

Here Sarah Hartley, Director and Solicitor at Malcolm C Foy & Co, answers some Frequently Asked Questions about Lasting Powers of Attorney and Court of Protection applications

Q: What is the difference between Lasting Powers of Attorney (“LPAs”) and Court of Protection Orders (“COPs”)?

A: LPA’s are created by people who still have capacity to make their own decisions, and make a choice as to who they would want to deal with their finances *IF AND WHEN* they lose physical or mental capacity. COPs are required when someone has already lost capacity and access to their finances is needed, but where the person in question has not made a LPA and can no longer make their own choice as to who they would trust to deal with the finances on their behalf.

Q: Does making an LPA mean that I am no longer able to deal with my own affairs?

A: No – an LPA acts as an insurance, in that if you lose capacity then your chosen attorneys can step in to deal with your affairs, but whilst ever you retain capacity you are still in full control of your affairs. If your attorney thinks you have lost capacity but you do not agree, a doctor would need to assess you to make a decision on this.

Q: I have an Enduring Power of Attorney in place already – can this still be used?

A: Yes – the law changed in 2007 and no new EPAs could be made from this date, but the ones that were already in existence continue to be effective. However, there are problems relating to EPAs (part of the reason the new LPA system was introduced was because of the impracticalities under the EPA system), and it may therefore be a good idea to think about revoking your old EPA and putting a new LPA in place.

Q: I have heard that there are two different kinds of LPA – do I need both?

A: It is possible to make an LPA in relation to either Finances and Property, or Health and Welfare, or both. Generally people choose to make only the Finances and Property LPA, as access to finances is needed on an almost daily basis when someone loses capacity, whereas the Health and Welfare LPA is needed much less often. The Health and Welfare LPA allows your chosen attorney(s) to make decision about where you will live, what medical treatment you receive, and who will visit you. It also gives your attorney authority to refuse life sustaining treatment if you are in a permanent vegetative state, if you are happy to give this power. The reason that the Health and Welfare LPA is often not created is that generally family members are consulted in reason of Health and Welfare decisions in any event, and so it is often seen that this type of LPA does not add much value. There is also an additional cost element if you take out both styles of LPA, as there are two separate registration fees payable to Court (£110 each), and the legal costs are also higher.

Q: How long does it take to set up an LPA or Court of Protection Order?

A: LPA’s take around 10 weeks to register with the Court, but this is done whilst the person who makes the LPA still has capacity, and therefore the LPA waiting time does not tend to cause any practical problems. If the person who made the LPA loses capacity after the registration is complete, the LPA can be used immediately, and access to that person’s finances will be granted by banks etc. once they have been provided with a copy of the LPA. COP’s take much longer to complete, generally around 3-4 months from start to finish. This creates a difficulty in that during this period, the person who has lost capacity cannot deal with their own affairs, and no-one is yet authorised to deal with their affairs for them. This can create financial hardship for the person and their family.

Q: What can I do if I make an LPA and then change my mind?

A: Whilst ever you retain your mental capacity, you can choose to cancel your LPA by giving notice of this to the Court

Q: I want my husband/wife to be my attorney, but what would happen if they passed away or were unable to deal with my affairs because they did not have capacity themselves?

A: The LPA allows you to name a primary attorney, and also a replacement. You could therefore for example name your spouse as primary attorney, and then include your children to act as replacements, and in this way a new LPA would not be needed if your spouse could not act on your behalf.

Q: What is the difference in costs between an LPA and Court of Protection Order?

A: LPA's are much cheaper than COP's.

- The cost of a single LPA is £300 plus VAT, or £550 plus VAT for a couple. There is also generally a Court registration fee payable of £110 per LPA. If you receive Guarantee Pension Credit, Housing Benefit or Council Tax Benefit you will not need to pay this fee, and if your gross income is under £12,000 per year you will receive a 50% reduction in the registration fee
- The legal costs of setting up a COP are £850 plus VAT, and there are a number of expenses payable to other persons, for example:
 - A fee payable to a GP / consultation to complete the medical report required by the COP, which is generally between £50-£200
 - The Court fee payable to the COP, which is £400
 - A supervision fee payable to Court, which is generally £320
 - A deputy registration fee payable to Court, which is £100
 - An annual insurance bond, to protect the assets of the person who has lost capacity, which is generally around £100 per year

- **Advice and costs accurate as at 21st April 2015.**