

INSTITUTE OF LEGAL EXECUTIVES

UNIT 15 – PRACTICE OF LAW FOR THE ELDERLY CLIENT*

Time allowed: 1 hour and 30 minutes plus 15 minutes reading time

Instructions to Candidates

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the paper or in your answer booklet during this time if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 3 CERTIFICATE IN LAW AND**

Question 1

Carole Ellis

Reference: This question relates to **Documents 2 and 3** of the case study materials.

Attachment: Document A (Lasting Power of Attorney – Property and Financial Affairs – pages 5-10 of this question paper)

(a) (i) Explain why your supervising solicitor, Thomas Andrews, is concerned about the involvement of Peter Ellis.

(3 marks)

(ii) What action should you take to deal with the concerns identified in question 1(a)(i)?

(3 marks)

(b) What is the test used in the Mental Capacity Act 2005 to decide if a person lacks capacity?

(5 marks)

Your supervising solicitor is satisfied that Carole has the mental capacity to prepare the Lasting power of attorney – property and financial affairs and there are no other concerns.

(c) Using the blank form **(Document A)** provided and the information contained in **Documents 2 and 3 of the Case Study Materials** complete Part A of the Lasting power of attorney – property and financial affairs.

(10 marks)

(Total: 21 marks)

Important: Write your candidate number clearly on Document A and attach it securely to your answer booklet.

Additional information

Following the meeting between your supervising solicitor Thomas Andre John Turner, John has telephoned to provide the following information:-

- His son David has offered to give him £50,000.
- John has also checked with his mother and he has been surprised to learn that the property she occupies is in his sole name. Apparently, it was transferred to him six years ago following his father's death. At that time, it was worth approximately £45,000 and he estimates that it is now worth around £85,000.

Question 2

Reference: This question relates to the **additional information** on this page and **Document 4** of the case study materials.

- (a) Explain to John Turner the consequences to him, if any, of him accepting the gift of £50,000 from his son David with regard to his:

(i) income tax position;

(3 marks)

(ii) entitlement to receive state benefits.

(4 marks)

- (b) John Turner understands that it may be possible to raise funds by using his home as security.

Explain the general principles of how this works for:

(i) equity release plans;

(7 marks)

(ii) home income plans (also known as reversion plans.)

(6 marks)

- (c) Explain how capital gains tax is assessed and what would be the capital gains tax consequences to John Turner if he sold or gifted the property occupied by his mother to his son David.

(8 marks)

(Total: 28 marks)

Question 3

John Turner

Reference: This question relates to **Document 4** of the case study materials.

- (a) (i) What are the criteria necessary for John Turner to qualify for attendance allowance?
(5 marks)
- (ii) Explain whether or not John Turner is likely qualify.
(3 marks)
- (b) (i) John Turner has decided to take his personal pension as soon as he reaches his 65th birthday. Briefly explain to him how it will be used to provide him with an income.
(4 marks)
- (ii) From whom should John seek advice with regard to the investment of his pension?
(2 marks)
- (c) John Turner tells you that he knows his physical condition is progressively deteriorating and is concerned about some of the treatments being offered.
- Advise John what he can do to prevent these treatments being given to him in the future if he is not well enough to make the decision himself at the time.
(7 marks)
- (Total: 21 marks)**

Candidate Number _____

DOCUMENT A

Lasting power of attorney – property and financial affairs – to be used with question 1(c)

For OPG office use only

LPA PA
registered on

OPG reference
number

Office of the
Public Guardian

Lasting power of attorney – property and financial affairs

About this lasting power of attorney

This lasting power of attorney allows you to choose people to act on your behalf (as an attorney) and make decisions about your **property and financial affairs**, when you are unable to make decisions for yourself.

If you also want someone to make decisions about your **health and welfare**, you will need a separate form (downloadable from our website or call 0300 456 0300).

Who can fill it in?

Anyone aged 18 or over, who has the mental capacity to do so.

