

Lasting Powers of Attorney for Health and Welfare: Attorneys Duties

You have been appointed as a Health and Welfare 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.

What is a LPA?

An LPA is a legal document authorising you to make decisions on behalf of the Donor. It will remain effective if the Donor loses capacity.

There are two types of LPA available, a Property and Affairs LPA and a Health and Welfare LPA.

What does a Health and Welfare Attorney do?

As a Health and Welfare Attorney, you can make decisions about the Donor's:

- Living arrangements, e.g whether they live at home or move into a care home
- Day-to-day routine
- Personal care
- Medical treatments.

You can only make decisions that the Donor is unable to make at that point in time.

Checking the LPA

You will need to follow the Donor's instructions about what to do or, if they have lost capacity, check the LPA to see if the Donor has listed:

- If you have to act with other Attorneys
- Restrictions on what you can do

- Guidance on how they want decisions to be made
- Instructions that you must follow.

What is mental capacity?

'Mental capacity' is the ability to make a **specific decision at the time** that it needs to be made. A lack of mental capacity is when a mind or brain problem stops a person making a specific decision when they need to.

How to make decisions for the Donor?

You must:

- Only make decisions when the Donor does not have mental capacity
- Make decisions in the Donor's best interests
- Understand and abide by the principles of the Mental Capacity Act 2005
- Keep a record of important decisions you make for the Donor and why it was in their best interest
- If appointed to act 'jointly' all decisions must be unanimous. If agreement cannot be reached (with or without the assistance of professional advisers) the OPG can give guidance and the Court of Protection can give Directions
- Not delegate decision-making, although you can seek advice from others
- Not make property and financial decisions.



Decisions about where the Donor will live

You cannot sell or buy property on the Donor's behalf unless you are also their Property and Financial Affairs Attorney.

Decisions about treatment to keep the Donor alive

You cannot make decisions about giving the Donor treatment which will keep them alive unless they gave you permission in their LPA.

Advance decisions

The Donor may also have made an Advance Decision, sometimes called a 'Living Will'. This is a legal statement about which medical treatments they do not want. It is not part of their LPA, but you will need to consider it as well.

You may need to apply to the Court of Protection to make a decision if:

- The Advance Decision and the LPA give different instructions
- There is any doubt or disagreement about whether the treatment should be given.

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.

How can Ashtons Legal help?

Our experienced team can help you consider your specific circumstances and advise you in relation to your role and duties as Health and Welfare Attorney and potential options available to you. We provide practical advice and assistance based on our legal knowledge and first hand experience.

The team can also advise and assist in applying to the Court of Protection, if so required.

More information

To discuss how we can help you, please contact us:

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