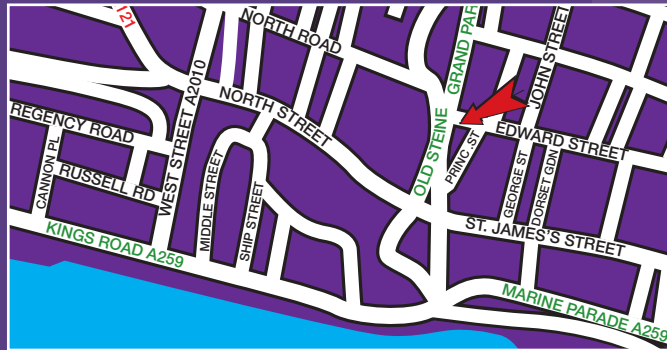
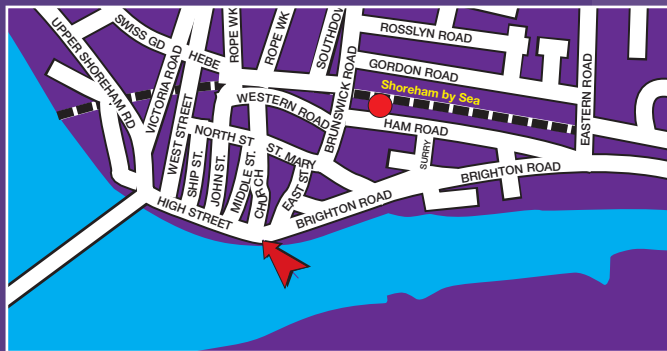


The difference is clear



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Lasting Power of Attorney



Fitzhugh Gates is one of the longest established legal practices in the area. We have a respected private client team dedicated to advising clients on how to optimise their affairs to cater for all eventualities. A Power of Attorney, together with a professionally drafted Will, is central to good organisation of your legal affairs whatever your circumstances. Read this leaflet to find out what Power of Attorney is and why you should have one.



TYPES OF POWER OF ATTORNEY

ORDINARY POWERS. These have been around for a long time and allow you to appoint someone else to deal with your financial affairs. An Ordinary Power may be appropriate, for example, if you wish someone to act on your behalf whilst you are abroad. However, they can not be used for trustee matters, including jointly owned property. They can also only be used for as long as you retain mental capacity to run your own affairs. They are not suitable for the majority of people who want a Power 'just in case' they decline mentally.

ENDURING POWERS (EPA's) were introduced to address this need. They enabled clients with mental capacity to appoint one or more attorneys whose authority would continue even if mental incapacity struck the client later on. They were relatively straightforward and extremely popular with the clients of Fitzhugh Gates for over 20 years. Their demise had long been predicted and they were replaced in 2007 amid concerns over abuse by attorneys. EPA's made before October 2007 remain valid.

LASTING POWERS OF ATTORNEY (LPA's) have superseded EPA's and are more complex. They are part of a more robust system introduced by the Mental Capacity Act 2005. The Act is an exciting development in empowering people of all mental abilities to participate in matters affecting them as far as they are able to do so. Perhaps more importantly for the healthy client, LPA's provide the greatest flexibility that they have ever had to choose how their attorney participates in decisions affecting them after they have lost capacity to do so themselves. Creation of an LPA can provide great reassurance. LPA's will be the Power of Attorney of choice for the majority of clients.



WHY MAKE AN LPA?

An LPA is for use during your lifetime. An LPA enables you to make provision in advance for the possibility that you may become incapable of managing your finances or personal welfare. The risk of mental incapacity grows with increasing life-expectancy, as does the chance of serious accident or illness, and therefore it is a prudent measure to have an LPA. It may help to think of it as the legal equivalent of an insurance policy.

If your health declines and you have not made an LPA an application may have to be made to Court for the appointment of a Deputy to act on your behalf. You would have no choice over who is appointed or the powers that they are given. The process is also slow and expensive.

WHAT CAN AN LPA COVER?

There are two types: Financial and Personal Welfare and they are separate documents.

Financial: Appointment of attorney(s) to manage financial matters is likely to be their most popular use. Fitzhugh Gates is willing for our partners to act as we are experienced in this field. Our impartiality may be a good reason to favour a professional attorney over family.

Personal Welfare: A Welfare Attorney may be involved in a range of decisions including what medical treatment you should receive for life threatening illnesses (or possibly in voicing your wishes in certain circumstances not to receive treatment). A Welfare Attorney can also be involved in mundane, but very important, day-to-day matters such as where you should live, who should be allowed to visit you and regulation of your diet. Although this may sound frightening, an LPA gives you the freedom to appoint someone who you trust and who knows you very well. If you don't have an attorney and you lose your ability to make those decisions for yourself, other people who know you less well will take them for you.

A Welfare LPA can only take effect in relation to any decision if you are incapable of making it yourself. The legislation recognises that, for example, a person may need the support of their attorney to make difficult treatment decisions whilst retaining the capacity to decide their own diet.

The partners of Fitzhugh Gates will rarely accept an appointment as a Welfare Attorney, because it is unlikely that they will have the depth of knowledge of your personal circumstances to carry it out to the high standards we set ourselves.

HOW FLEXIBLE IS AN LPA?

Very. You may have a Financial LPA without a Welfare one, opt for a Welfare LPA alone or have both. You may have different attorneys if you do both. You may appoint one or more attorneys. You can choose

whether they must act together or can act separately. You may insist that they act jointly for some decisions but not for others. You can give them outright authority or limit it in any way that you wish. You can insist that they consult with certain people about certain decisions or allow them to make their own decisions. The permutations are almost endless.

CERTIFICATE PROVIDERS & NOTIFYING FRIENDS OR FAMILY.

The legislation is much stronger than it was under the EPA regime. Two safeguards are incorporated in LPA's

- an appropriately qualified person must give a certificate to confirm that you have the capacity to make an LPA and that you fully understand its significance. At Fitzhugh Gates we are able to provide certificates for most clients who make an LPA through us and some who have made them elsewhere.
- you can choose who (if anyone) you wish to be notified that the LPA is being registered with the Office of the Public Guardian (OPG)

REGISTRATION

LPA's are not valid until they have been registered at the OPG. This can take some time. At Fitzhugh Gates we can prepare and file the registration papers. We recommend making LPA's whilst in good health and allowing plenty of time for registration.

WANT MORE ADVICE?

We would be pleased to meet you to discuss your requirements. For an appointment contact:

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