Before you fill in the lasting power of attorney:

1. Please read the guidance available at publicguardian.gov.uk or by calling **0300 456 0300**. See, for example, the **Lasting power of attorney creation pack** or other relevant guidance booklets which are all available online or by post.
2. Make sure you understand the purpose of this lasting power of attorney and the extent of the authority you are giving your attorneys.
3. Read the separate **Information sheet** to understand all the people involved, and how the three parts of the form should be filled in.
4. Make sure you, your certificate provider(s), and your attorney(s) have read the section on page 2 called **Information you must read** before filling in their relevant part.



This lasting power of attorney could be rejected at registration if it contains any errors.

Checklist

See the information sheet for guidance on all the people involved

Part A: about you, the attorneys you are appointing, and people to be told

How many **attorneys** are you appointing? *Write in words.*

How many **replacement attorneys** are you appointing? *Write in words or write 'None' if this does not apply.*

How many **people to be told** are you choosing? *Write in words from 'None' to 'five'. If 'None' you must have two certificate providers in part B.*

Part B: about your certificate providers

How many **certificate providers** do you have? *(Tick one box)*

☐

One

☐

Two

If you have used any continuation sheets each one must be signed and dated.

Attached to the back of this lasting power of attorney are:
(Write the number of each)

continuation sheet A1

continuation sheet A2

continuation sheet A3:PFA

continuation sheet B

continuation sheet C

Total number of continuation sheets

Information you must read



This lasting power of attorney is a legal document. Each person who signs parts A, B and C must read this information before signing.

Purpose of this lasting power of attorney

This lasting power of attorney gives your attorneys authority to make decisions about your property and financial affairs when you cannot make your own decisions. This can include running your bank accounts and savings accounts, decisions about making or selling investments and selling property, and spending your money.

When your attorneys can act for you

Your attorneys can use this lasting power of attorney only after it has been registered and stamped on every page by the Office of the Public Guardian. Your attorneys can make decisions for you as soon as this lasting power of attorney is registered – both when you have mental capacity and when you lack mental capacity, unless you put a restriction in this lasting power of attorney.

The Mental Capacity Act

Your attorneys cannot do whatever they like. They **must** follow the principles of the Mental Capacity Act 2005.

Guidance about these principles is in the Mental Capacity Act Code of Practice. Your attorneys must have regard to the Code of Practice. They can get a copy from The Stationery Office at **tso.co.uk** or read it online at **publicguardian.gov.uk**

Principles of the Act that your attorneys must follow

- 1 Your attorneys must assume that you can make your own decisions unless they establish that you cannot do so.
- 2 Your attorneys must help you to make as many of your own decisions as you can. They cannot treat you as unable to make the decision in question unless all practicable steps to help you to do so have been made without success.
- 3 Your attorneys must not treat you as unable to make the decision in question simply because you make an unwise decision.
- 4 Your attorneys must make decisions and act in your best interests when you are unable to make the decision in question.
- 5 Before your attorneys make the decision in question or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

Your best interests

Your attorneys must act in your best interests in making decisions for you when you are unable to make the decision yourself. They must take into account all the relevant circumstances. This includes, if appropriate, consulting you and others who are interested in your welfare. Any guidance you add may assist your attorneys in identifying your views.

Cancelling this lasting power of attorney

You can cancel this lasting power of attorney at any time before or after it is registered as long as you have mental capacity to cancel it. Please read the guidance available at **publicguardian.gov.uk**

How to fill in this form

- Tick the boxes that apply like
- Use black or blue ink and write clearly
- Cross through any boxes or sections that don't apply to you, like this:

Any other names you are known by in financial documents or accounts

- Don't use correction fluid – please cross out any mistakes and rewrite nearby. All corrections must be initialled by the person completing that section of the form (and their witness) like this:

Any other names you are known by in financial documents or accounts

WILLIAM EDWARD SMITH

A.S.B / W.E.S. SMYTH

- Your application could be rejected if your intentions are not clear and explicit. If you are in any doubt, please start again on a new copy of the form.

What happens after you've filled it in?

