



How Lasting Powers of Attorney can help you to plan for the future

By **Zoe Blomfield**, managing partner at Viberts

AS we get older, we naturally start thinking about later life. We don't, however, like to think about the challenges that we may encounter along the way. Many of us will suffer from some form of memory loss, be that from old age or from some form of dementia.

There are currently more than 1,600 people living with dementia in Jersey and, with an ageing population, this number is expected to double within a generation. However, in addition to dementia, there are also many other afflictions that can affect our ability to make decisions.

Before the loss of capacity, it is, however, possible to put in place a Lasting Power of Attorney. The Capacity and Self Determination (Jersey) Law 2016 enables the donor to appoint one or more trusted persons, known as attorneys, to make financial/property or health decisions on your behalf should you no longer be able to do so. You can give your attorney very specific instructions or very general instructions. You can also appoint an attorney to act on your behalf in relation to financial and property matters while you still have capacity and they can assist you to run your affairs (with your active consent).

If you become unable to make decisions, the person you appoint as your attorney will be able to do this on your behalf. Therefore, it is important to appoint someone you trust to act in your best interests and to make them aware of your wishes.

There is a common misconception that this responsibility will automatically fall to your next of kin or your children. However, under the law, if you have not executed an LPA and you lose capacity, the court will need to appoint a delegate to manage your personal affairs and this may not be who you ordinarily would have chosen. In addition, a delegation, while effective, is a highly regulated arrangement and may not be what you had in mind.

THE DIFFERENT TYPES OF LPAS

There are two types of LPA in Jersey, covering two distinct issues. The first covers property and financial affairs, and enables your attorney to make decisions regarding things such as paying bills, managing accounts, collecting benefits and managing your property. The second relates to health and welfare, and enables your attorney to make health and welfare decisions on your behalf (potentially including what type of care you have, should you require it). A Health and Welfare LPA will only come into effect in the event of a loss of capacity.

There is a concern that LPAs may be abused. However, there are protections set out in the law to ensure your that wishes are followed and there are severe sanctions if abuse is found.

You can choose to make one type of LPA or both, and you can appoint more than one attorney (two children for

example). There are a number of things to consider when choosing an attorney:

- How responsible are they with their own finances?
- How well do you know them?
- Do you trust them to make the best financial/welfare decisions for you?
- Would they be happy to make decisions on your behalf?

WHO SHOULD MAKE AN LPA?

Some believe that an LPA is, in some ways, more important than a will as it will affect you more during your lifetime. This is why LPAs are often called 'living wills'. An LPA isn't something only the older generation need to consider. Unfortunately, anything can happen to any of us. To make an LPA, you only need to be over 18 and have mental capacity. I would recommend that everyone have one.

It is not a requirement to use a lawyer to draft an LPA as you can do this yourself online through the Government of Jersey website. There can, however, be advantages to taking legal advice. Viberts' private client team deals with all elderly client and care issues. Should you require assistance, please call us on 01534 632263, email privateclient@viberts.com or visit our website at viberts.com/services/private-client.