



How to be an attorney

Health and welfare decisions

Getting started

This guide is for people who've been appointed attorneys for health and welfare decisions or are considering taking on that role.

Being an attorney is an important responsibility. You need to understand fully what it involves before agreeing to accept the position – and you can refuse to do it if you feel uncomfortable about it.

Throughout the guide we use others' stories to show things attorneys consider when making decisions. These aren't final answers but may give you ideas about how to act.

An A-Z jargon buster at the end of this booklet explains terms you might not understand.

What is an attorney?

In law, an attorney is someone who's chosen to act on behalf of someone else.

When someone (called the 'donor') makes a lasting power of attorney (LPA), they pick people to make decisions for them in case they lose mental capacity.

Mental capacity means the ability to make your own decisions.

The people chosen to help donors are attorneys. Attorneys don't need any special training but they do need to be trustworthy and reliable.

Throughout this guide, we call the person who you are making health and welfare decisions for the 'donor'

What is an LPA?

An LPA is a legal document that names the attorneys who'll make decisions if the donor can't. You can make LPAs for health and welfare decisions, or financial decisions, or both.

This guide is for attorneys making health and welfare decisions for someone else. There's a separate guide for property and financial affairs attorneys. Some donors appoint an attorney to take on both roles.

Who can be an attorney?

Anyone aged over 18 who has mental capacity can be a health and welfare attorney.

Should you be an attorney?

The person asking you believes you're the right person to make very important decisions for them about their health and care – sometimes including whether to consent to life-sustaining treatment.

If you haven't already accepted the role of attorney, you need to think carefully about whether you're prepared to carry it out.

Things to think about:

- Would you have the time to help the donor, if ever they can't make decisions for themselves?
- Do you know them well enough to help them? If not, can you spend time now finding out what they like?
- Making decisions for someone without mental capacity can be stressful – could you cope with the demands of the role?
- Would you be confident making decisions in the best interests of the donor, even if other people wanted something else?
- If the donor is appointing other attorneys and you'd have to work together – would you find that easy or would there be conflict?

The main rule for attorneys is that they must always make decisions in the donor's best interests – not their own or anybody else's

What sorts of tasks will I do for the donor?

Donors can leave specific instructions when they create an LPA but looking after someone's health and welfare often covers:

- where they live and who they live with
- their day-to-day routine, including diet and dress
- organising community care assessments and services
- personal care, such as washing and dressing
- arranging appointments with doctors, dentists and opticians
- agreeing to or refusing health care

If the donor is unable to understand and make choices, check in the LPA if they've chosen you or doctors to accept or reject treatment that could keep them alive – known as 'life-sustaining treatment'.

When do I start acting as an attorney?

You can act under an LPA only if it's been registered with the Office of the Public Guardian (OPG).

If you're not sure if the LPA is registered, check with the donor.

If the donor lacks capacity, check the LPA document – if it's registered, every page will have a mark saying 'Registered'.

If the LPA is registered, you begin acting for the donor once they have lost mental capacity to make decisions about their own health and welfare. (Property and financial affairs LPAs are different – they can be used while the donor still has capacity.)

If you're unsure about the donor's mental capacity, you, the donor or someone else can arrange for an assessment by a GP or other medical professional.

Register now

It's better to register the LPA as soon as possible. If the LPA has any mistakes or there are other problems, it might only be possible to correct them if the donor has mental capacity.

Either the donor or their attorney(s) can register the LPA. If the donor has mental capacity, you could suggest they apply to OPG now to register their LPA.

If the donor can no longer make and understand decisions and their LPA is signed and dated, attorneys can apply to register it. (If the attorneys have been appointed jointly, you'll all need to register the LPA together.) If there are errors, however, OPG might not be able to register the LPA.

If OPG can't register the LPA and the donor lacks mental capacity, the LPA can't be used.

In that case, you'll need to apply to the Court of Protection if you want to make decisions for the person. That will cost at least £400 – paid from the donor's estate – and can take longer than registering an LPA.

