attorneys must agree on the decision
    - you can also choose to let them make some decisions 'jointly', and others 'jointly and severally'
- Witnesses and certificate providers must be 18 or over
- In relation to the Attorney or Attorneys
    - they need to be aged 18 or more
    - they could be: -
        - a relative
        - a friend
        - a professional, for example a solicitor
        - your husband, wife, or partner
- The Attorney or Attorneys appointed must have the mental capacity to make their own decisions
- The Attorney or Attorneys do not need to live in the UK or be a British citizen
- An important safeguard in the process relates to 'people to be told', chosen by the person making the LPA, who are notified and who can then raise any concerns with the Office of the Public Guardian (OPG)

Given the important role the Attorney or Attorneys will play for you 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

In the absence of an LPA for money matters, assuming that an Enduring Power of Attorney is not already in place which could be valid still, then the family cannot operate the money or deal with any money matters without an LPA. Application would have to be made to the Court of Protection through the OPG which would only add to delay. If the OPG had to act in the absence of anyone else then there are their costs to consider and they do not come cheap!

The government website giving more detail in relation to LPAs is https://www.gov.uk/power-of-attorney - do not be put off and it can be done quickly. It is possible to do so online at https://www.gov.uk/power-of-attorney/make-lasting-power or you can download the forms from the same website.

To encourage action do visit the other government website relating to the Court of Protection route for the appointment of Deputies to see why not leaving it too late makes sense.
Visit https://www.gov.uk/become-deputy

If any doubt about the process or ability to see it through then contact your local Solicitor as they can handle this, and it need not be an expensive task. Preferably a member of STEP (www.step.org).

Alternatively, the paperwork can be downloaded from the government website and you can do it all yourself. However, any errors etc means a re-application cost.

Each LPA must be Registered, and the fee is £82 for each LPA (currently). Some people can qualify for a reduction in that fee or are exempt from payment. Do take care because if the LPA paperwork is not completed properly all that happens is that there would be delay and some more expense. Depending on the type of mistake, the Office of the Public Guardian may allow a correction and to apply again within 3 months for £41. So, best get it done quickly and right at the first time of asking.

If there is a 'pension pot' in what is known as 'drawdown' then the wording in the LPA dealing with money matters needs to include wording that would enable an Independent Financial Adviser to manage the 'pension pot'.

Registration

The most important thing to remember is to Register the LPA with the OPG. It takes between 8 and 10 weeks to register an LPA if there are no mistakes in the application. You can apply to register your LPA yourself if you are able to make your own decisions. The Attorney or Attorneys can also register it and if they do then the person to whom the LPA relates will be advised enabling them to raise an objection to the Registration of the LPA.

Changes to an LPA

The OPG can be asked by the person who made the LPA to change it if it has been registered and they still have mental capacity to make decisions. For more detail visit https://www.gov.uk/power-of-attorney/change-your-lasting-power-of-attorney

The Office of the Public Guardian (OPG) must be advised if: -

- one of the Attorneys has changed their name - by marriage or deed poll
- an Attorney has changed their address
- if one of the Attorneys dies then also need to send the OPG: -
    - a copy of their death certificate
    - the original LPA
    - all certified copies of the LPA

End an LPA

The person who made the LPA can end their LPA if they still have mental capacity to make that decision.

There are other ways an LPA can end: -

- if the Attorney
    - loses the ability to make decisions - 'loses mental capacity'
    - divorces the person who made the LPA or ends their civil partnership if they are the husband, wife or civil partner
    - becomes bankrupt or they are subject to a Debt Relief Order (DRO) - if they are a 'property and financial affairs' Attorney
    - is removed by the Court of Protection
    - dies
        - if the only Attorney dies the LPA will end if that Attorney dies and there is / are no replacement Attorney / Attorneys