

Your role and duties as an Attorney

Agreeing to become an attorney means taking on an important role. Your role begins when you agree to be an attorney and sign the Lasting Power of Attorney (LPA), although you or any other attorneys cannot use the LPA until it is registered with the Office of the Public Guardian (OPG).

Your role as an Attorney

Your role as an attorney will be different depending on how you have been appointed and the type of LPA you have been appointed under. If you have been appointed as a:

Health and Welfare Attorney:

you can only act and take decisions on the donor's behalf when the donor lacks capacity to make those decisions. Once the LPA is registered, you will be able to make personal welfare decisions that the donor could have made themselves before they lost the capacity to do so. Depending on how you have been appointed to act under the LPA, you may have to make some or all decisions jointly with the other attorney(s). You will also need to comply with any restrictions and/or conditions that have been included in the LPA.

Property and Affairs Attorney:

you will be able to take decisions on the donor's behalf **even when they have the capacity to make them themselves**, unless the donor has included a restriction in the LPA that you can only act when they lack capacity. You will not be able to use the LPA until it has been registered. Depending on how you have been appointed to act under the LPA, you may have to make some or all decisions jointly with other attorney(s). You will also need to comply with any restrictions and/or conditions that have been included in the LPA.

What are my duties as an Attorney?

The Mental Capacity Act 2005 imposes some specific duties. When acting under an LPA you have a duty:

- to act in accordance with the Act's principles;
- in particular to act or make decisions in the donor's best interests;
- to have regard to the guidance in the Code of Practice;
- to act only within the scope of your authority as attorney.

When agreeing to act as attorney under a Lasting Power of Attorney you are taking on a role that carries a great deal of power which you must use carefully and responsibly.

Other duties and obligations are set out in chapter 7 of the Code of Practice. They include:

- A duty of due care when making decisions on behalf of the donor
- To carry out instructions as required by the LPA
- A duty not to delegate the powers given to you under the LPA unless you have been authorised to do so

- Not to benefit yourself but to benefit the donor - this means avoiding conflicts of interest and in particular not profiting or acquiring personal benefit from your position
- A duty of good faith, which means to act with honesty, and integrity
- A duty of confidentiality - to keep the donor's affairs confidential unless the donor has consented otherwise
- To comply with the directions of the Court of Protection
- Not to give up the role without telling the donor and the Court.

And specifically in relation to Property and Financial Affairs LPAs:

- To keep the donor's money and property separate from your own
- To keep accurate accounts of your dealings as attorney.

These duties are described in greater detail in the Code of Practice which you should read if you are deciding whether to take on the role of attorney. If you become an attorney you will have a legal duty to have regard to the contents of the Code.

If you do not perform your duties properly, you may be ordered to compensate the donor for any losses they have suffered as a result. Anyone ill-treating or willfully neglecting someone they have care of who lacks capacity, or to whom an LPA appointment relates, can be found guilty of a criminal offence.

The penalty for such an offence is a fine and/or a sentence of imprisonment of up to five years.

Do you supervise attorneys?

We do not usually supervise attorneys or tell them how they should make decisions on behalf of the donor. If concerns are raised about the actions of an attorney we may investigate, or refer the concerns to another agency (or possibly the police).

The Court of Protection has powers to issue directions to attorneys and require them to produce information (including accounts if they are acting under a Property and Affairs LPA).

The Court can also cancel the registration of the LPA if there is sufficient evidence the Attorney has not acted in the Donor's best interests.