



# How to be an attorney

Property and financial decisions

**You don't have to read this guide all at once. It's meant for reference and is divided into sections to help with different aspects of being an attorney**

## Getting started

This guide is for people who've been appointed attorneys for property and financial 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 guide 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 legal training but they do need to be trustworthy and reliable.

An attorney for property and financial affairs – to use the full legal term – also needs to know enough about money matters to carry out the role well.

**Throughout this guide, we call the person who you are making property and financial 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 financial decisions, or decisions about health and welfare, or both.

This guide is for attorneys making financial decisions for someone else. There’s a separate guide for health and welfare attorneys.

Some donors appoint an attorney to take on both roles.

## Who can be an attorney?

Anyone aged over 18 who has mental capacity and isn’t bankrupt can be a property and financial affairs attorney. If you become bankrupt in the future, you must tell the Office of the Public Guardian (OPG) because you will no longer be able to act as attorney.

## Should you be an attorney?

The person asking you believes that you’re the right person to look after their property and finances. If you haven’t already accepted, you need to think carefully about whether you’re prepared to carry out the role.

## Things to think about

- Do you have the financial skills to act for the donor? Would you be able to manage their bank accounts, pay their bills, look after any investments and make a decision about whether to sell their house?
- Do you have the time to help them, 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?
- 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 financial tasks will I do for the donor?

Donors can leave specific instructions for their attorneys when they create an LPA but looking after someone's property and finances usually covers:

- using their bank and building society current and savings accounts
- claiming and using their benefits, pensions and allowances
- dealing with their tax
- paying their household, care and other bills
- making gifts on their behalf
- making and selling investments for them
- buying or selling their home
- maintaining or repairing their home
- using their money to buy things the donor needs, such as specific health equipment

## 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).

Once it's registered, you can start using a property and financial affairs LPA straight away – including when the donor still has mental capacity, if they want you to. (Health and welfare LPAs are different – they can be used only when someone no longer has mental capacity.)

Donors may appoint attorneys to act for them while they still have mental capacity for different reasons. They may find it difficult to use a computer or to talk on the phone and so need someone to pay their bills or collect benefits or income for them. Or the donor may be out of the country a lot of the time and need someone to act for them at home.

Alternatively, the donor may have stated that their attorneys can only use the LPA when they no longer have mental capacity – for example, due to the onset of dementia or if they suffer a brain injury.

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 'OPG validated'.

## Register now

If the LPA isn't registered and the person has mental capacity, suggest they apply now to OPG to register the LPA. Either the donor or their attorney(s) can register the LPA. If the attorneys have been appointed jointly, you'll all need to register the LPA together.

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 person has mental capacity.

If the person can no longer make and understand decisions and their LPA is signed and dated, attorneys can apply to register it. If there are errors, however, OPG might not be able to register the LPA.

**If OPG can't register the LPA and the person 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](http://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](http://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 possible misuse of the donor's money or property include fellow attorneys and family members.

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

**Office of the Public Guardian**

**PO Box 16185**

**Birmingham B2 2WH**

**Phone: 0300 456 0300**

**Email: [customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)**

**Monday to Friday 9am to 5pm; Wednesday 10am to 5pm**

## **What to do now**

### **1) If the donor still has mental capacity, talk to them about how they look after their finances**

For example, do they:

- give birthday gifts to children or other friends and family (and to what value)
- like spending on clothes, music or trips (and how much)
- donate to particular charities (and how much)
- want to sell or rent out their home if they move into a care home
- prefer to keep a minimum bank balance

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

You may know the person who has made the LPA well. So, 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 know them well – friends, family, colleagues – when making decisions.

You can also ask professional advisers for their views, such as a solicitor or an accountant, if it's in the donor's best interests to do so.

### **2) Ask the donor where they keep financial information**

For example:

- benefits, pensions and tax letters

- bills and bank or credit card statements
- the deeds of any property they own

### 3) Get contact details and certified copies of the LPA

Ask the donor:

- for contact details (for example, of their accountant, solicitor and estate agent)
- where they keep the LPA document

If they have mental capacity, you can ask the donor 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’ve got permission to make decisions on the donor’s behalf.

Banks and other financial bodies need to see the original or a certified copy of the LPA before they’ll give you access to the donor’s accounts. They may also need to see proof of your address and the donor’s.