LPAs made online

If the LPA was made using the GOV.UK digital service:

- 1) Go back to the online account at www.lastingpowerofattorney.service.gov.uk and complete the registration part of the electronic form, including paying the LPA application fee.
- 2) Then print the form out, sign it in the right order and send it to OPG for registration.

LPAs made on paper forms:

- if the LPA was made after 1 July 2015, use the registration form at the back of the LPA form itself
- if the LPA was made before 1 July 2015, apply to register it using an LP2 form available from OPG or at www.gov.uk/government/publications/register-a-lasting-power-of-attorney

What does the Office of the Public Guardian do?

The Office of the Public Guardian (OPG) registers LPAs (makes them legally valid) and investigates concerns about how attorneys are carrying out their role

People who might raise concerns about the donor's physical or mental wellbeing include fellow attorneys, family members and others involved in the donor's care.

OPG has lots of information about being an attorney but it can't give legal advice – for that, you could speak to a solicitor.

Office of the Public Guardian

PO Box 16185

Birmingham B2 2WH

Phone: 0300 456 0300

Email: customerservices@publicguardian.gsi.gov.uk

Monday to Friday 9am to 5pm, except Wednesday 10am to 5pm

What to do now

1) Get to know the donor well

If you don't know the donor already, find out about their likes and dislikes, values and views – either now or those they held in the past.

If the donor is still able to, discuss with them:

- where they want to live
- if they follow any particular diet, such as vegetarian or vegan
- their views on health care – if you're chosen in the LPA to make decisions about 'life-sustaining treatment', this should include what they'd accept doctors doing to keep them alive
- any political or moral outlook that shapes the decisions they make
- what will happen if they can't care for their pets
- how they like to dress and wear their hair
- their hobbies and tastes in music, TV, radio or books
- if they prefer being indoors or outdoors
- small things that cheer them up, such as a favourite film, a crossword, a glass of wine or a walk

Write these things down – or ask the donor to write down what's important to them.

If you do know the person who has made the LPA well, treat this as a chance to understand them even better.

The more you know about them, the better you'll be able to make decisions if ever they can't.

If they're no longer able to talk to you about their wishes and beliefs, then ask others who knew them well when you are making decisions.

Planning ahead

Ask the donor if they've made care plans. These may include:

- a statement of wishes and preferences about their care and treatment (this might be written or told to people)
- an 'advance decision to refuse treatment' (ADRT) – sometimes also called a 'living will' or 'advance directive' – that health and social care staff can follow

An ADRT is a legal document that must be signed and witnessed.

If the donor chose you in the LPA to decide about life-sustaining medical treatment and they lose capacity:

- you can talk to doctors as though you were the donor
- the LPA may replace an ADRT

See if the LPA contains any instructions or preferences about how you should make decisions for the donor.

2) Get contact details and certified copies of the LPA

Ask the donor:

- for contact details of professionals such as their GP, dentist and optician
- where they keep the LPA document

If the LPA is lost or destroyed, OPG can make copies for £35 each.

If the donor has mental capacity, ask them to make official copies of their registered LPA document – known as ‘certified’ copies. You can use a certified copy in the same way as the original – to prove you have permission to make decisions on the donor’s behalf.

If the donor lacks mental capacity, a solicitor or notary can also make official copies – however, they will charge a fee.

For details about certifying an LPA, call OPG or visit www.gov.uk/power-of-attorney/certify

3) Start recording your decisions as an attorney

Once you start acting as an attorney, you should keep a record of all the important decisions you make about the donor’s health and welfare.

Significant decisions might include choosing a care home, agreeing to medical treatment or making a change to the donor’s diet for health reasons. You don’t have to include small, everyday matters.

You could keep a written journal or create a file on your computer (saving a copy as a backup) recording the decisions you made and when. You should include details of who you consulted about any decisions and any disputes about a decision.

Your role as an attorney

What does mental capacity mean?

As a donor, you’ll start making health and welfare decisions for the donor once they have lost mental capacity.

