

LPAs and Discretionary Investments

Do you have the “Power”?

As an Attorney for Property and Financial Affairs, you would fully expect to be able to leave a professional fund manager to make discretionary decisions on behalf of the donor.

However, to be effective the Lasting Power of Attorney (LPA) should have given you, as Attorney, the power to manage the investments on a discretionary basis. If this isn't the case and your loved one has lost capacity, you may find yourself with a problem.

We have helped a number of individuals who, until now, have had their investments managed by large Banks. Following guidance issued by the Office of the Public Guardian (OPG), these individuals have been told that, unless the Power of Attorney mentions this “discretionary power”, the Bank is no longer able to assist.

An application to the Court of Protection to change the LPA document might be an option. Alternatively, a change to an “Advisory” or simple savings arrangement.

If you are thinking of setting up a LPA, we suggest you add a suitable paragraph allowing this power to be delegated, which could save a great deal to time and effort in the future. The wording should be checked with both your Solicitor and Investment advisor, as different managers appear to be taking different stances.

The suggested wording provided by the OPG is:

‘My attorney(s) may transfer my investments into a discretionary management scheme. Or, if I already had investments in a discretionary management scheme before I lost capacity to make financial decisions, I want the scheme to continue. I understand in both cases that managers of the scheme will make investment decisions and my investments will be held in their names or the names of their nominees’.

If you already have an LPA in place, but still have capacity, we'd suggest you speak to your Solicitor now.

As Independent Financial Advisers, we look at people's overall position (age, health, other assets, income, expenditure etc), not just where money is invested. In some cases, the need for an investment solution becomes less important as time passes by, especially where there is plenty of income. As people get older, we often find that a discussion around the structure of assets is more important, especially when it comes to the issue of Inheritance tax, for example.

For more information, please visit the OPG's official website:

<https://www.gov.uk/government/organisations/office-of-the-public-guardian>

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Clients are advised that the value of all investments can go up as well as down. Opinions, interpretations and conclusions expressed in this document represent our judgement as of this date and are subject to change.

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