For details about certifying an LPA, visit [www.gov.uk/power-of-attorney/certify](http://www.gov.uk/power-of-attorney/certify)

For details about dealing with banks, visit [www.gov.uk/government/publications/deputy-and-attorney-guidance-dealing-with-banks](http://www.gov.uk/government/publications/deputy-and-attorney-guidance-dealing-with-banks)

### 4) Set up a separate account for the donor

The law says property and finance attorneys should usually keep the donor’s finances separate from their own or anyone else’s. This is to avoid confusing the donor’s financial affairs with your own.

Sometimes there’s a good reason not to keep the donor’s finances separate. For example, you may be your wife or husband’s attorney and have held a joint account for many years.

Contact OPG if you’re unsure about setting up a separate attorney account.

### 5) Start recording your decisions as an attorney

It’s one of your legal duties as a property and financial affairs attorney to keep an accurate record of all the financial decisions you make on the donor’s behalf.

Record all significant transactions and keep receipts for all major purchases you make for the donor.

As an attorney, you must look after the donor’s finances with even more care than your own.

# Your role as an attorney

## What does mental capacity mean?

As a property and financial affairs attorney, you may be able to make decisions for the donor while they still have mental capacity. However, you may also have to make decisions when they no longer have mental capacity.

If someone doesn't have mental capacity, they lack the ability to make specific decisions – in this case, financial decisions – 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 want to buy on a shopping trip, but be unable to understand and make more complex decisions, such as about selling their house.

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 (MCA) – 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. The donor should make decisions for themselves unless it can be shown that they're unable or don't want 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 eccentric decision, that doesn't mean they lack capacity to make it. (Many people 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 in more detail 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 for 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](http://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 been able to make 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 making investments or selling their house, 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 what gifts you buy relatives on their behalf, 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 like paying bills and grocery shopping.

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 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, nod or show you in some other way 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, Enid made a lasting power of attorney for property and financial affairs naming her son, Anthony, as her attorney. She has now been diagnosed with dementia, and Anthony is worried that she's becoming confused about money.

Anthony starts by assuming that Enid has mental capacity to manage her financial affairs. Then he considers each of Enid's financial decisions as she makes them, helping her if she needs it.

Anthony goes shopping with Enid and sees she's quite capable of checking her change to make sure it's correct. But when she needs to make a decision about some shares she owns in a company, Enid gets confused. She still doesn't understand after Anthony explains the options again.

Anthony concludes that Enid has mental capacity to deal with everyday financial matters but not more difficult decisions at this time. He is therefore able to use the LPA for the difficult financial choices his mother can't make.

\*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

If you're making a decision about day-to-day matters, such as household spending or buying small gifts, friends and family, carers or care home staff may be able to advise you.

If you're making a big financial decision, such as whether to sell the donor's house, then you may need to consult a professional such as an accountant or a solicitor – as well as the donor, if they still have capacity.

## 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 health and welfare – unless the donor also named you in an LPA for these decisions
- make decisions that discriminate against the donor on the basis of their age, gender, sexuality or ethnic background

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

# What should I do if... ? Some common decisions a property and financial affairs attorney might need to make

## There's more than one attorney

The donor may have appointed two or more attorneys to make their property and financial 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 specified by the donor, 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 sign a property deed for the donor.

However, some organisations such as banks might require all joint attorneys to be present to withdraw funds, for instance. Check with the organisation about its policies.

### Example: Making decisions together

Brett and Lucy are joint property and financial affairs attorneys for their father, Euan, who has developed Alzheimer's disease and is moving into a nursing home.

Brett and Lucy have to decide what to do with their father's house. As joint attorneys, they must agree on every financial decision they make for Euan.

Brett thinks it is in their father's best interests to sell the property and invest the money for Euan's future care. Lucy says it's in their father's best interests to keep the house, because he has always enjoyed spending time there.

Brett and Lucy first try to get their father'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 discuss what to do with the house.

The attorneys listen to other family members before agreeing that it would be in their father's best interests to keep the property for as long as he can enjoy visiting it.

## **I want to claim expenses as an attorney**

You can claim out-of-pocket expenses if they're in proportion to the size of the donor's estate – their property and finances – and the duties you undertake as an attorney. Examples are the cost of phone calls, travel and postage on behalf of the donor.

