

Report

WHO WILL DECIDE FOR YOU WHEN YOU CAN'T?

The importance of planning ahead
for peace of mind

This report was created under our previous branding as SFE.





WHO WILL DECIDE FOR YOU WHEN YOU CAN'T?



Don't leave your life in the hands of a stranger

Glossary of terms

- **Assets** – any item of value owned by an individual or corporation
- **Attorney** – a person appointed to act on behalf of another individual or business
- **Court appointed deputy** – a person appointed by the Court of Protection to make on-going decisions for someone who lacks mental capacity
- **Court of Protection (CoP)** – the superior court which makes decisions on financial or welfare matters for people who can't make decisions at the time they need to be made
- **Enduring power of attorney (EPA)** – a document which gives a person legal authorisation to act on someone else's behalf in a legal or business matter. (EPAs were replaced by two types of lasting power of attorney (LPA) in 2007, but are still valid if they were created before 1st October 2007)
- **Incapacitated** – when a person is unable to make their own decisions due to a temporary or permanent mental and/or physical deficiency, disability or illness
- **Lasting power of attorney (LPA)** – a document that gives a person legal authorisation over someone else's health and welfare and/or property and financial affairs
- **Lawyer** – a professional who practices law (also known as an advocate, attorney, barrister, chartered legal executive, counsel, counselor, or solicitor)
- **Local Authority** – the governing body of a county, district etc.
- **Older Client Care in Practice Award (OCCP)** – an externally accredited qualification by SFE which demonstrates the specialist client care skills that enable lawyers to advise and support older and vulnerable clients
- **SFE (Solicitors for the Elderly)** – a membership organisation for solicitors, barristers and chartered legal executives who are specialists in advising older people and those considering plans for later life
- **Solicitor** – a qualified, regulated legal practitioner
- **Will** – a document that outlines the management and distribution of a person's estate after their death



Executive summary

More than two million people in the UK are unable to make their own decisions, perhaps because of dementia, a stroke, brain injury, learning disability, or mental illness.

Most of us assume that if this happens to us, we can rely on people we know and trust to ensure our wishes are carried out – to safeguard our finances, our health, and our care.

But it is a mistake to assume that you can make decisions on behalf of a loved one, or that they can do so for you, without the appropriate legal documents in place.

A lasting power of attorney (LPA) is a powerful legal document, which allows you to choose one or more individuals (called an attorney) to handle your affairs. These do not need to be legal professionals; they can be a trusted family member or friend. In England and Wales, there are two types of LPA, which cover your property and financial affairs, and health and welfare respectively. With both in place, your legally appointed attorney(s) will be able to use these documents to make important decisions on your behalf, such as the management of your property, bank accounts, bill payments, and choices around your care plans, medical treatment, and end of life wishes.

LPAs are recognised by local authorities, banks, medical professionals, and government agencies, such as HMRC and the Department for Work and Pensions.

Without an LPA in place, many families find major decisions about their spouse, child, or parent are left to the court, medical professionals, or even a social worker. In these circumstances, there is a risk that families will have little or no influence, even if they believe it's not what the individual would have wanted.

SFE (Solicitors for the Elderly) is an independent, national organisation of over 1,500 lawyers, such as solicitors, barristers, and chartered legal executives, committed to providing the highest quality of legal advice for older and vulnerable people, their families, and carers.



39% of us have a will in place whilst only 7% have an LPA

The extensive experience and qualifications required of SFE-accredited lawyers make them the gold standard for solicitors and chartered legal executives advising on LPAs.

Shocking research conducted by SFE reveals that whilst more than 84% of people want their family or friends to be able to make decisions for them if they become too ill, fewer than 1 in 10 had an LPA in place to grant legal permission to do so.¹

We're better at planning for death than life:

39% of people have a will in place, whilst only 7% of people have some kind of LPA. Far more people have planned what they would like to happen after death, whilst leaving crucial plans for later life to chance.

Even the few people who have an LPA in place may still be at risk, due to poor quality legal advice from unregulated advisers, or invalid or easily challenged documents, obtained through online resources and off-the-shelf kits. SFE's research shows that 54% of people have used risky advice or no legal guidance at all when creating their LPA.

As a country, we are neglecting to plan ahead, leaving important later life decisions to chance.

This report offers guidance on LPAs, to help people safeguard their future and that of their loved ones. It also highlights the importance of using a legal specialist to obtain the best legal advice and save costs by getting it right the first time around.

