

North Lincolnshire

Safeguarding Adults

Learning Briefing:

Lasting Power of

Attorney (LPA)

January 2021



What is Lasting Power of Attorney (LPA)

A Lasting Power of Attorney (LPA) is a legal document that lets a person appoint one or more people (known as 'attorneys') to help them make decisions or to make decisions on their behalf. The attorney must be over 18 years old and been given permission to act by a person who has the capacity to make that decision. The types of decision the attorney can make depend on the court awarded LPA:

Health and welfare attorney – can only be used when a person is unable to make their own decisions

- Daily routine, for example washing, dressing and eating
- Medical care
- Where the person lives
- Care and support arrangements
- End of life decisions

Property and financial affairs attorney – can be used as soon as it is registered, with the person's permission

- Money, tax and bills
- Bank and building society accounts
- Property and investments
- Pensions and benefits

Where a person has lost capacity to agree to an LPA an application to the Court of Protection can be made to become Court appointed Deputy. The types of decision are the same for a Deputy as an LPA.

How do we know an LPA is in place?

You should also ask the person (donor) and family if they are aware that an LPA is in place and if so what type.

You should also check case records and ask the named social worker if they are aware of one being in place.

To check or confirm an LPA you can submit a OPG100 Form via post or email to the Office of Public Guardian (OPG)

<https://www.gov.uk/government/publications/search-public-guardian-registers>

The OPG will need to understand what actions and checks you have already taken.

What are the responsibilities of the LPA?

A person can only make decisions once the LPA has been registered. These include:

- A duty to act based on the principles of the Mental Capacity act 2005 and its Code of Practice
- Follow any instructions the person included in the LPA
- Consider any preferences the person included in the LPA
- Help the person make their own decisions as much as they can
- Make any decisions in the person's best interests
- Respect the person's human and civil rights
- Keep records of decisions and actions
- An attorney must make decisions themselves or jointly (if the LPA states decisions have to be jointly made). They can't ask someone else to make them
- Be clear of their responsibilities as an attorney.

The need to regularly consult and involve those with LPA

- Be mindful that relatives and carers may state that they have appointeeship or be an advocate. In these cases we would need to request evidence to ensure validity
- As a professional working with a person **who lacks capacity** it is essential to have regular contact with a person's attorney to ensure that their wishes and needs are clearly heard
- It is essential that an attorney knows their responsibilities under the LPA and remind them of these if required
- It is essential to involve the attorney in any decision making information
- **How to report a concern about an attorney or deputy.** If you're concerned that decisions made by an attorney or deputy are not in the best interests of a donor or client, you should email opg.safeguardingunit@publicguardian.gov.uk or telephone 0115 934 2777.

Ensure that all staff who provide care are aware of the need to regularly consult with, and involve, those who act as attorney through an LPA for health and welfare. This should include the need to record such involvement.

The need to record LPA involvement

Keep records of decisions and actions

Recording

- Any contact with an attorney should be recorded in appropriate place; case recording if in social care and in care notes if in a care home or at home
- As a professional working with vulnerable people, you are responsible for making sure you keep good records. You should keep clear and accurate records which are relevant to your practice
- You need to make sure you keep accurate, complete and up-to-date records. You should have controls and processes in place to maintain these standards
- Failure to maintain complete and accurate records means you are at risk of not meeting your legal obligations. Poor record-keeping can have a huge impact on an individual.

Types of records to keep

You need to keep records relating to:

- Conversations
- Meetings and decisions
- Any contributions received from other professionals
- Conflict resolution.

Key Points

Always:

- Check if a person has an LPA
- Check the validity of that person's LPA
- Check what the LPA covers/includes (Health and Welfare and/or Finance and property)
- Consult with a person's attorney
- Record all outcomes of conversations and decisions made in the person's best interest
- Remind the attorney of their responsibility to the person
- Discuss any concerns over an attorney's actions and escalate where necessary

For further information please refer to:

<https://www.gov.uk/lasting-power-attorney-duties>