



Looking after those who can no longer look after themselves

Most of us never question our own ability to make decisions, whether they are financial or health related, with thought only be given by other family members when an individual seems to have or is losing the capacity to make those decisions.

Important changes to our law governing capacity have been introduced by the Capacity and Self-Determination (Jersey) Law 2016 ("**Law**") which comes into force on **1 October 2018**. The changes will have an impact on the majority of us in the Island over the course of our lifetimes particularly as our population ages and dementia is on the increase. Even if we ourselves are not affected, our loved ones may need assistance in managing their affairs.

Historically a person could give power of attorney to someone they trusted (an "attorney") to act on their behalf and on their instruction. However, that power of attorney lapsed when the individual lost capacity. In addition, many people chose not to appoint an attorney.

At the point when capacity was lost a "curator" had to be appointed by the Royal Court. As the appointment is a formal one, significant delay could arise between the medical assessment that capacity had lapsed and a Curator being sworn in by the Royal Court. The system of curatorship was also limited because the powers of a Curator stretched only so far as managing the financial affairs of an individual. The Curator had no power to make decisions in respect of the care of that individual, such decisions usually remaining to be made by their 'next of kin'. It left a vacuum where individuals did not have family to speak on their behalf.

The changes under the new Law.

The Law brings in changes to a number of areas:

- there is a presumption that a person has capacity unless proved otherwise;
- the Law provides a framework that should enable people to make their own decisions or be involved in the decision making process as far as possible;
- the Law enables people to plan for the future by putting in place Lasting Powers of Attorney (LPA) in respect of:
 - health and welfare matters; and/or
 - property and financial affairs.
- the Law provides for an individual to sign an Advance Decision to Refuse Treatment stating what treatment they do not want to receive in future in the event that they lose capacity.
- a new 'delegate' system will come into force which provides for a 'delegate' to be appointed for those who have lost capacity and have not put in place an LPA. Please see [\[link\]](#) for further information in relation to these.



Lasting Powers of Attorney

What can an LPA cover?

An LPA for property and financial affairs can cover things such as:

- buying and selling property;
- paying the mortgage;
- investing money;
- paying bills; and
- arranging repairs to property.

A person can appoint more than one attorney and can decide what he or she would like to be dealt with, how it should be dealt with and by which attorney and who will be responsible for different decisions. It is envisaged that an individual will be able to restrict the types of decisions their attorney can make if they wish.

An individual can also choose when the LPA comes into force, whether now or at some time in the future, usually when he or she is no longer capable of managing his or her own affairs.

An LPA for health and welfare matters will only be used once an individual has lost mental capacity.

An attorney will be able to make decisions about things such as:

- where the individual should live;
- what medical care they should receive;
- what the individual should eat;
- who the individual should have contact with; and
- what kind of social activities the individual should take part in.
- Special permission can also be given to an attorney to make decisions about life-saving treatment.

What should I do now?

LPAs are not just for the elderly.

Within moments a person's life can change:- a serious accident; a stroke, mental health issues. If an LPA is in place, this will allow the attorney to get quick access to funds necessary for care and maintenance.

Banks will allow the attorney to take control of bank accounts upon presentation of the original LPA and other necessary documents. If mental capacity is lost without an LPA in place, funds in any bank account cannot be touched until a court order is obtained appointing a person as delegate. This would cause distress and inconvenience for loved ones.

Going forward, LPAs should form a part of everyone's estate planning and be put in place alongside Wills.



VOISIN LAW

Voisin's Estate Planning & Capacity Team provide expert guidance in all matters concerning capacity issues. If you would like to have an informal discussion about these matters, please contact Eliana Lennon and Angela Roscouet at probate@voisinlaw.com.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.