More information on how to find an SFE accredited lawyer can be found at www.sfe.legal.

¹ Survey of 2,000 British adults commissioned by SFE and conducted by YouGov on 16 September 2015.

Introduction

When planning for later life, we all want the best for ourselves and the people we love. Having a will in place ensures your wishes are followed after death; but what about ensuring your wishes are followed while you're alive, if you become unable to make your own decisions anymore?

What happens if I can't manage my finances anymore? Where do I want to live? Who do I want to care for me? Can my house be sold to free up finance? Who is best placed to make crucial decisions if I become ill? These are all important questions we should be asking whilst we still have the time and health to make informed and considered choices – especially about who should be responsible for our affairs.

When someone is no longer able to make rational, responsible decisions for themselves – through either mental or physical deficiencies – they are deemed as legally incapacitated. More than two million people in the UK fall into this category, and it is left to others to make decisions on their behalf.

Completing an LPA in advance is the only way to ensure your feelings, wishes, and beliefs in life are heard, in the event you become incapacitated.

An LPA gives individuals the opportunity to nominate a trusted person to take charge of making certain decisions on their behalf, if they no longer wish to, or become unable to do so. LPAs also allow you to outline your specific wishes around your care and financial affairs, to ensure these are respected.

Having a clear understanding of your wishes laid down in a legal document acts as a safety net, giving you and your family peace of mind.

What is an LPA?

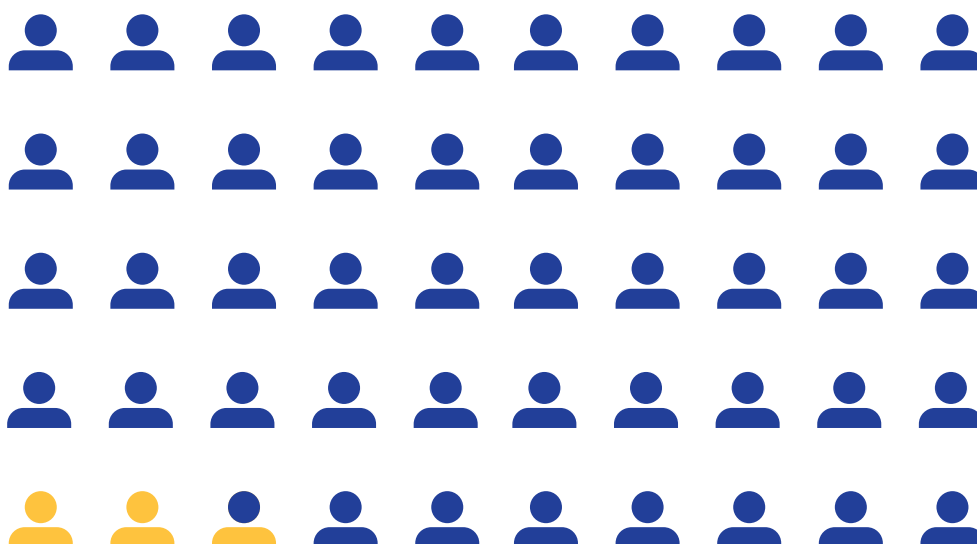
A lasting power of attorney (LPA) is a powerful legal document, which allows you to choose one or more individuals (called an attorney) to handle your affairs. In England and Wales there are two types of LPA, which cover your property and financial affairs, and health and welfare respectively. With both in place, your legally appointed attorney(s) will be able to use these documents to make important decisions on your behalf, such as the management of your property, bank accounts, bill payments, and choices around your care plans, medical treatment, and end of life wishes.

Our research has found that only 7% of us have some form of LPA in place to protect our health and financial affairs in the future.

It is important that everyone, no matter their age, gets high quality, specialist advice to help safeguard their quality of life, in the event they become incapable of making decisions for themselves.

Without doing so, many of us are unknowingly leaving important decisions about our lives in the hands of complete strangers.

Creating an LPA offers the opportunity to discuss who you would like to make decisions for you, and can also open up difficult, but important conversations with family members on subjects rarely talked about. An LPA can state how you want your money spent, where you wish to live and your views on resuscitation.



Only 7% of us have some form of lasting power of attorney to protect our wellbeing

Not planning ahead risks our health and finances

Who do you want to make decisions on your behalf?