If someone doesn't have mental capacity, they lack the ability to make specific decisions – in this case, decisions about their own health and welfare – at the time they need to be made.

Someone may lack mental capacity because of a mind or brain problem such as:

- dementia
- a serious brain injury
- a severe mental illness

The donor might be able to make some decisions, such as what they'd like for dinner, but be unable to make more complex ones, such as whether to move into a care home.

Their mental capacity may come and go, so they may be able to make decisions at some times but not others.

Mental capacity: five principles

The Mental Capacity Act 2005 – which governs how attorneys can act – sets out five rules about people without mental capacity.

The principles affect you as an attorney in these ways:

1. You must let the donor make decisions for themselves unless it can be shown that they're unable to make them.
2. You should give the donor all the help they need to make a decision before deciding they can't make that decision.
3. Just because the donor makes what seems to be an unwise or strange decision, that doesn't mean they lack capacity to make it. (Many of us make unwise decisions from time to time.)
4. Any decision you make for the donor must be in their best interests – a very important point explained more below.
5. Anything you do on behalf of someone lacking capacity should restrict their basic rights as little as possible.

These rules should guide all your decision-making on behalf of the donor.

The Mental Capacity Act Code of Practice explains the legal background to being an attorney and has many useful examples of how attorneys can act. You can order or download it at www.gov.uk/opg/mca-code

How can I tell when someone has mental capacity?

The law says you need a 'reasonable belief' about the donor's mental capacity to make decisions.

Sometimes that just means considering the kinds of decisions they've made in the past and asking: Is it reasonable to think they probably still will – or won't – be able to make this decision today?

For example, if they have become confused in the past about decisions such as medical treatment or their living arrangements, it's reasonable to conclude they will still need help making such decisions – or be unable to make them.

But if they are usually able to help with deciding about their diet, it would be unreasonable not to involve them in such decisions.

If the donor's mental capacity fluctuates – changes a lot – you might need to check more often which decisions they can make. But if the donor's condition stays the same or is deteriorating, you might not reasonably need to check their capacity every day for decisions such as about what clothes to wear.

You can also ask yourself a series of questions to check the donor's mental capacity:

- do they have a general understanding of the decision that needs to be made?
- do they have a general understanding of the consequences of the decision?
- can they retain and weigh up this information to make a decision?

How to help the donor make decisions

Sometimes you'll need to choose the right time and place to help the donor make decisions or you'll need to try different ways of communicating.

For example, the donor may be more responsive if you choose the right setting – they may be less confused in their home, rather than in an unfamiliar environment.

Or is the donor usually livelier in the morning? That may be the best time to involve them in decision-making, rather than later in the day.

Sometimes the donor may just need more time for you to explain a decision.

Different ways of communicating might also help:

- try using pictures or sign language to explain a decision to the donor
- perhaps the donor can point, squeeze your hand, blink or nod to show you what they want, even if they can't say anything

Try to stay calm. It can sometimes take a while to make a decision, if someone is ill or unable to speak.

If you're still unsure whether the donor can understand and make decisions, you could ask their doctor to assess them. You could also ask friends, family and care staff who see a lot of the donor.

Example: Telling when someone has mental capacity*

When planning for her retirement, Joyce made a lasting power of attorney for health and welfare naming her son, Ralph, as her attorney. She has now been diagnosed with dementia, and Ralph is worried that she's becoming confused about decisions.

Ralph starts by assuming that Joyce has mental capacity to manage her choices by herself. Then he considers each of Joyce's health and welfare decisions as she makes them, helping her if she needs it.

Ralph helps Joyce throughout a normal day and finds she can make decisions about what meals she'd like and what she wants to wear. But when Ralph asks her about visiting the doctor for an arthritis checkup, Joyce keeps forgetting when she'll be available.

Ralph concludes that Joyce has mental capacity to deal with some everyday personal care matters but not other decisions involving timekeeping. He uses Joyce's LPA to arrange medical and dental treatments for her.

