

Your role as an Attorney

How do I become an Attorney?

You are appointed as an attorney under a lasting power of attorney (LPA).

What is an LPA?

An LPA is a legal document. The person who made the LPA (the 'donor') trusts you and possibly **other attorneys** to make decisions for them if they lose mental capacity. However, you can help them now if you want.

'Mental capacity' is the ability to make a specific decision at the time that it needs to be made. It is when a mind or brain problem stops a person making a decision when they need to. The law says that the donor should be assumed to have capacity to make decisions, unless shown otherwise.

What is my role if there are other Attorneys?

The LPA will say how you act together:

- **Jointly and severally** – you can carry out a decision with your other attorneys or by yourself
- **Jointly** – unanimously, all attorneys must agree on every decision
- **Jointly for some decisions and jointly and severally for others** – you must agree decisions that are set out in the LPA with all the attorneys. You can make others alone.

If you have to make a decision jointly and you do not all agree, it cannot be made. Further, you cannot act until the LPA has been registered by the Office of the Public Guardian (OPG).

What are my legal responsibilities as an Attorney?

In the process of making the LPA you will have been required to sign a statement confirming that you understand the legal responsibilities of an attorney. These include:-

- Always acting in the best interests and taking reasonable care when making decisions on the donor's behalf.
- Acting within the terms of the LPA
- Assisting the donor in making their own decisions where possible.

The law say you must always act honestly and, in the donor's best interests.

What are certified copies of the LPA?

A certified copy is a copy of a document which is signed by an authorised person who has seen the original document and can vouch that the copy has been made accurately and honestly.

If the donor has capacity, they can certify copies, or a solicitor or notary will make them for a fee. As an attorney ensure you have a certified copy of the LPA.

How can I help the donor?

As an attorney, you must help the donor to reach their own decisions, if they can. You cannot decide for the donor just because you think their decisions are odd or unwise.

How can I help the donor to make decisions?

- Ensure they can make some decisions
- Explain decisions in different ways. Would using pictures, sign language or their native language help?
- If there are times when the donor cannot decide and the decision is not urgent, wait.

What if the donor doesn't have mental capacity?

- Follow any LPA restrictions or conditions
- Try to follow guidance in the LPA
- Ask others what the donor would do
- Do not make assumptions based on the donor's age, behaviour, condition or appearance – think about what they would want.

*Avoid decisions that restrict the donor's freedom, seek options with less impact

*Ensure each decision must be the best choice for the donor

*If you make an important decision for the donor, make a note of it and why it was in their best interests.

What can't I do as an attorney?

You are unable to sign the donor's will for them, step in the place as a trustee of a trust, act as a personal representative where a donor has been appointed as an executor in a will or appear in court in the place of a donor as a witness.

Health and Welfare LPA

The **Health and Welfare LPA** includes but is not limited to decisions such as, where the donor lives, their day-to day routine, personal care and medical treatments.

What should I do next?

Talk to the donor about their likes and dislikes in relation to for example, any special diet, where they want to live, who will care for any pets if they cannot, their hobbies, music, TV, radio, books, whether they prefer to be indoors or outdoors and small things that may cheer them up like a favourite film, crossword or walk. The more you know, the better you'll be able to decide on their behalf, if ever the donor is unable to.

Ask the donor about care plans:

- An advance decision to refuse specific treatments (sometimes called a 'living will') that health and social care staff can follow.
- A statement of wishes and preferences about their care and treatment (this could either be written or told to people).
- Check if the donor chose you in the LPA to refuse or consent to treatment to keep them alive. If it is you and they lose capacity, you can talk to doctors as though you were the donor.
- Ensure you find out the donor's views on life-saving and other health and social care, including any restrictions or guidance in their LPA.
- Keep records by writing down decisions such as moving the donor to another home, choosing care services or refusing medical treatment.

Ask the donor:

- For contact details like their GP, dentist or optician
- Where they keep the LPA document

Let people know they must contact you, if the donor can't make decisions. Tell:

- Carers, friends and family
- The donor's GP and other healthcare staff
- Care workers, the donor's social worker and other social care staff

- Care home staff, sheltered housing wardens or other wardens.

You may have to show them either:

- The original LPA document or certified copy; and
- Proof of who you are and where you live (such as a gas or electricity bill and driving license or passport).

Describe the donor's choices:

- Explain to care workers the donor's views on care and any medical treatment
- Provide the GP and care workers copies of any advance decisions or written statement of wishes from the donor.
- Inform home workers and hospital staff of the donor's likes and dislikes.

Property and Financial LPA

The **Property and Financial LPA** includes but is not limited to the donor's property and money matters such as:

- Using their bank and building society current and savings accounts
- Claiming, receiving and using their benefits, pensions and allowances
- Paying their household, care and other bills
- Buying or selling their home
- Saving or making and selling investments.

What should I do next?

Talk to the donor about how they look after their finances. For example, do they:

- Give birthday gifts to children or other friends and family (how much)?
- Like spending on clothes, music or trips?
- Donate to particular charities (how much)?
- Want to sell or rent out their home if they move into a care home?
- Prefer to keep a minimum bank balance?

Ensure you are aware of where the donor keeps, benefits, pension and tax letter, bills and bank or credit card statements, the deeds of any property they own and the LPA document or certified copies.

Managing Finances

Keep accounts by writing down income, expenditures and gifts. Keep bills. It is easier to keep your finances and the donor's finances and property separate unless you already had joint accounts.

Importantly, the Donor may have limited the LPA by only granting authority to the attorney(s) to deal with specific assets or set financial limits. Please check this in the LPA.

If the donor owns **property** check it is registered in their name with HM Land Registry. If not, it is important to register it. Don't assume you can carry out extensive maintenance work to any property – you might need consent from the Court of Protection as your job is to maintain the donor's finance, not deplete them. Minor works can be done but do obtain a number of quotes for comparison and record why you have used one contractor over another. If you are a contractor yourself, there is a conflict of interests if you use your own company.

Banks, building societies and utility companies need proof that you are an attorney. You should also tell the Department of Work and Pensions.

You may have to show them either:

- The original LPA document or certified copy; and
- Proof of who you are and where you live (such as a gas or electricity bill and photo ID such as driving license or passport).

Making gifts

Gifts can only be made if they are in the donors best interests. Spending must not harm the donor's care or quality of life. Gifts must also be affordable. You can still make charitable donations or family birthday gifts but you cannot spend a lot more or differently from the donor.

The law says you cannot make profits or benefit from acting as a donor.

Important information:

- If a donor loses capacity prior to registration of the LPA, as an attorney you can apply to the OPG to register it. With all registration there is a six-week delay before registration takes effect.

- If you feel a decision needs to be taken that is outside of your powers, you can apply to the Court of Protection.
- If the donor dies, you should send copies of the LPA with the death certificate to the OPG. You will then no longer have the authority to act for the donor, unless you are appointed as an executor in the donor's will.
- If you no longer wish to be an attorney, you may 'disclaim' your appointment. The LPA005 form must be completed which must be sent to the donor and copied to the OPG and any other attorneys.
- If you suspect an attorney is abusing their position or acting dishonestly as an attorney, you must contact the Compliance and Regulations Unit of the OPG immediately. The OPG may decide to carry out an investigation which could result in suspension as an attorney. You must also contact the police if you suspect abuse to the donor, theft or fraud.

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These notes are for general guidance only. The legal position may alter from time to time. You should seek advice on your individual circumstances before making any decisions. We cannot take responsibility for action solely based on these guidelines.