Note that you can't claim travel costs for purely social visits, as these fall outside your duties as an attorney and under your role as a friend or family member. You repay your expenses from the donor's funds.

### **Example: Claiming expenses as an attorney**

Sophia is a property and financial affairs attorney for her longtime friend Roberto, who has dementia and lives in a care home.

Roberto owns a flat, which Sophia rents out on his behalf to help pay his care home fees. She makes occasional visits to her accountant to discuss this and other aspects of her attorney role. Sophia 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 attorney duties.

Sophia asks the Office of the Public Guardian (OPG) whether she can also claim for the cost of the computer she uses to manage Roberto's accounts. However, because she uses the computer for many other purposes, she can't claim this as an attorney expense.

The law says you can't use your position as an attorney to benefit yourself. If 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.

The donor has to specify in their LPA that they want to pay their attorney.

## **I want to pay professionals to help manage the donor's estate**

As an attorney, you can employ professionals such as accountants, solicitors and regulated financial advisers to help manage the donor's affairs. For example, it would be reasonable to pay accountants to draft the donor's annual tax return if they had a large investment portfolio or complex investments.

However, it might not be appropriate to employ a solicitor to do something straightforward like paying the donor's nursing home fees. Professional services you pay for must be in keeping with the task they're needed for and the donor's funds.

## I want to sell the donor's home

As an attorney, you may have legal authority to sell the donor's property. However, a house or flat may be the donor's main asset, so you need to consider some crucial questions first:

1. Does the donor have the mental capacity to understand the decision to sell their property? If so, you must gain their consent before selling it.
2. If the donor lacks mental capacity, does the LPA contain instructions saying you can't sell their property?
3. If you have authority to sell the donor's property, is it in their best interests to do so? For example, do you need to sell the property to cover the donor's care home fees? Can they maintain their quality of life without their home being sold?

## Buying the donor's property or selling it more cheaply

You'll need to apply to the Court of Protection if:

- you're selling the donor's property – not only their home but also other valuable items such as cars or jewellery – below market value
- you want to buy a valuable item of the donor's property yourself

If you don't apply to the court, the LPA may be cancelled and action may be taken against you if you haven't acted in the donor's best interests.

Applications to the court cost at least £400 and are paid from the donor's funds.

### Example: Selling a house to a relative

Jenny is Neil's property and financial affairs attorney, as well as being his girlfriend. They never lived together and now Neil is in a care home because he has dementia.

Neil had stated in his lasting power of attorney that his home could be sold to cover fees if he needed to go into a home. Jenny has decided to sell Neil's house.

Jenny's cousin wants to buy the house and offers an amount below the asking price. She points out that, because it's a private sale, there will be no estate agent's fees.

However, if the property is to be sold to the attorney, a relative or someone the attorney knows, the Court of Protection and OPG expect attorneys to apply to the court for approval. They should do this even if the sale is at market value.

In Jenny's case, she decides to sell the property on the open market.

Court of Protection  
Phone: 0300 456 4600  
Email: [courtofprotectionenquiries@hmcts.gsi.gov.uk](mailto:courtofprotectionenquiries@hmcts.gsi.gov.uk)  
Monday to Friday 9am to 5pm

## I want to make a gift from the donor's funds

Giving gifts on the donor's behalf can be important in helping to preserve their relationships with close family and friends. However, there are strict limits on the gifts you can give as an attorney.

**The law says attorneys can normally give gifts only on customary occasions, such as birthdays or anniversaries.**

Before making a gift, also ask yourself:

- Does the donor's LPA contain specific instructions or preferences about gifts?
- If the donor no longer has mental capacity, would they have wanted to make a gift like this if they still had it?
- Is the value of the gift similar to gifts the donor previously gave to this person or people in a similar position?
- Is the gift of the right value for the donor's estate – or is it too valuable, for example?

If you make larger gifts of money or property – for instance, as part of planning for inheritance tax – you must apply to the Court of Protection for permission.

**You don't have to give any gifts as an attorney, unless your LPA instructs you to. Don't let families and friends pressure you into giving gifts using the donor's money.**

Keep a record of gifts you do give and be prepared to explain any that might seem too valuable.

