



Getting started as an attorney

Property and financial affairs



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. If they want, you can help them now.

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

The LPA covers 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.

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

What to do now

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?

Ask the donor where they keep financial information:

- benefits, pension and tax letters
- bills and bank or credit card statements
- the deeds of any property they own
- the LPA document.

If the LPA is destroyed or lost, the Office of the Public Guardian (OPG) can make copies for £35 each.

Get certified copies of the LPA document

- If the donor has capacity, they can make them.
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 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 can 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.

Managing finances

Keep accounts by writing down income and bigger outgoings and gifts. Keep bills.

It's easier to keep the donor's and your money and property separate, unless you already have joint accounts or own a home together.

If the donor owns a property, check it's registered in their name with Land Registry and, if it's not, register it; also, join the Property Alert Service.

See www.gov.uk/land-registry

Dealing with banks and other companies

Banks, building societies and utility companies need proof that you're the attorney.

You may have to show them:

- the original LPA document or a certified copy, not a photocopy
- proof of who you are and where you live (such as a gas or electricity bill and passport or driving licence).

Problems? Speak to the manager or head office.

Making gifts

Gifts can only be made if they are in the donor's best interests.

Spending must not harm the donor's care or quality of life. Gifts must be affordable.

You can still give charitable donations or family birthday presents but you can't spend a lot more or differently from the donor.

You can't make profits or benefit personally from acting for the donor – it's against the law.

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 £400 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.

More information

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 Work and Pensions (benefits and pensions), HMRC (tax) and Land Registry (property ownership)

www.gov.uk

Age UK

0800 169 6565 www.ageuk.org.uk

Alzheimer's Society

0300 222 1122 www.alzheimers.org.uk

British Banking Association

'Guidance for people wanting to manage a bank account for someone else' leaflet

www.bba.org.uk

Citizens Advice

www.adviceguide.org.uk

Family Mediation Council

www.familymediationcouncil.org.uk

Mind

0300 123 3393 www.mind.org.uk

Money Advice Service

0333 321 3434 (England)

0300 330 0520 (Wales)

www.moneyadviceservice.org.uk

Scope

0808 800 3333 www.scope.org.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).

PHONE

0300 456 0300

Monday to Friday 9am to 5pm

Wednesday 10am to 5pm

TEXTPHONE

0115 934 2778

EMAIL

customerservices@publicguardian.gsi.gov.uk

WEBSITE

www.gov.uk/opg