The next step is to **register** it. You or your attorneys can do this at any time. The person applying will need to fill in a registration form and may need to pay a fee at that time. They will also need to send notices to the 'people to be told' named at part A when the application to register this lasting power of attorney is made. You can find out more and download the registration form at **publicguardian.gov.uk**

The 'people to be told' are given time to raise any concerns or objections. This means the earliest the Office of Public Guardian can register this lasting power of attorney is 6 weeks after they notify the donor or attorneys that an application to register has been received.

Your lasting power of attorney will **end** if it can no longer be used. For example, if a sole attorney dies or can no longer act for you and no replacement attorney has been named in this lasting power of attorney. Please read the guidance available at **publicguardian.gov.uk**

Part A Declaration by the person who is giving this lasting power of attorney

Please write clearly using black or blue ink.

1 About the person who is giving this lasting power of attorney

Mr Mrs Ms Miss Other title

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
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First names

Last name

Date of birth

D	D	M	M	Y	Y	Y	Y
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Address and postcode

Postcode

Any other names you are known by in financial documents or accounts

2 About the attorneys you are appointing



If you are appointing a trust corporation alone, cross through this section and go to 2A →

Thinking about your attorneys

- You can appoint more than one attorney if you want to. You do not have to appoint more than one attorney.
- Each attorney must be aged 18 or over. Choose people you know and trust to make decisions for you. You are recommended to read the separate guidance for people who want to make a lasting power of attorney for property and financial affairs.
- Your attorney must not be bankrupt.

Your first or only attorney

Mr Mrs Ms Miss Other title

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
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First names of your first or only attorney

Last name of your first or only attorney

Date of birth of your first or only attorney

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Address and postcode of your first or only attorney

Postcode

Your second attorney

Please cross through this section if it does not apply.

Mr Mrs Ms Miss Other title

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
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First names of your second attorney

Last name of your second attorney

Date of birth of your second attorney

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Address and postcode of your second attorney

Postcode



If you are appointing more than two attorneys, use continuation sheet A1 to tell us about your other attorneys.

Other attorneys you are appointing

Number of attorneys named in continuation sheet A1 attached to this lasting power of attorney

Cross through this box if this does not apply

2A About appointing a trust corporation as attorney or replacement attorney

About the trust corporation you are appointing *Please cross through this section if it does not apply.*

- A trust corporation cannot be going through winding-up proceedings.

Company name

Address

Are you appointing this trust corporation to act as an

☐ attorney, or

☐ replacement attorney?

Postcode

3 About appointing replacements if an attorney can no longer act

 **If you are appointing a trust corporation as replacement attorney, cross through this section.**
Your trust corporation should then fill in continuation sheet C →

Thinking about replacement attorneys

- Replacement attorneys will only act once your attorney can no longer act for you.
- You can appoint replacements to replace an attorney who does not want to act for you or who is permanently no longer able to act because they are dead, bankrupt, have disclaimed, lack mental capacity or if they were married to you or were your civil partner, and have now had the marriage or civil partnership annulled or dissolved.
- You do not have to appoint any replacements.
- If you appoint only one attorney and no replacements, this lasting power of attorney will end when your attorney can no longer act.

Your first or only replacement attorney *Please cross through this section if it does not apply.*

Mr Mrs Ms Miss Other title

☐ ☐ ☐ ☐


Date of birth of your first or only replacement

First names of your first or only replacement

Address and postcode of your first or only replacement

Last name of your first or only replacement

Postcode

 **If you are appointing more than one replacement, use continuation sheet A1 to tell us about your other replacement attorneys.**

Other replacement attorneys you are appointing

Number of replacement attorneys named in continuation sheet **A1** attached to this lasting power of attorney

Cross through this box if this does not apply

4 How you want your attorneys to make decisions

Thinking about how you want your attorneys to make decisions

! If you leave this section blank, your attorneys will be appointed to make all decisions jointly.

