

## Attorney Responsibilities

### Property & Affairs

This Lasting Power of Attorney (LPA) allows a person (the Donor) to nominate somebody else to look after their financial affairs should they be unable to do so. You can use this LPA to give an Attorney the power to make decisions about money and property for you. For example:

- managing a bank or building society account
- paying bills
- collecting benefits or a pension
- selling your home

In completing part C of the LPA you are declaring that you understand and accept the role and the responsibilities associated with it.

Attorneys or Replacement Attorneys must not be bankrupt. You cannot, therefore, continue to act as an Attorney or Replacement Attorney if you become bankrupt. In this event you must contact the Office of the Public Guardian.



You can make decisions and act only when the LPA has been registered. The Donor or Attorney can apply to register the LPA any time after it has been made. You must always act in the best interests of the Donor.

Even the Donor has the capacity to make decisions themselves. The LPA, once registered, allows you to make decisions on their behalf unless the Donor has included a condition stating that you can only act when they lack mental capacity. A Property and Financial Affairs LPA does not allow you to make decisions about the Donor's health and welfare - a separate Health and welfare LPA would be necessary. Even after registering the LPA you should assume that the Donor has capacity to make decisions themselves.

You should only make decisions for the Donor when they are incapable of making them themselves or when they may be capable but have asked you to make them on their behalf. A person should not be treated as unable to make a decision just because they make a decision which, in your opinion, is unwise.

## Health & Welfare

You can use this LPA to give an Attorney the power to make decisions about things like:

- your daily routine (e.g. washing, dressing, eating)
- medical care
- moving into a care home
- life-sustaining treatment

It can only be used when the Donor is unable to make their own decisions.

The Mental Capacity Act 2005 and Code of Practice set out other responsibilities of Attorneys, including:

- a duty of care when making decisions on behalf of the Donor
- carrying out instructions that the Donor has made in their LPA
- a duty not to delegate the powers you have under the LPA, unless the LPA says you can
- to not benefit yourself but to benefit the Donor - meaning that you should avoid any potential conflicts of interest, and to not profit or benefit personally from the position other than where specified within the LPA
- a duty of good faith - meaning that you should act with honesty and integrity
- keeping the donor's affairs confidential unless the Donor has specified otherwise

- complying with directions of the Court of Protection
- to not give up your role without discussing it with the Donor if possible
- keeping the Donor's money and property separate from your own
- keeping accurate accounts and financial records in all of your dealings as an Attorney.

Having a good understanding of the Donor's past and recent wishes and decision making, will help you make decisions that are in their best interests. You should take into consideration the Donor's guidance in mind when making any decisions on their behalf. In deciding what is in the Donor's best interests, consider:

- their past and recent wishes
- any view the Donor has expressed in the past and the views of family members, parents, carers, etc.
- their beliefs and values
- the possibility that the Donor could regain capacity
- any other factors that may be specific to the Donor's circumstances
- any guidance in the LPA (Section 6) or other written statement

If the Donor has stated that you can only act when they lack capacity, you need to be able to assess their capacity. To do this, consider whether the Donor:

- has a general understanding of the decision that needs to be made
- has understanding of the consequences of the decision
- can assess information in order to make the decision themselves
- could make the decision themselves if you were to help them
- needs help communicating their decision or thinking

You can spend money to make gifts but only to charities or on customary occasions and for reasonable amounts. You can claim reasonable expenses for transport costs, telephone calls, postage, etc. that you incur.

You cannot make decisions about making a Will on the Donor's behalf or voting on the Donor's behalf.

Note for Replacement Attorneys: You will only have the authority to act under this LPA if an original Attorney's appointment is terminated and you are still eligible to act. You must notify the Office of the Public Guardian.



Contact the Office of the Public Guardian if you need help.

**Office of the Public Guardian**

[customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)

Telephone: 0300 456 0300

Textphone: 0115 934 2778

Monday to Friday, 9am to 5pm except  
Wednesday, 10am to 5pm

 [info@adviserwill.com](mailto:info@adviserwill.com)

 [www.adviserwill.com](http://www.adviserwill.com)

 +44 (0)117 287 2187

 **Greystone House, 198 – 200 High Street,  
Worle, BS22 6JD**