



Getting started as an attorney

Health and welfare



How to be an attorney

You've been appointed as an attorney under a lasting power of attorney (LPA).

The person who made the LPA (the 'donor') trusts you to make decisions for them if they lose mental capacity.

'Mental capacity' is the ability to make a specific decision at the time that it needs to be made.

The LPA covers health and care decisions such as:

- where the donor lives
- their day-to-day routine
- personal care
- medical treatments.

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

What to do now

Talk to the donor about their likes and dislikes, for example:

- any special diet (such as vegetarian)
- where they want to live
- what will happen if they can't care for their pets
- how they like to dress and wear their hair
- hobbies and tastes in music, TV, radio or books
- if they prefer being indoors or outdoors
- small things that cheer them up, such as a favourite film, a crossword, a glass of wine or a walk.

The more you know, the better you'll be able to decide on their behalf, if ever the donor can't.

Ask the donor if they've made 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 might 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's you, and they lose capacity:

- you can talk to doctors as though you were the donor
- the LPA may replace any advance decision to refuse a life-sustaining treatment.

Find out the donor's views on life-saving and other health and social care, including any restrictions or guidance in their LPA.

Ask the donor:

- for contact details (for example, their GP, dentist, optician)
- where they keep the LPA document.

Get certified copies of the LPA document

- If they have mental capacity, the donor can certify copies. See www.gov.uk/power-of-attorney/certify
- A solicitor or notary will make them for a fee.

Helping the donor

As an attorney, you must help the donor to reach their own decisions, if they can.

You can't decide for the donor just because you think their decisions are odd or unwise.

The law says that you must assume that someone can make decisions, unless it's shown that they can't.

Help the donor to make decisions

- Check: can they make some decisions?
- Explain 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's not urgent, wait.

A lack of mental capacity is when a mind or brain problem stops a person making a specific decision when they need to.

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

- don't make assumptions based on the donor's age, behaviour, condition or appearance – think about what they as an individual would want.

Avoid decisions that restrict the donor's freedom

Look for an option with less of an impact.

Make decisions in the donor's best interests

Each decision must be the best choice for the donor, not just one that suits other people.

Keep records

If you make an important decision for the donor, make a note of it and why it was in their best interests. Write down decisions such as moving the donor to another home, choosing care services or refusing medical treatment.

Informing others

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 housing workers.

Staff may want to see proof of your identity and the original LPA or a certified copy – not a photocopy.

Describe the donor's choices

- Tell health and social care staff the donor's views on care and medical treatment.
- Give the GP and health and social care staff copies of any advance decision or written statement of wishes and preferences.
- Let care home workers, home helps and hospital staff know about the donor's likes and dislikes.

Other attorneys

If there are other attorneys, the LPA will say how you act together:

- **jointly and severally** – you can decide with other attorneys or by yourself
- **jointly** – all attorneys must agree 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 don't all agree, it can't be made.

Can't agree?

If you and other attorneys can't agree, ask family and friends what the donor would want and what's in their best interests.

Use advocacy or mediation. Look online or ask at a library. If the donor is in a home or gets social care, ask staff for help.

You can contact OPG and we may be able to advise, or you may need to apply to the Court of Protection. This could cost £385 or more.

Before you act

THINK – is this what the donor would want?

CHECK – can the donor be helped to make all or part of the decision?

REMEMBER – every decision must be in the donor's best interests.

Advice

Age UK

0800 169 6565

www.ageuk.org.uk

Alzheimer's Society

0333 150 3456

www.alzheimers.org.uk

Citizens Advice

www.adviceguide.org.uk

Family Mediation Council

www.familymediationcouncil.org.uk

Health in Wales (NHS Wales)

www.wales.nhs.uk

Mind

0300 123 3393

www.mind.org.uk

NHS Choices

www.nhs.uk

NHS England

www.england.nhs.uk

Scope

0808 800 3333

www.scope.org.uk

More information

LP15 How to be a health and welfare attorney

A guide for people who've been appointed attorneys for health and welfare decisions or are considering taking on that role.

www.gov.uk/government/publications/how-to-be-an-attorney

Mental Capacity Act 2005 Code of Practice The Code of Practice explains attorneys' duties.

www.gov.uk/opg/mca-code

GOV.UK

Court of Protection, Department for Communities and Local Government and Department of Health.

www.gov.uk

How to contact us

Get advice, raise concerns or tell us if the donor's or your circumstances change (for example, if you move house).

TELEPHONE

0300 456 0300

Monday to Friday 9am to 5pm

Wednesday 10am to 5pm

TEXTPHONE

0115 934 2778

EMAIL

customerservices@publicguardian.gov.uk

WEBSITE

www.gov.uk/opg