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What are the Consequences of not Having a Health and Welfare LPA in Place?

For a Free initial consultation call **02380 661166**
or visit **www.apw-ifa.co.uk**

What is an LPA?

A Lasting Power of Attorney (LPA) is a legal document which allows a person (otherwise known as the donor) to appoint someone they know and trust to make decisions on their behalf should they become unable to do so in the future. This person is called an attorney. Attorneys must always act in the best interest of the donor.

There are 2 types of LPA:

- **Health and Welfare**
- **Property and Financial Affairs**

However, for the purposes of this article, we will be looking at Health and Welfare LPAs only.

What decisions can be made by your attorneys on your behalf with a Health and Welfare LPA?

Having this LPA in place will give your attorneys the authority to make the following decisions on your behalf:

- **Day to day decisions such as exercise, dietary requirements and care**
- **Arrange medical or dental care**
- **Make decisions on life-sustaining treatment**
- **Where the donor lives i.e. relocation into a care home or sheltered accommodation.**

The LPA will allow you to set out any preferences you would like your attorneys to be aware of. Preferences are non-binding wishes that you would like the attorneys to keep in mind when making decisions on your behalf.

We have set out some examples on the following page.

Examples :

"I would like my pets to live with me for as long as possible. If I go into a care home, I'd like to take them with me."

"I prefer to live within 5 miles of my sister NAME."

"I would like to have regular haircuts and manicures."

You can also set out instructions in the LPA which are legally binding and what your attorneys must follow. We have set out some examples below:

"My attorneys must ensure I am only given vegetarian food."

"My attorneys must not decide I am to move into residential care unless, in my doctor's opinion, I can no longer live independently."

When does it come into effect?

A Health and Welfare LPA will only come into effect once the donor loses mental capacity.

What is the cost to register the LPA and what is the turnaround time?

A Health and Welfare LPA can only be used once it has been registered with the Office of Public Guardian (OPG).

There will be a registration fee payable to the OPG when the LPA is submitted to them. The current cost is £82 per LPA. If you are on a low income or receive benefits, you may be eligible for fee remission. An additional form (Form LPA120) will need to be completed if you are applying for reduced fees.

Registering your LPA with the OPG can take up to 16 weeks or possibly longer, depending on the volume of applications they receive, so it is important you register your LPA as soon as possible.

What Happens if you don't have a Health and Welfare LPA?

It is a common misconception that a Health and Welfare LPA is only needed for those that are of an older age. The reality is that capacity could be lost at any time due to a serious accident, stroke or even a degenerative condition such as Alzheimer's.

If you should lose capacity and there is no Health and Welfare LPA in place, your family and friends will not have automatic authority to make decisions on your behalf with regards to your health and welfare. Instead, others could make decisions for you and the decisions made may not be what you would have wanted, i.e. social services decide where you live and what care you receive, or you may be resuscitated against your wishes. This can cause disagreements between family members and professionals about what is best for you. Having an LPA in place prevents those disagreements whilst ensuring loved ones who are best placed to look after you if you lose capacity are legally able to do so.

Is there a way for someone to make decisions on my behalf after I have lost capacity if I do not have a Health and Welfare LPA?

Yes. If capacity is lost and there is no LPA in place, a friend or family member can apply to the Court of Protection to be a Deputy for you and make decisions on your behalf.

However, this is a long but also expensive process. The process can 6 months or even more, so it is cheaper and more effective to have an LPA in place.



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