*The examples in this guide use imaginary characters and situations to help you with your attorney decision-making

How do I make decisions in the donor's best interests?

When you do make decisions for the donor, the law says every decision must be in their best interests.

You mustn't make a decision to suit yourself or other people – it has to be right for the donor.

Before making decisions for the donor:

- check the LPA for any instructions they've included – the law says you have to follow them
- try to follow any preferences the donor has included in the LPA – you don't have to follow them but you should consider them when making decisions
- consider the values and wishes of the donor – including any moral, political or religious views they have held
- think about what the donor would have decided if they could
- don't make assumptions based on the donor's age, gender, ethnic background, sexuality, behaviour or health – think about what they as an individual would want

You should also ask whether the donor might regain mental capacity – for example, if their condition improves or they learn new skills. If so, can the decision wait until then?

Asking other people

The law says you must consult anyone the LPA says to consult about a particular topic, say healthcare or the donor's living arrangements.

If you're making a decision about day-to-day matters such as leisure activities and diet, then care home staff may also be able to advise you.

If you're making a big decision, such as about medical treatment, then you will often need to consult a professional such as a doctor to show that you are acting in the donor's best interests.

Best interests meetings

If a decision is complicated or on a topic you don't know much about, you could consider calling a 'best interests meeting'.

As part of these meetings, a group of people involved in the care of the donor gather to share views on the best course of action. This process may help you to make a decision in the donor's best interests. Professionals involved in the donor's treatment or care can arrange a best interests meeting.

Remember: keep a record of important decisions, who you consulted, any disputes and why the decision was in the donor's best interests.

What can't I decide?

You can't:

- do anything that's not allowed by the LPA
- make decisions about the donor's finances – unless the donor also named you as an attorney in an LPA for financial decisions
- agree to the donor getting married, divorced, dissolving their civil partnership or having sex
- make decisions that discriminate against the donor on the basis of their age, gender, sexuality or ethnic background
- make decisions about treatment for a mental disorder if the donor has been sectioned (taken into hospital as an emergency under section 4 of the Mental Health Act 1983)

When someone else decides

You don't decide everything for the donor – you can only make decisions in areas the LPA says you can.

The law gives other people decision-making power for the donor, too. For example, a doctor may need to decide whether a treatment is in the donor's best interests or a relative may make day-to-day care decisions.

For decisions that don't fall to you, the decision-maker may consult you.

For more about best interests, see chapter 5 of the Mental Capacity Act Code of Practice, available at www.gov.uk/opg/mca-code

Example: Respecting a donor's beliefs and values

Derek has been a strict vegetarian for most of his adult life. Some years ago, he appointed his daughter, Lucy, as his health and welfare attorney.

With the onset of Alzheimer's disease, Derek is having trouble making many day-to-day decisions, including about his diet. However, Derek left instructions in his LPA that he should continue to eat only vegetarian food if he lost mental capacity. He also said that whoever prepared the food shouldn't use utensils that have been used to make meals containing meat.

Lucy has met with kitchen staff in Derek's care home to discuss how they can stick to Derek's food preferences. She also researches vegetarian meals on the internet and passes on suggestions to care home staff to keep Derek's diet varied and appetising.

What should I do if... ? Some common decisions a health and welfare attorney might need to make

There's more than one attorney

The donor may have appointed two or more attorneys to make their health and welfare decisions.

When there's more than one attorney, the donor specifies that they must make decisions in one of these ways:

- together (also called 'jointly'), which means all the attorneys have to agree on the decisions
- separately or together (also called 'jointly and severally'), which means attorneys can make decisions on their own or with the other attorneys
- together for some decisions and separately or together for other decisions, which means all attorneys must agree on decisions the donor specifies, but can make others on their own

Joint attorneys have to agree on decisions but don't necessarily have to carry them out together. For example, as long as you have evidence of a joint agreement, only one attorney might need to agree to a medical treatment.

