

Role as Attorney of a Health and Welfare Lasting Power of Attorney

What you need to know about your role as Attorney of a Health and Welfare Lasting Power of Attorney

You have been asked to be an Attorney of a Health and Welfare Lasting Power of Attorney (LPA). This is an important role and so before you agree and sign the LPA, please take the time to read and understand your responsibilities.

An Attorney is a person(s) appointed in the LPA to make decisions on behalf of the Donor should they be unable to in the future due to lack of capacity.

Restrictions

- Attorneys must be at least 18 years old and
- Have mental capacity to make decisions

You may be asked to act:

Jointly & Severally – This is the most practical option because it allows Attorneys to make decisions independently or together with their co-Attorney

Jointly – Attorneys must agree unanimously on every decision

Jointly for some decisions & jointly and severally for other decisions – Attorneys must agree unanimously on some decisions and can make other decisions on their own.

If you have been asked to be a **Replacement Attorney** you will substitute or succeed an original Attorney where they are not able to act due to the occurrence of a terminating event namely death, disclaiming their appointment or loss of mental capacity.

When do I need to act?

An Attorney can only act if:-

- The LPA has been registered with the Office of Public Guardian (OPG)
- The Donor has been assessed to lack the mental capacity to make the decision in question
- In relation to life sustaining treatment where care, surgery, medicine or other help from doctors that is needed to keep someone alive and where there is no valid advance medical decision (Living Will) in place

What decisions can I make as an Attorney?

Unless the document restricts you, you will be able to make decisions about the Donor's personal welfare and health care, which could include:

- Where the Donor should live and who they should live with
- The Donor's day-to-day care, including diet and dress
- Consenting to or refusing medical examinations and treatment on the Donor's behalf
- Arrangements needed for the Donor to be given medical, dental or optical treatment
- Assessments for and provision of community care services
- Whether the Donor should take part in social activities, leisure activities, education or training
- The Donor's personal correspondence and papers

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- Rights of access to personal information about the Donor, or
- Complaints about the Donor's care or treatment

In your role as an Attorney, you must follow the principles of the Mental Capacity Act 2005.

This includes:

- Assuming that everyone has capacity to make his or her own decisions, unless it is proved otherwise
- Ensuring a person has all the help and support possible to enable them to make their own decision, before concluding that they lack capacity to make their own decision
- Not treating a person as lacking capacity just because they make an unwise decision
- Only acting in the best interests of someone who lacks capacity
- Where possible preserve the rights and freedom to act of the person lacking capacity by using the least restrictive option.

By signing the LPA, you are confirming:

- That you are over 18
- You have read and understood the LPA
- You understand the duty to act based in the principles of the Mental Capacity Act 2005
- That you will make decisions based on what is in the best interest of the Donor
- That you will take into account any instructions and preferences of the Donor
- That you will only act when the LPA has been registered