

Acting as a certificate provider on a Lasting Power of Attorney

Introduction

As an important safeguard against abuse, one of the requirements in making a Lasting Power of Attorney (LPA) is for the document to be countersigned by an independent person (the certificate provider) chosen by the donor to confirm that in his or her opinion:

- 1 The donor understands the purpose and contents of the document and the scope of the powers they are giving to the attorneys;
- 2 The donor is not under any undue pressure or duress to make the LPA or has not been tricked into making it; and
- 3 There is nothing else that would prevent the LPA being created.

Who can act as a certificate provider?

There are two types:

1 Category A

This is a knowledge based certificate provider who knows the donor personally and has done so for a minimum period of two years.

2 Category B

This is a skills based certificate provider. This is a person the donor believes has the relevant professional skills and expertise to provide the certification. A skills based certificate provider would normally make a charge for their services, and could be one of the following:

- a A registered healthcare professional such as a GP.
- b A registered Social Worker.
- c A Barrister, Solicitor or Advocate.
- d An Independent Mental Capacity Advocate.
- e Any other person who considers they have the relevant professional skills and expertise to be a certificate provider.

The responsibilities of the certificate provider

The certificate provider needs to assess the donor's capacity to understand the importance of the document they are signing and the extent of the powers given by it. If, for any reason, the LPA is challenged at the time when it is being registered, the certificate provider may be called on by the Court to justify their opinion.

The certificate provider needs to be satisfied that the donor understands the nature and effect of the document that they are making. It is advisable for the certificate provider to ask the donor open questions about the LPA, why they are making it and the choice of attorneys.

It would be wise for the certificate provider to record the questions asked and to keep a note of the responses given.

If the donor has not listed anyone to be told when the LPA is to be registered (Section 8 in a Property and Financial Affairs LPA and Section 9 in a Health and Welfare LPA) then it will be necessary to have a second certificate provider.

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Acting as a certificate provider on a Lasting Power of Attorney (continued)

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed.

We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

If you require further information, please discuss with your usual contact in the firm or Edward Fardell, Martin Terrell or Mary Robinson on 01892 510000 or by email at:

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