More of us are living longer, and with the number of people over 60 years old estimated to double by 2050, cases of incapacity are undoubtedly set to rise. ²

Between April and June 2015, there were 6,744 applications made to the Court of Protection to appoint a deputy – a person that can make decisions on someone's behalf if they lack mental capacity. ³

Research conducted with 2,000 adults by SFE shows over 84% of people want their family or friends to be able to make decisions about their health, if they become incapacitated. Yet less than 1 in 10 people asked had an LPA in place to ensure their wishes are upheld in the event that they lose capacity to make decisions.

These applications are costly and extremely stressful, but they can be avoided if you plan ahead properly.

A deputyship application is required when a person has left no legal plans in place, such as an LPA, to set out whom they want in charge of their care, in case they become incapacitated.

Applications are time-consuming, stressful, and expensive – potentially costing families thousands of pounds in legal and court fees. An application typically takes around six months to be approved by the Court, but can take much longer. Meanwhile, decisions over an individual's long-term care and finances are frozen.

Often these individuals have not thought to create an LPA because they have no immediate health issues. However, it is a mistake to assume LPAs are only relevant to the vulnerable or elderly: every year, thousands of people of all ages are left incapacitated by a sudden accident, such as a road collision, or an illness, such as a stroke or heart attack.

By the time a deputyship is required, it is already too late.

² World Health Organization, 30th September 2015 WHO: Number of people over 60 years set to double by 2050; major societal changes required, <http://www.who.int/mediacentre/news/releases/2015/older-persons-day/en/>

³ Ministry of Justice, 2015, Family Court Statistics: April to June 2015, p.22, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462910/family-court-statistics.pdf



Without an LPA in place, it is impossible to know an individual's true wishes around the management of their health, care, or financial affairs.

As a result, family members may have to make difficult and sometimes heart-breaking decisions about a loved one, for example, their end-of-life options. In some cases, disagreements arise between family members over the use of assets or the care needs of a loved one, leading to lengthy and costly legal proceedings that result in debt and broken relationships.

This burden of responsibility placed on families is avoidable if they seek the help of a knowledgeable lawyer who can advise on the right kind of legal protection ahead of time.

CASE STUDY:

When Roy Fielding had a sudden heart attack last year, it led to a stroke, which caused him severe brain damage. Roy was relatively young, still in his fifties, and had made no legal plans to safeguard his wishes in case he lost capacity. An urgent application was made on Roy's behalf to the Court of Protection to appoint a deputy. As Roy had no immediate family, a professional deputy was appointed to ensure Roy's finances were arranged, such as his employment protection insurance. But with no legal documentation regarding Roy's wishes surrounding his health and wellbeing, it is now up to doctors and professionals to make important life decisions on his behalf.

This case study has been anonymised.

Without the right advice you risk making plans in the dark

Creating an LPA can be one of the most important things you can do to safeguard your future – which is why you should make sure all your documentation is legally watertight.

Sometimes, those with legal documents in place still see their wishes go unfulfilled, after preparing them independently. DIY methods, such as off-the-shelf kits and online applications, may lead to mistakes in your documentation, making them legally invalid.

Around 38,000 families face legal disputes, following the death of a loved one each year, due to a poorly drafted or DIY will.⁴ In these circumstances, the value of the deceased's estate could be lost entirely to legal fees and associated costs.

Research by SFE found that people were using risky or no legal advice when creating an LPA, with 54% using off-the-shelf kits or non-legally qualified advisers.

If an LPA is invalid, families can be powerless over a loved one's finances, housing, and care, and life-changing decisions can be left to third party individuals or institutions, rather than those they trust the most.

In any event, an invalid LPA will mean an application for deputyship will need to be made to appoint someone to take control over your affairs, if you become incapacitated. Not only does this cause unnecessary stress and heartache for family and friends, but it also means that the wishes outlined in your LPA(s) may be in vain.

The best £600* you'll ever spend:

For around £600* and two hours with a specialist legal practitioner, you could save thousands of pounds, months of legal action and stress for you and your loved ones.

⁴ The Guardian, 9th February 2015, 'The dangers of DIY wills': <http://www.theguardian.com/money/2015/feb/09/dangers-diy-wills-mistakes>

* Approximate figure. Excludes Office of Public Guardian application fees. Individual solicitor fees may vary.



A specialist lawyer will ensure your LPA covers your specific wishes and that your affairs will be handled the way you want, if you are no longer capable yourself.

Specialist lawyers will apply their experience to help you think about things you perhaps hadn't considered. They can also act as a neutral third party, able to advise and negotiate between family members.

They can offer advice and information on funding social care, your rights to free care, eligibility for benefits and navigating the system.

