



Mander Hadley
Solicitors

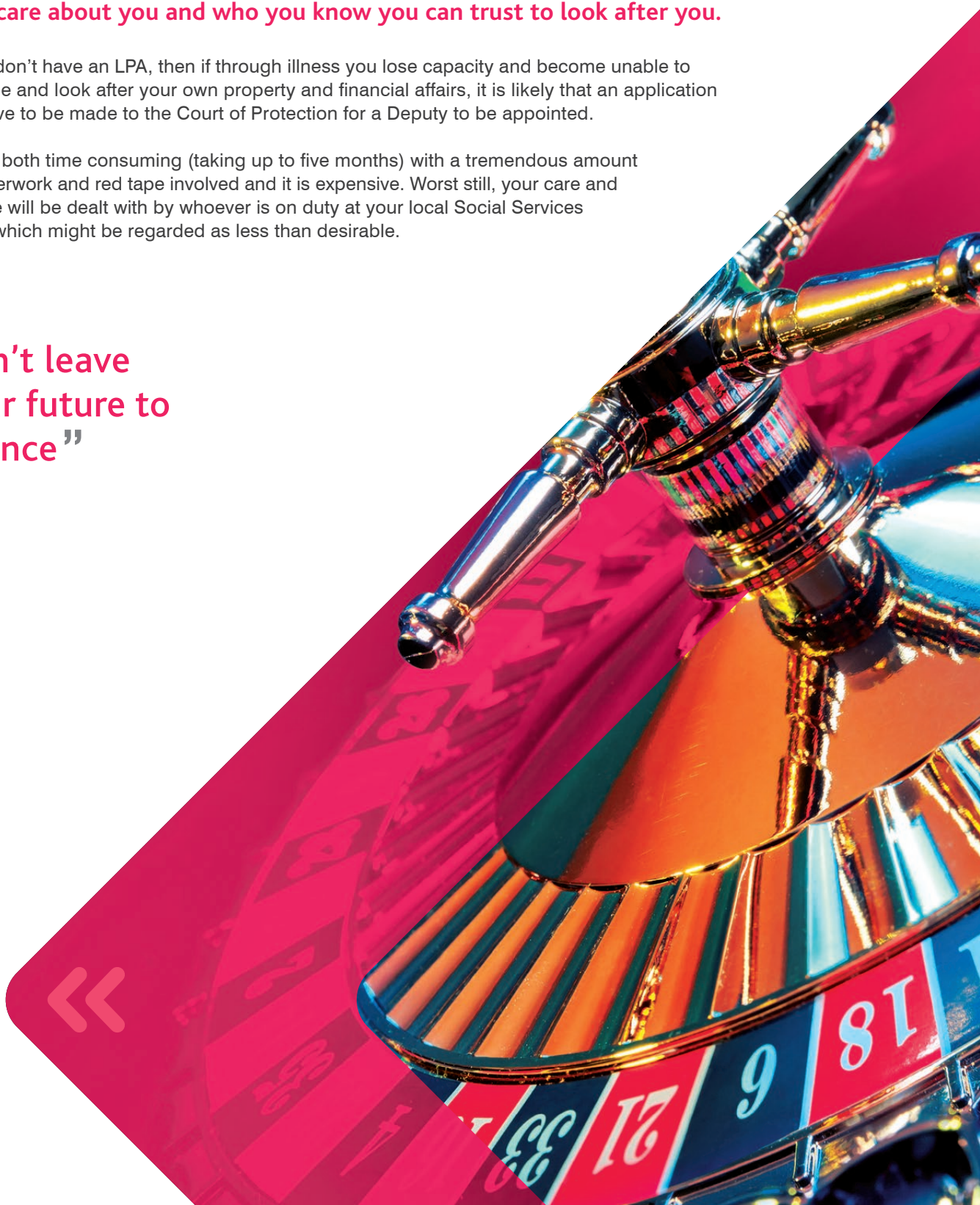
Lasting Powers of Attorney

What do you do if you ever find yourself in the position of being unable to look after your own property and financial affairs or even your own care and welfare? The answer is probably to have a Lasting Power of Attorney (LPA) in place ready to be used by your immediate family or closest and most trusted associates who care about you and who you know you can trust to look after you.

If you don't have an LPA, then if through illness you lose capacity and become unable to manage and look after your own property and financial affairs, it is likely that an application will have to be made to the Court of Protection for a Deputy to be appointed.

This is both time consuming (taking up to five months) with a tremendous amount of paperwork and red tape involved and it is expensive. Worst still, your care and welfare will be dealt with by whoever is on duty at your local Social Services office which might be regarded as less than desirable.

“Don't leave
your future to
chance”



So what are LPAs? It is hoped that the following points will be helpful to you:

- LPAs were introduced on 1st October 2007 and allow one person (called the Donor) to give authority to another (called the Attorney) and there are two types. It is possible for either or both types to be completed, depending on what the Donor wants to do.
- The first type of LPA is a property and affairs LPA. This confers authority on the Attorney over the Donor's property and financial affairs and potentially the scope of what the Attorney can do is very wide indeed. It is possible to impose limitations or restrictions on the Attorney's authority, but if general authority is conferred then the Attorney(s) can do anything in regard to the Donor's affairs (other than make a Will) which the Donor could legally do for him or herself. This would embrace operating the Donor's bank accounts and investments through to selling his or her house and belongings.
- The second type of LPA is a personal welfare LPA and this can again impose limitations or restrictions on the Attorney's authority. Otherwise, a general authority under the personal welfare LPA will allow the Attorney(s) to make all personal care and healthcare decisions for the Donor ranging from where the Donor should live, their diet and who they might have contact with, through to consenting to or refusing medical examinations and treatment.
- An LPA has to be registered with the Office of the Public Guardian before it can be used. The registration process with the OPG is by formal application in the prescribed form and fees are payable to the OPG for this.
- Once registered, the property and affairs LPA can be

used straightaway (but is permissive not mandatory so it can be used but doesn't have to be) by the Attorney(s) regardless of whether or not the Donor has capacity to deal with his or her own affairs (and this can sometimes be very useful if for example the Donor is spending time abroad or is frail or ill). The LPA can however, specifically restrict the Attorney(s) so that the LPA can only be used if and when the Donor, through accident or illness, loses capacity and until then the LPA will simply lie fallow and gather dust. The important point, however, is that the LPA will be there if it is ever needed.

- A personal welfare LPA can only ever be used in regard to specific decisions which the Donor does not have capacity to make for him or herself at the particular time when a decision is required. A personal welfare LPA cannot be used in any other circumstances.
- The Attorney(s) should be chosen very carefully indeed. You will be placing a great deal of trust in them. The Attorney(s) should always act in your best interests and for your benefit, but the possibility of the LPA being abused and of fraud should be kept in mind. You can appoint two or more Attorneys and they can act jointly (so that they have to act together always) or jointly and severally (so that they can act either together or independently of each other). A joint and several appointment is the more flexible. You can also appoint substitutional Attorneys to take the place of your first choice Attorneys, should they die, or themselves become incapable of acting. You can appoint the same or different Attorneys for your property and affairs LPA and your personal welfare LPA.
- There are a variety of requirements which must be met in order for an LPA to be validly made and brought into effect, but we will guide you through these requirements stage by stage.

Find out how Mander Hadley can help you

Although helpful, the brief information included in this document is intended as a guide only and does not constitute legal advice. For more detailed information regarding any of the matters raised in this guide, tailored to suit your specific circumstances, please contact a member of Mander Hadley's Wills, Probate and Older Client Services team.