I need to decide where the donor lives

You'll often need to work with family and friends of the donor, as well as other care providers, to make decisions about the donor's living arrangements.

You should research accommodation that's right for the donor, if they pay for their own care. If they don't pay for their own care, work closely with local authorities to make sure their accommodation best suits their needs. If there's a problem, discuss it with social services and care staff.

You shouldn't move the donor to a different place without consulting others such as family members, health professionals, care staff and social services.

If there's a disagreement, a best interests meeting may help resolve it. If you can't arrange a meeting, you'll need to show you've formally consulted people involved in the donor's care.

If those approaches don't work, you may need to ask the Court of Protection to decide.

Example: Making decisions together

Aisha and Tariq are joint health and welfare attorneys for their brother, Noor, who suffered severe brain damage after a car accident.

Tariq thinks Noor's problems are demanding enough that he should move into a nursing home. But Aisha points out that Noor appears distressed when away from familiar surroundings for long. She suggests Noor should move in with her or Tariq, if possible.

Aisha and Tariq try to get Noor's views but he seems to show little understanding of the decision that needs to be made. So they meet with the rest of the family to help decide where Noor should live.

The attorneys listen to the family members before deciding it would be in Noor's best interests to get used to living in a nursing home early on. They will decorate his room in the home with familiar items and visit him often, along with other members of the family.

I'm asked to consent to medical treatment for the donor

Your decisions about the donor's medical treatment should always be guided by their best interests.

You should:

- sign 'consent to treatment' forms on behalf of the donor – taking into account their past wishes
- share any instructions or preferences in the donor's LPA with care staff
- make sure the staff have copies of any Advance Decision to Refuse Treatment ('advance directive' or 'living will') or any written statement of wishes and preferences, such as an advance statement
- follow the donor's wishes about medical treatment, even if you disagree with them

But you shouldn't:

- impose your own medical choices – your decisions must be based on the donor's past preferences and best interests
- treat the donor yourself or change prescribed medication or treatment – you must agree upon changes with health care staff
- if the donor is in a care home, don't change incontinence pads, give medication or change dressings without asking the manager

Example: Deciding about medical treatment

Jakub suffers from dementia and can no longer communicate well. He lives at home with his wife, Lena, who is his health and welfare attorney.

While on an outing with Lena, Jakub cuts his leg and gets dirt in the wound. A doctor wants to give him a tetanus jab but Jakub struggles and gets upset when the doctor tries to give him an injection.

The doctor discusses Jakub's ability to make and understand decisions with Lena. Lena believes he doesn't understand the risk to his health, though she has tried to explain. Jakub is unable to make the decision.

After speaking to the doctor, Lena decides it is in Jakub's best interests to have the vaccination. The doctor asks a nurse to comfort Jakub and, if necessary, restrain him by holding his hands while she gives the injection.

I need to make decisions about the donor's leisure and social activities

Think about the donor's past preferences and how they respond now during leisure activities.

Arrange activities that the donor used to do, such as a trip to the theatre, cinema, zoo, bingo, park or concert. If possible, talk to the donor about leisure activities and outings they'd like.

Even if the donor doesn't show the same enthusiasm as they used to, you shouldn't stop them from taking part in leisure or social activities they might enjoy.

Let care home staff know if there are things the donor disliked doing. On the other hand, the donor might enjoy different things to what they liked when they had mental capacity – their preferences might have changed.

I want to claim expenses as an attorney

You can claim reasonable expenses for things directly associated with fulfilling your role as attorney, such as phone calls, postage and any necessary travel costs. You can't claim travel costs for purely social visits, as these fall under your role as a friend or family member rather than attorney.

You claim expenses from the donor's funds, through whoever is looking after them. That may be another person acting as the donor's attorney for property and financial affairs. If you are the donor's attorney for both financial and health and welfare decisions, you can compensate yourself for valid expenses.

The law says you can't use your position as an attorney to benefit yourself. If the Office of the Public Guardian (OPG) believes your expenses are unreasonable, it might investigate and you may have to pay the money back.