For more advice on giving gifts, see the OPG guide 'Giving gifts for someone else', at: [www.gov.uk/government/publications/giving-gifts-a-guide-for-deputies-and-attorneys](http://www.gov.uk/government/publications/giving-gifts-a-guide-for-deputies-and-attorneys)

### Example: Giving gifts

Hannah is elderly and lives in a care home. Sometimes she can make decisions but often she can't. Her nephew David is her property and finances attorney. He wants to give Hannah's granddaughter Ruth a batmitzvah present from her.

Before she started to lose her ability to make decisions, Hannah was very generous. However, her care home fees are eating into her savings and David is worried about how to meet these costs in the future.

Although Hannah would have liked to have given a generous present, David decides that it is in her best interests to give something more modest. This way, Hannah has been helped to celebrate her granddaughter's coming of age ceremony, as she'd have wanted, but her money and her future are safeguarded.

### **I'm asked to make decisions about the donor's health and welfare**

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

If the donor has appointed someone else as their health and welfare attorney, it can be good practice for them to consult you when their decisions concern financial matters. For example, they may be helping to decide where the donor should live.

### **I want to buy things to make the donor feel better – not just manage their finances**

Managing the donor's finances in their best interests is about more than just paying regular bills. You should also consider spending on things that will maintain or improve their quality of life, for example:

- new clothes or hairdressing
- decorating their home or room in the care home
- paying for extra support so your donor can go out more, for example to visit friends or relatives or to go on holiday

As with gifts, your purchases must be in the best interests of the donor and in keeping with the size of their assets.

### **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 property and finances but the law says you can't delegate your decision-making. 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 way attorneys are handling a donor's property and finances. 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 unsure about making a decision, 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.

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

## **The donor already has an enduring power of attorney**

Enduring powers of attorney (EPAs) were used to allow people to make financial decisions for someone else before lasting powers of attorney began to be used, in 2007.

If the EPA is unregistered, it can be used only if the donor still has mental capacity. In that case, ask the donor what they want to do.

If the EPA is registered, you'll need to consult the attorney appointed to act.

## **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 of property and financial affairs attorneyships can include:

- theft or fraud
- undue pressure upon the donor to make a financial decision
- misuse of property, possessions or benefits

## **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 as attorney. Visitors will sometimes also contact others involved, such as family members, accountants or banks. On rare occasions, a visitor might also be asked to investigate suspected abuse of a donor.

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

- somebody has used fraud or too much pressure to get the donor to make the LPA
- the attorney has done something the LPA doesn't allow them to do
- the attorney is behaving in a way that isn't in the donor's best interests

## **Penalties**

If you don't carry out your duties properly as a property and finances attorney, you may be ordered to pay the donor back for any losses they've suffered as a result. OPG may refer cases of suspected fraud to the police.

### Example: Court of Protection visitors

Marta made an LPA appointing her niece, Karolina, as her property and financial affairs attorney. When Marta lost mental capacity to make financial decisions, Karolina registered the LPA and now looks after Marta's financial affairs.

But Marta's nephew suspects that Karolina is using their aunt's money to pay off her mortgage. He calls OPG, which sends a Court of Protection visitor to meet Marta and Karolina and to assess the facts in the case.

The visitor's report might suggest the case go to court to consider whether Karolina has behaved in a way that:

- goes against what the LPA says she can do
- is not in Marta's best interests

The Public Guardian will finally decide whether the court should be involved. If the court thinks that Karolina is abusing her position, it may cancel the 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 become subject to a Debt Relief Order
- you become bankrupt
- 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](http://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 and the donor lacks capacity, 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](http://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 property and financial affairs attorneyship, abuse may occur when a vulnerable person is persuaded to enter into a financial transaction they haven't consented to or cannot consent to.

### **Attorney**

Someone appointed under a lasting power of attorney (LPA) to make property and finance or personal welfare 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.

### **Code of Practice**

A guide to the Mental Capacity Act that you can order or download at [www.gov.uk/opg/mca-code](http://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 upsets

### **Donor**

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

## **Enduring power of attorney (EPA)**

The legal instrument used before lasting powers of attorney were introduced to allow someone to make financial decisions for someone else. EPAs can still be registered and used but new ones cannot be created.

## **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 a particular matter 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 p7 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.

## **Property and financial affairs**

Any possessions owned by a person (such as a house or flat, jewellery or other possessions), the money they have in income, savings or investments or any expenditure.

## **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.