

## COVID-19: Lasting Powers of Attorney and Deputyships

On the 17<sup>th</sup> April 2020 the Office of the Public Guardian (“OPG”) updated their guidance on making Lasting Powers of Attorney (“LPAs”) and how to act as an Attorney or a Deputy during lockdown.

### Creating an LPA

For those that have already submitted their LPA applications these will still be processed, although the processing period may be longer than usual.

The OPG have recommended only submitting an application now if it is absolutely necessary, but you can of course discuss your wishes with your advisor who will complete the application on your behalf. Once your LPA has been prepared and you are ready to get it signed it is important to remain socially distant from your Witnesses, Attorneys and Certificate Provider.

Digital signatures will not be accepted and everyone must sign the same document. The OPG need to see the original signed LPA for registration and scanned or copy pages will not be accepted.

Whether you are the Donor or an Attorney, your signature should be witnessed by an adult independent Witness who is not the Donor or an Attorney. The Witness must also sign the LPA. Unlike the signing of Wills, LPAs can be witnessed through a closed window but not by video call. If the Donor is not able to sign the LPA someone can do this on their behalf (with their consent) in the presence of two Witnesses. The rules concerning the order in which an LPA should be signed and dated still apply and you should check this with your advisor to make sure it is done correctly.

A Certificate Provider will discuss the LPA with the Donor to ensure that they have mental capacity and that no one is pressuring them into entering into the LPA. In the current circumstances the Certificate Provider and Donor can have this conversation by phone or, even better, via a video call. The Certificate Provider should ensure that the conversation is private and that the Donor is not being pressured by anyone in the room.

### Short-Term Options

The OPG have suggested some short-term options if it is not necessary to put an LPA in place right now.

In relation to your financial decisions you can write down your wishes and tell close family and friends where this information is kept. You should also talk to them about how you would like your affairs to be dealt with. Although anything you write down or discuss is not legally binding; it ensures that those closest to you know your wishes so those making decisions on your behalf can take this into account. If you are self-isolating or not able to go out, and you need somebody to make decisions in relation to your finances, for example at the bank, you could speak to your bank about a third party mandate and ask someone you trust to act on your behalf.

In terms of your health and welfare decisions you could make an Advance Decision or Living Will which sets out the types of treatment you would prefer to receive and those you would refuse. This document ensures that your family, carers and other health professionals know your wishes and, as long as the document meets certain requirements, it can be legally binding. Alternatively, you could make an Advance Statement which sets out your preferences, wishes, beliefs and values regarding your future care. This statement is not legally binding but has a similar effect; letting those around you know what type of care you would like to receive.

### Attorneys and Deputies

If you are caring for somebody that has lost mental capacity, and they do not have an LPA, you will not be able to make decisions on their behalf. In this situation you should speak to your advisor about contacting the Court of Protection to make an application to become their Deputy. This type of application can be quite lengthy; however, it is the only way that decisions can be made on behalf of someone who has lost the ability to make decisions for themselves.

If you are already appointed as an Attorney or Deputy for somebody who no longer has the ability to manage their own affairs, you must try to continue making decisions on their behalf, even if you are self-isolating or unable to go out. You cannot temporarily give up your role as Deputy or Attorney and you do not have to step down just because you cannot visit the person at the moment.

If you have any questions regarding the above then please do not hesitate to contact [Toni Recchia](#) or a member of the [Wealth Planning](#) team who would be happy to assist.



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