

Guidance notes for Attorneys

A. Acting on the donor's best interests

A core principle of the Mental Capacity Act 2005 is that any action or decision taken by someone acting for a person who lacks mental capacity must be in that person's best interests.

How well do you know the donor? Acting in the donor's best interests includes taking into account their past and present wishes and feelings, and any beliefs and values. It may be advisable to keep a written record of your discussions with the donor so that you can revisit this regularly and update as required. It is particularly important to keep a record if the donor has specific views or religious preferences that may be important e.g. about ethical investing or worship or charities they want to (continue to) support. If there is no information then you could look at how the donor has invested their funds during their lifetime.

For a Health and Welfare LPA the donor might wish to create a Letter of Wishes at the same time as making the LPA. Again this should be revisited so that any change of wishes can be recorded - this could avoid subsequent disputes over the donor's true intentions.

Keep up to date with the donor – many LPAs are created well in advance of their use because of a lack of capacity and the donor's views and preferences many change in the intervening period. If there is a long gap between the creation of the LPA and the active involvement of the attorney, try and stay in touch and refresh your understanding of the donor's preferences.

B. After the LPA is created

A Property and Financial Affairs LPA can be used immediately it is registered unless the donor has specified otherwise in the document. A Health and Personal Welfare LPA can only be used once the donor has lost mental capacity.

Judging a donor's mental capacity – consider how you will know of the donor's capacity is declining, so you can make a decision about when you need to start to act. For example, if the donor has become vulnerable to exploitation and scams you may need to step in.

Stay in touch with the donor – make sure you stay in touch and refresh any preferences or instructions, so you can record these. The donor should always know how to contact you. If the donor has declining capacity don't rely on their memory to remember where you live and how to contact you if you have moved address or changed your contact details. If you are a co-attorney make sure the other attorneys are also updated.

Access to important paperwork – How will you find the practical information you need to begin to act under the LPA? Will you have access to account and investment details or the donor's internet or web based accounts and passwords? Perhaps the donor could create or add to a file of useful information that will be accessible to you when you need to act.

Useful guides and further information

Mental Capacity Act Code of Practice ([GOV.UK/opg/mca-code](https://gov.uk/opg/mca-code))

How to act under a Lasting Power of Attorney ([GOV.UK/government/publications/how-to-be-an-attorney](https://gov.uk/government/publications/how-to-be-an-attorney))

How to act under an Enduring Power of Attorney ([GOV.UK/enduring-power-attorney-duties](https://gov.uk/enduring-power-attorney-duties))

Standards for Deputies appointed by the Court of Protection ([GOV.UK/deputy-standards](https://gov.uk/deputy-standards))