In extreme cases, you may be discharged as an attorney (have your role as attorney ended by the Court of Protection).

I want to be paid as an attorney

You can't claim fees for time spent acting as an attorney unless it's stated in the LPA. Most attorneys who are friends or family aren't paid. Professional attorneys (such as solicitors) usually are paid.

Example: Claiming expenses as an attorney

Cathy is a health and welfare attorney for her longtime friend Abigail, who has dementia and lives in a care home.

Cathy makes regular trips to the home, around half an hour from where she lives, to visit Abigail and discuss her care with staff. Cathy can claim expenses for these visits, including petrol for the trip and parking costs – otherwise she would be left out of pocket for performing her duties as an attorney.

However, Cathy can't claim expenses for the trip she made to the care home at Christmas with some of Abigail's other friends. This counts as a purely social visit, which Cathy can't claim for.

I'm asked to make decisions about the donor's financial affairs

As a health and welfare attorney, you can only make decisions about the donor's finances if they've also appointed you as a property and financial affairs attorney.

If the donor has appointed someone else as their property and financial affairs attorney, it can be a good idea for them to consult you when they're making decisions that affect the donor's health and welfare. For example, they may be selling a house the donor used to live in but still sometimes visits.

I want to hand over my attorney duties to someone else

You can't do this. You can seek expert advice about the donor's health and welfare but the law says you can't delegate your decision-making while you are still attorney. Ultimately, you have to make the decisions.

You can 'disclaim' your attorneyship if you no longer want to carry out the role. See 'When do I stop being an attorney?' later in this guide.

There's a dispute about my role as an attorney

Sometimes disputes and disagreements occur over the decisions an attorney is making for the donor.

Disputes can occur:

- between the attorney(s) and donor
- between attorneys themselves
- with others who have an interest in the donor, such as family members

Disputes with the donor

If the donor disagrees with a decision you are making and they still have capacity, you must not make that decision. But if you reasonably believe they lack capacity to make the decision, you can make it as long as:

- it is in the donor's best interests
- no instructions in the LPA prevent you from making the decision

If you are uncertain about making a decision as an attorney, contact OPG.

Disputes with others

If attorneys acting jointly can't agree on a decision for the donor, contact OPG for advice. OPG can also advise on resolving disputes between attorneys and friends and family members of the donor.

If you are challenging someone else's decision, you need evidence that the decision-maker isn't acting in the donor's best interests. You can't simply disagree with the decision.

You should keep a record of any disputes about your attorneyship and how they were resolved.

Protecting the donor

As well as offering attorneys advice and support, one of the roles of the Office of the Public Guardian (OPG) is to protect people without mental capacity from abuse or exploitation.

Abuse is anything that goes against a person's human and civil rights. It can be deliberate or can happen because an attorney doesn't know how to act correctly or lacks the right help and support.

Abuse by a health and welfare attorney could include:

- violence, such as pushing or slapping the donor
- threatening the donor
- imposing your own beliefs on the donor
- punishing the donor because they've been 'bad'
- stopping the donor contacting other people
- neglecting the donor, such as not providing medicine or food
- involving the donor in sexual acts without their consent

Court of Protection visitors

OPG may arrange for a Court of Protection visitor to meet you if we are investigating concerns about how you are acting as an attorney.

Visitors will usually meet you and the donor, or the donor alone, and discuss how you are managing your role. Visitors will sometimes also contact others involved, such as family members or doctors.

As an attorney, you must comply with a court visitor and give them any information they ask for. OPG will refer serious cases of possible abuse to the court, which may revoke (cancel) the LPA if it decides that:

- somebody has pressured the donor into making an LPA
- the attorney has done something the LPA doesn't allow them to
- the attorney isn't acting in the donor's best interests

Example: Court of Protection visitors

Jack made an LPA appointing his son, Oliver, as his health and welfare attorney. When Jack lost capacity to make health and welfare decisions, Oliver registered the LPA and now makes many medical and care decisions for Jack.

