

## The role and responsibilities of an Attorney

Once you (the attorney) start using your powers under the LPA you may have to answer to the Office of the Public Guardian or the Court of Protection if anyone expresses concerns to them that you might not be acting in the person's best interests. Remember that you have no authority to act under the LPA until it has been registered with the OPG.

If you are an attorney you must:

- follow the statutory principles of the Mental Capacity Act
- make decisions in the best interests of the donor
- have regard to the guidance in the Code of Practice (available from the Office of the Public Guardian)
- only make those decisions that you have authority to make under the LPA. So if you are only a property and affairs attorney, you can't make decisions about the donor's welfare although you might be consulted about these decisions.

You should take all practicable steps to help the person to make their own decisions. Steps to help someone make a decision could include:

- making sure they have all the information they need to make a decision
- making sure the information is communicated in the most appropriate way; for example, consider using simple language, an interpreter, non-verbal communication, or a family member who may be able to help with communication.
- making the person feel at ease by considering the best time of day and location to communicate with them, and considering who they would want present.

When deciding what is in someone's best interests, you should take into account their religious and moral beliefs, how they have behaved in the past, and any views that they have expressed. You should also consult their family and carers where practical. But remember that the donor has appointed you to assess what is in their best interests and to make the decision on their behalf. You cannot delegate that authority to anyone else.

## Attorneys under a Property and Financial LPA

The following information applies to attorneys under a Property and Financial LPA. Remember that you do not have authority to act on personal welfare decisions unless you are also appointed under a Health & Welfare LPA.

- Accounts – you should keep full, accurate and up-to-date accounts of all the donor's assets and income, including bank and building society accounts, investments and property. Tax returns will need to be completed. The OPG and Court of Protection may ask to see these at any time, including after the death of the donor. You should keep all the donor's assets in the donor's name and keep their accounts separately. You will need to keep all estimates, invoices, receipts and vouchers. An attorney may be held liable if the donor's money is not handled in a responsible manner.
- Gifts – you may make gifts to people at times when the donor would usually have done so themselves, for example birthday presents to relatives of the donor, or a wedding or civil

partnership present to a friend of the donor. You can also make charitable donations in accordance with the donor's expected wishes, for example if they regularly gave to charity in the past. Any gifts or donations must be reasonable in proportion to the donor's estate. If you want to make larger gifts of money or property, for example for Inheritance Tax planning purposes you will need to make an application to the Court of Protection.

- Expenses – professional attorneys (for example, solicitors or accountants) may charge for time spent on their duties. The LPA form includes a section to record what fees have been agreed between the donor and the attorney. Other attorneys can be paid out of pocket expenses such as the cost of stationery, postage and phone calls, but not for their time.
- Property – if you are thinking of selling or letting the donor's property because it is in their best interests, you need to be sure that they would not be likely ever to return to live there. You should contact the OPG if the sale is below the market value, or you want to buy the property yourself, or give it to someone else. The OPG can advise you on whether you need to apply to the Court of Protection about this.
- Wills – you cannot make a will on behalf of the donor. If the donor still has mental capacity to do so they can make their own will or make an amendment to the existing will (a codicil). You should contact the OPG if you are in any doubt about the donor's capacity to do this. If it is necessary for a will to be made on behalf of someone who lacks capacity to do it themselves, a 'statutory will' can be made by the Court of Protection. This could be required if, for example, if they previously made a will that needs to be amended due to a change in circumstances (eg the death of the main beneficiary). You should contact the OPG if this is necessary.

## Attorneys under a Health & Welfare LPA

The following information applies to attorneys under a personal welfare LPA. Remember that you do not have authority to act on property and affairs decisions unless you are also appointed under a property and affairs LPA.

- Where the donor lives – you can make decisions on where it is in the best interests of the donor to live. You cannot make decisions about the sale of the donor's house unless authorised under a property and affairs LPA.
- Medical treatment – if there is no restriction on your powers under the LPA, you can consent to or refuse medical treatment on behalf of the donor.
- Life-sustaining medical treatment – you cannot refuse life-sustaining treatment on behalf of the donor unless they have specifically authorised you to do so. The donor must have signed section 6 of the LPA form giving their consent for you to make such decisions.
- Advance decisions – if the donor has made an advance decision to refuse treatment you cannot make a decision relating to the provision of that treatment, unless the LPA under which you are appointed was made by the donor after they made the advance decision and they have given you authority to refuse or consent to that treatment.
- Mental Health Act 1983 – if the donor is being treated for a mental disorder and is detained under the Mental Health Act 1983, you cannot make decisions refusing or consenting to this treatment.
- Marriage and civil partnerships – you cannot consent to marriage or civil partnership on behalf of the donor, or to divorce or dissolution of a civil partnership. You cannot consent to sexual relations on their behalf.
- Wills – You cannot make a will on behalf of the donor.

- N.B. If you do not comply with your duties as an attorney, you may be ordered to pay compensation to the donor for any losses they suffer. There is also a new criminal offence of ill treatment or wilful neglect that applies to attorneys, court-appointed deputies and anyone who has the care of a person who lacks capacity.