A quality LPA, written by a specialist lawyer, will give you the best chance of ensuring your later-life decisions are respected. Their knowledge and expert advice can save you money by getting it right the first time around.

Creating an LPA offers the opportunity to discuss who you would like to make decisions for you, and can also open up difficult, but important conversations with family members on subjects rarely talked about. An LPA can state how you want your money spent, where you wish to live and your views on resuscitation.

CASE STUDY:

Mary Taylor had lived alone for many years with the support of her family, but when her mental capacity began to deteriorate, as a result of dementia, her family were divided on whether she should reside at home, or be moved to a private care facility. Following a number of family disputes, the Local Authority intervened and made an application to the Court of Protection. As Mary had left no legal documents in place outlining her wishes regarding her health and wellbeing, the Court decided it was in Mary's best interest to be moved into care. Mary's family is still in dispute over her care.

This case study has been anonymised.

How to safeguard your future

1. Get specialist advice: Don't leave legal protection for you and your family's future in the hands of someone unqualified. Instead, use an expert who specialises in helping people plan ahead. They will help you assess which protections you need to get in place and ensure any legal documents, like wills and LPAs, are robust. They can also save you money by better structuring your costs to remove any unnecessary fees. You can find an SFE accredited lawyer near you at www.sfe.legal.
2. Plan early: While you have capacity, it's vital that you get your affairs in order and choose the best people to manage your affairs, in case of an accident or illness. Simple steps are all that are needed to safeguard your future and ensure minimal financial cost and emotional impact on your loved ones.
3. Don't risk legal uncertainty: By using DIY, off-the-shelf kits or creating legal documents online you're missing out on the expert help and insight from lawyers about protecting yourself and making sure all the documentation is correct and legally valid. If your document is invalid you may have to spend more money having it amended or even redrawn completely. There is no substitute for good legal advice.
4. Combine will and LPA planning: Save time and money by combining an appointment to write a will with setting up an LPA. Your lawyer can also give advice on care planning, benefits, and entitlements for older people.
5. Keep your plans current: Make sure you keep your LPA and will updated if your circumstances change. Your choices around the people you want responsible for your finances and wellbeing may change, such as following a marriage or divorce, when children reach adulthood, or if parents pass away. If you have an enduring power of attorney in place from before 2007 this only covers finance and assets; you may want to also get an LPA in place to protect your health and wellbeing.

If you think you've left it too late, a specialist lawyer may still be able to help. For people with fluctuating capacity, LPAs can still be completed. An SFE member will advise you on the best course of action given your specific circumstances.



Choosing an expert to protect you and your family

SFE has over 1,500 expert solicitors, chartered legal executives and barristers who are specialists in advising older people and those considering plans for later life.

The extensive experience and qualifications required of SFE-accredited lawyers make them the gold standard for solicitors and chartered legal executives advising on LPAs.

SFE members spend a substantial amount of their time working with older and vulnerable clients, building trust-based relationships to provide the reassurance they need.

CASE STUDY:

William and Margaret Bachelor are both in their early sixties. After deciding to appoint each other, and both their daughters as joint attorneys, they now have peace of mind, knowing in the event they become incapacitated, their wishes around important health and financial affairs will be respected. Their SFE accredited solicitor also helped the Bachelors specify their particular wishes around end-of-life care, outlining their decisions regarding physical and mental illness.

William said: “Nobody wants to find themselves in the situation where an LPA is needed and it’s not there. Unfortunately, nobody knows when, or if these situations will arise, but it’s reassuring knowing my family has guidance on what to do, if I ever become unable to make decisions for myself.”

This case study has been anonymised.



In order to be a fully accredited SFE member, lawyers must have a minimum of three years' experience advising in areas of older client law and have completed the Older Client Care in Practice Award – a qualification which demonstrates the specialist client care skills that enable lawyers to advise and support older and vulnerable clients.

Members are also required to continuously update their knowledge with training and produce an annual statement of competence, which ensures they maintain their expertise.

Clients of SFE members can also be reassured by the SFE code of practice and safety of redress through the members' regulated bodies, should something go wrong.

For more information about SFE or our members, please visit our website at www.sfe.legal or call us on 0844 567 6173 to find an SFE member near you.

You must not rely on the information in this report as an alternative to legal advice. If you have any specific questions about any legal matter you should consult an appropriately qualified legal professional.

SFE thanks Sarah O'Grady, Social Affairs and Property Correspondent, Daily Express, for her contribution to this report.

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