However, other family members think Oliver might be abusing his position as an attorney. They say he has prevented other family members he doesn't get on with from seeing Jack. Care home staff also report that Oliver never takes Jack on outings, although Jack often seems happier when he has been on an excursion.

The family call OPG, which sends a Court of Protection visitor to meet Jack and Oliver and assess the facts of the case. If the visitor's report suggests Oliver might not be acting in Jack's best interests, OPG may launch an investigation.

As a result of that investigation, the public guardian will decide whether the court should be involved. If the court thinks Oliver is abusing his position, it may cancel Jack's LPA.

When do I stop being an attorney?

You'll stop being an attorney if:

- the donor dies (the LPA will automatically end)
- you choose to stop being an attorney – sometimes called 'disclaiming' an attorneyship
- you are the donor's husband, wife or civil partner and get divorced or separated (unless the LPA says otherwise)
- you lose mental capacity and can't make decisions any more

If the donor dies

If the LPA is registered, send OPG:

- a copy of the death certificate
- the original LPA
- all certified copies of the LPA

If you want to stop

If you decide to give up the role of attorney, you'll need to fill in and send form LPA0005, called 'Disclaimer by a proposed or acting attorney under a lasting power of attorney', to:

- the donor, if the LPA hasn't been registered
- the donor and OPG if the LPA has been registered

You should also tell any other attorneys named in the LPA.

You can find the form at www.gov.uk/government/publications/disclaim-a-lasting-power-of-attorney or contact OPG for a copy.

If you're the only attorney or have to make joint decisions with other attorneys and there are no replacements, the LPA usually ends if one of you stops.

If the LPA ends, someone will need to apply to the Court of Protection if they want to make decisions for the donor. See www.gov.uk/make-decisions-for-someone

Jargon buster

Abuse

Abuse is a violation of an individual's human and civil rights by another person or people. Abuse may be a single act or repeated acts. Or it may be an act of neglect or a failure to act.

For a health and welfare attorneyship, abuse can include violence towards the donor, neglecting their care and stopping them from seeing people.

Attorney

Someone appointed under a lasting power of attorney (LPA) to make health and welfare or financial decisions for someone else (the 'donor').

Best interests

Attorneys should always think about what action is in the donor's best interests when making a decision. You should also consider the donor's past and present wishes and think about consulting others. For more on best interests, see p9 of this guide.

Code of Practice

A guide to the Mental Capacity Act that you can order or download at www.gov.uk/opg/mca-code

The code contains much valuable information for attorneys.

Court of Protection visitor

Someone who is appointed to report to the Court of Protection or public guardian on how attorneys are carrying out their duties.

Dementia

A group of symptoms that can include problems with memory, language or understanding. Strokes or diseases such as Alzheimer's can cause brain damage leading to dementia.

Dementia symptoms can include:

- loss of memory
- difficulty in understanding people and finding the right words
- difficulty in completing simple tasks and solving minor problems
- mood changes and emotional upset

Donor

Someone who creates a lasting power of attorney allowing other people ('attorneys') to make health and welfare or financial decisions for them.

Lasting power of attorney (LPA)

A legal instrument that allows other people ('attorneys') to make financial or health and welfare decisions on behalf of someone else (the 'donor').

Least restrictive care

If a person doesn't have mental capacity, decisions taken on their behalf must restrict their rights and freedoms as little as possible, while keeping them safe.

Mental capacity

The ability to make a decision about something at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in section 2 of the Mental Capacity Act 2005. For more on mental capacity, see p6 of this guide.

The Mental Capacity Act (MCA) 2005

The act is designed to protect people who can't make decisions for themselves. This could be due to a mental health condition, a severe learning disability, a brain injury or a stroke. The act allows adults to make as many decisions as they can for themselves and for an attorney or others to make decisions on their behalf.

Wilful neglect

A failure to carry out an act of care by someone who has responsibility for a person who lacks mental capacity to care for themselves. Wilful neglect is an offence under the MCA.