

Lasting Powers of Attorney: the why, when and how in the Channel Islands

Insights - 23/05/2023

One in three people over 65 will develop dementia and, every 90 seconds, someone in the UK is admitted to hospital with an acquired brain injury. But while an estimated 40% of the adult population has a will, less than 1% has a Lasting Power of Attorney.

The possible loss of mental capacity in the future is a predicament that throws up many questions. Who will make the individual's business and financial decisions? Does the individual know enough about how a financial adviser makes decisions to allow them to take the reins? This is where a Lasting Power of Attorney (an **LPA**) comes into play.

LPAs were introduced in the UK in 2007 as part of the Mental Capacity Act 2005, replacing the previous system of Enduring Power of Attorney. However, in Jersey, LPAs were only introduced in 2018 as part of The Capacity and Self-Determination (Jersey) Law 2016. And in Guernsey, residents have only been able to put LPAs in place since April 2022.

Business Life invited Head of Estate Planning, Wills and Probate Henry Wickham to share his insights on LPAs in their February/March 2023 edition - [In the balance: the impact of changing wealth holder priorities.](#)

In this article, we share Henry's insights and everything you need to know about LPAs in the Channel Islands.

LPAs in the Channel Islands

In Jersey and Guernsey, LPAs enable a person to appoint someone else to make decisions on their behalf in respect of (1) their property and affairs and (2) their health and welfare.

LPAs allow individuals to plan for their future and put in place arrangements to support them at a time when they may no longer have the capacity to make decisions for themselves.

How does an LPA work?

Under LPAs, the donor can provide their attorney with concise instructions and preferences in order to outline their wishes. An attorney must adhere to any instructions provided, whereas preferences are guidelines the attorney should regard when making decisions.

Example instructions for an LPA for property and affairs might include:

- my attorney must consult a financial advisor before investing over £20,000
- my attorney must consult with my daughter/son before selling my property

Example preferences for an LPA for property and affairs might include:

- I would like my attorney to donate the sum of £250 per year to an animal charity
- I would like my attorney to only invest in ethical funds

Example instructions for an LPA for health and welfare might include:

- my attorney must ensure that I am fed a vegetarian diet
- my attorney must not make the decision to put me into a care home unless it is the opinion of my doctor that I am no longer able to live at home

Example preferences for an LPA for health and welfare might include:

- I would like to continue to exercise in the form of yoga and swimming for as long as I am able to do so and as long as it is of benefit to me
- if it comes to the time when I should be cared for in a care home rather than live in my house, my first choice for care home would be [X]

It is important to take care when inserting particular instructions and preferences in your LPA, if doing so without legal advice, to ensure that the wording used does not make the LPA unworkable. You do not wish to include something the law doesn't allow, so always seek legal advice if you have queries to ensure your attorney will be able to perform their role in line with your wishes.

What's the difference between LPAs in the Channel Islands and in the UK?

LPAs in Jersey and Guernsey are very similar, but there are minor differences in some of the terminology used. For example, in Jersey, the person who appoints their powers is known as a donor, but in Guernsey they are known as a grantor.

There are no noticeable differences between LPAs in Jersey and Guernsey and LPAs in the UK. This is not surprising as Jersey and Guernsey's respective capacity laws, which provide the legal framework for the islands' LPAs, were heavily influenced by the English Mental Capacity Act 2005. However, it is worth noting that UK LPAs can be registered in Jersey or Guernsey and so take effect as a local Jersey or Guernsey LPA.

Who needs an LPA and when should it be considered as an option?

LPAs are an excellent tool which enables islanders to take additional estate planning steps. They allow the donor to exert more control over their future if it comes to a point where they can no longer express their choices and wishes due to incapacity of some form. An LPA for property and affairs can also be used immediately at the donor's instigation (for example, before the donor loses capacity) if they feel they need this support. This can be especially useful for someone who might not want to leave their home.

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