

## Acting as an Attorney Under a Lasting Power of Attorney (LPA): Common Questions

If you've been appointed as an attorney under a Lasting Power of Attorney (LPA), you have an important role in helping someone manage their affairs. This guide answers some common questions about what being an attorney involves.

If the person has mental capacity – you can only use the LPA with their consent. If they have asked for your help as they are struggling, but still have capacity, you should always include them in every decision made and ask them what they want you to do.

### 1. How Do I Know If Someone Has Lost Mental Capacity?

Capacity is decision-specific—a person may be able to make some decisions but not others.

Key Questions to Assess Capacity:

- ✓ Do they understand the decision?
- ✓ Can they retain the information?
- ✓ Can they weigh up the pros and cons?
- ✓ Can they communicate their choice?

Examples:

- Someone may choose what to eat but be unable to manage finances.
- A person with dementia may have good and bad days—capacity can fluctuate.

If You're Unsure:

- Seek medical advice for a formal assessment.
- Encourage decisions when they are most alert.
- Support them to decide where possible—lack of confidence doesn't mean lack of capacity.

### 2. What Are My Responsibilities as an Attorney?

As an attorney, you must:

- ✓ Act in the person's best interests at all times.
- ✓ Follow any instructions or preferences in the LPA document.
- ✓ Keep financial matters separate from your own (for Property & Financial LPAs).
- ✓ Make decisions carefully, considering what the person would have wanted.
- ✓ Keep records of major decisions and financial transactions.

### **3. When Can I Start Acting as an Attorney?**

- For a Property & Financial LPA: You may act as soon as the LPA is registered, unless the document states otherwise.
- For a Health & Welfare LPA: You can only act when the person has lost mental capacity to make their own decisions.

### **4. How Do I Prove I'm an Attorney?**

You will need to show a certified copy of the registered LPA to banks, healthcare providers, or other organisations before you can act on behalf of the person.

### **5. Can I Make Gifts or Give Money to Family?**

Only small gifts (e.g., birthday or Christmas presents) that are in line with the person's past giving habits are allowed. Large gifts, such as money or property, require court approval.

### **6. Can I Make or Change a Will on Their Behalf?**

No, an attorney cannot make or update a Will. If the person lacks capacity and a new Will is needed, you may need to apply to the Court of Protection.

### **7. Can I Claim Expenses or Be Paid for My Role?**

- You can claim reasonable expenses (e.g., travel costs) but must keep records.
- You cannot be paid unless the LPA specifically allows for this.

### **8. What Happens If I No Longer Want to Be an Attorney?**

If you can no longer act as an attorney, you must complete a deed of resignation and inform the Office of the Public Guardian (OPG). If there's no replacement attorney, the Court of Protection may appoint a deputy.

### **9. Where Can I Get Help If I'm Unsure?**

- Office of the Public Guardian (OPG) – Provides guidance on acting as an attorney.
- A lawyer – Can offer legal advice if you are unsure about a decision.
- Court of Protection – Deals with complex cases or disputes.

**Being an attorney is a big responsibility, but help is available. If in doubt, always seek advice to ensure you're acting in the person's best interests. A member of the Private Client team at Thomas Flavell & Sons will be happy to help – call 01455 610747.**

