

Lasting Powers of Attorney



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Advice correct as of January 2015

The Mental Capacity Act (MCA) creates a new form of power of attorney – Lasting Power of Attorney (LPA), which gives another individual the authority to make decisions for an individual who now lacks capacity. This factsheet gives you more information about LPAs.

Lasting Power of Attorney (LPA)

An LPA allows people to nominate someone they trust to make decisions on their behalf, should, in the future, they lose capacity. An LPA can cover health and personal welfare, and property and financial affairs.

The person making the LPA is referred to as the “donor”. It is a legal document and decisions that the attorney makes are as valid as any made by the donor. An attorney is bound by the principles set out in the Act; for example, any decisions they make must be made in the best interests of the person lacking capacity.

LPA replaces Enduring Powers of Attorney (EPA). An EPA relates solely to financial and property matters and, if made before 1 October 2007, is still valid. However, since the Act came into force, LPAs have taken over this function.

A valid LPA must include a certificate completed by an independent third party (the certificate provider), which confirms that, in their opinion, the donor understands the scope and purpose of the LPA; the donor was not put under undue pressure to make the LPA; and that the certificate provider is not aware of anything else that would prevent the LPA being made. As a doctor, you may be asked to act as the certificate provider.

Personal welfare LPAs

A personal welfare attorney application appoints an LPA to make decisions about an individual’s welfare. This includes healthcare decisions, and consenting on their behalf to treatment and social care decisions – for example, where the person should live and who with.

There are specific situations in which the attorney cannot consent to or refuse treatment:

- when the donor has the capacity to consent to the treatment

- when the donor has made an advance decision to refuse the treatment. However, if the donor subsequently made an LPA that gave the attorney the right to refuse treatment then the attorney can decide not to follow the advance decision. (MPS factsheet – *Advance Decisions*)
- when the decision relates to life-sustaining treatment and this has not been expressly authorised in the LPA
- when the donor is detained under the Mental Health Act 1983.

An LPA does not give attorneys the power to demand specific treatments, if you do not believe that they are necessary or appropriate. Attorneys also have no authority to make decisions that result in the deprivation of a donor’s liberty.

Life-sustaining treatment

A donor must expressly state in their LPA that their attorney has the authority to make decisions about life-sustaining treatment. The attorney must not be motivated by the desire to bring about the donor’s death. If you have any doubts about whether the attorney is acting in the donor’s best interests, you should apply to the Court of Protection for a decision. If you are the doctor caring for the donor, you should not be the patient’s LPA.

If you disagree with a decision made by the attorney

The best interests test (see MPS factsheet – Best Interests Tests) applies in any decision the attorney makes. If you do not believe that the decision taken is in the best interests of the person lacking capacity, you can refer to the Code of Practice and also apply to the Court of Protection to review the decision. You should provide life-sustaining treatment to the person lacking capacity, or treatment to stop their condition getting worse, until a decision has been made.

Property and affairs LPAs

LPAs can also give the attorney authority to make decisions about the property and affairs of the donor, once they have lost capacity. Property and affairs attorneys are separate from personal welfare attorneys and can be different individuals.

How do you find out if a patient has an LPA?

LPAs are only valid if they are registered with the Office of the Public Guardian (OPG). If you believe they may have an LPA, you should contact the OPG.

The Court of Protection and LPAs

The Court of Protection can:

- determine whether or not an LPA is valid
- give directions about using an LPA
- remove an attorney.

The Court can prevent an LPA being registered if it is suspected that the LPA was made as a result of undue pressure on the donor, through fraud, or if the attorney behaves, has behaved or is believed to be planning to behave in a way that is not in the best interests of the donor.

If you are unclear about the meaning of an LPA, the Court of Protection will be able to clarify it. The Court can also extend the powers of the attorney when the donor has lost capacity.

If you suspect that an attorney is abusing their position, you should contact the OPG immediately. In suspected cases of physical or sexual abuse, theft or serious fraud, you should contact the police. The OPG, in serious cases, will refer the matter to the Court of Protection, who may then revoke the LPA.

In specific situations the Court of Protection can consider cases of children under 16; for example, in relation to longer-term decisions and financial care.

Further information

- MPS factsheets, Mental Capacity Act series – www.medicalprotection.org/uk/factsheets
- Mental Capacity Act – www.legislation.gov.uk/ukpga/2005/9/contents
- Safeguarding Vulnerable Groups Act 2006 – www.legislation.gov.uk/ukpga/2006/47/contents
- Mental Capacity Act 2005, Code of Practice, Chapter 7 – www.publicguardian.gov.uk/mca/code-of-practice.htm
- Ministry of Justice – www.justice.gov.uk
- DH – www.dh.gov.uk
- The Office of the Public Guardian, *Making Decisions: A Guide for People who work in Health and Social Care Booklet 3* – Mental Capacity Act 2005 – www.publicguardian.gov.uk

For medicolegal advice please call us on:

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This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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