- **Jointly:** this means that the attorneys must **make all decisions together**. → For further information on appointing your attorneys jointly, see the separate guidance.
- **Jointly and severally:** this means that attorneys can **make decisions together and separately**. This might be useful, for example, if one attorney is not available to make a decision at a certain time. If one attorney cannot act the remaining attorney is able to continue to make decisions.
- **Jointly for some decisions, and jointly and severally for other decisions:** this means that your attorneys **must make certain decisions together and** may make **certain decisions separately**. You will need to set out below how you want this to work in practice.

Choosing which decisions must be made together and which decisions may be made separately – how this will work in practice

- Please make your intentions clear about how your attorneys are to make decisions about running bank accounts and savings accounts, making or selling investments and selling property, and spending your money.
- Please check that your intentions will work in practice – it may not be possible to register or use this lasting power of attorney if, for example, a bank or building society account cannot be operated as you wish.

How you want your attorneys to make decisions

If you are appointing only one attorney and no replacement attorneys, now go to section 5 →

Jointly

☐

→ Go to section 5 and cross through the box below

Jointly and severally


☐

→ Go to section 5 and cross through the box below

Jointly for some decisions, and jointly and severally for other decisions

☐

Only if you have ticked the last box above, now tell us in the space below which decisions your attorneys must make jointly and which decisions may be made jointly and severally


 If you need more space, use continuation sheet A2

5 About restrictions and conditions

Putting restrictions and conditions into words

- You should read the separate guidance for examples of conditions and restrictions that will not work in practice.
- Your attorneys **must** follow any restrictions or conditions you put in place. But it may not be possible to register or use this lasting power of attorney if a condition is not workable.
- **Either:** give any restrictions and conditions about property and financial affairs here
- **Or:** if you would like your attorneys to make decisions with no restrictions or conditions, you should cross through this box.

Restrictions and conditions about property and financial affairs


 *If you need more space, use continuation sheet A2*

6 About guidance to your attorneys

Putting guidance into words

- Any guidance you add may help your attorneys to identify your views. You do not have to add any.
- Your attorneys do not have to follow your guidance but it will help them to understand your wishes when they make decisions for you.
- **Either:** Give any guidance about property and financial affairs here
- **Or:** if you have no guidance to add, please cross through this box.

Guidance to your attorneys about property and financial affairs


 *If you need more space, use continuation sheet A2*

7 About paying your attorneys

Professional charges

- Professional attorneys, such as solicitors and accountants, charge for their services. You can also choose to pay a non-professional person for their services. You **should** discuss payment with your attorneys and record any agreement made here to avoid any confusion later.
- You can choose to pay non-professional attorneys for their services, but if you do not record any agreement here they will only be able to recover reasonable out-of-pocket expenses

Charges for services

 *If you need more space, use continuation sheet A2*

→ For further information on paying attorneys, please see the separate guidance.

8 About people to be told when the application to register this lasting power of attorney is made

Thinking about people to be told

- For your protection you can choose up to **five people to be told** when your lasting power of attorney is registered. This gives people who know you well an opportunity to raise any concerns or objections **before** your lasting power of attorney is registered and can be used.



- You do not have to choose anyone. But if you leave this section blank, you must choose two people to sign the certificate to confirm understanding at part B.**

- The people to be told cannot be your attorney or replacement named at part A or in continuation sheets to part A.

The first or only person to be told

Please cross through this section if it does not apply.

Mr Mrs Ms Miss Other title

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
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First names of first or only person to be told

Last name of first or only person to be told

Address and postcode of first or only person to be told

<input type="text"/>	Postcode	<input type="text"/>
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The second person to be told

Please cross through this section if it does not apply.

Mr Mrs Ms Miss Other title

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
--------------------------	--------------------------	--------------------------	--------------------------	----------------------

First names of second person to be told

Last name of second person to be told

Address and postcode of second person to be told

<input type="text"/>	Postcode	<input type="text"/>
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Other people to be told

Please cross through this section if it does not apply



Tell us about other people to be told on continuation sheet A1.

Number of other people to be told named in continuation sheet **A1** attached to this lasting power of attorney

END OF EXAMINATION PAPER

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