

Lasting Powers of Attorney:
**What care providers
need to know**



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A Lasting Power of Attorney (LPA) is a legal document that allows an individual (the ‘donor’) to appoint one or more trusted people (‘attorneys’) to make decisions on their behalf if needed.

What is an LPA?



Property and Financial Affairs LPA:

covers decisions about an individual's property and financial affairs and can be used whilst the individual has capacity with their express permission.

Health and Welfare LPA:

covers decisions about care, treatment, and living arrangements, and can only be used once the person has lost capacity.

An **LPA must be registered** with the **Office of the Public Guardian (OPG)** before it can be used.

LPAs in a care setting: why they matter



In a care setting, LPAs provide clarity on who is authorised to make decisions, helping to avoid uncertainty at critical moments.

Where a valid LPA is in place, attorneys may be able to:

- Participate in care planning and reviews
- Provide consent for treatment (where appropriate)
- Liaise with health and social care professionals
- Make decisions in the donor's best interests if they lack capacity.

They also provide the legal basis for sharing relevant information with the authorised attorney when the individual lacks capacity. This supports lawful and proportionate information sharing, in line with the Mental Capacity Act and data protection principles.

Common risks and pitfalls for providers

Providers should be mindful of the risks and challenges around LPAs, including:

Inappropriate information sharing

Sharing information without confirming legal authority, or failing to share where an authorised attorney is in place.

Assuming next of kin has authority

Family members do not automatically have decision-making rights without an LPA.

Unclear or incomplete records

Not documenting LPA status or attorney details clearly.

Acting outside scope of authority

Not checking whether the relevant LPA is held to make the decision in question.

Delays in recognising absence of LPA

Not identifying early where deputyship may be required

Supporting good practice

LPAs should be viewed as a practical tool to support person-centred care, ensuring that decisions reflect the individuals preferences and values even if they lose capacity.

By embedding awareness of LPAs into routine practice, providers can:

- Reduce delays and disputes
- Strengthen communication with families
- Improve confidence in decision-making processes.



What do you do if there is no LPA in place?

If a person loses capacity before they have made an LPA, decisions cannot automatically be made by family members for the individual. Decisions should be made in the best interests of a person in accordance with section 4 of the Mental Capacity Act, and it may be necessary in some cases to apply to the Court of Protection for a Deputy to be appointed.

Deputyship:

- Is court-appointed rather than chosen by the individual
- Can take several months to arrange
- May create delays in managing care decisions and finances.

Deputies have similar decision making roles to attorneys, but they are bound by the terms of the Court Order which appoints them.

Ask to see the Order if a resident has a Deputy.

Requirements and considerations for providers

1

Verify and record LPAs

- Ensure any LPA is valid and registered before relying on it
- Clearly document attorneys and their scope of authority.

2

Understand the scope of authority

- Financial LPAs may be used while a person still has capacity (if specified)
- Health and welfare LPAs are only used if capacity is lost.

3

Maintain professional boundaries

- Staff must not provide wording, act as certificate providers, or witness LPAs for people they support (unless a close relative)
- Seek legal advice where appropriate.

4

Support early conversations

- Introduce the subject of LPAs early as part of admission or care planning discussions
- Use clear, non-technical language and remain neutral (raising awareness rather than giving legal advice).

5

Work in partnership with attorneys

- Engage Health and Welfare attorneys appropriately in care decisions if the resident lacks capacity to engage themselves
- Ensure decisions align with the Mental Capacity Act principles and what is in the individual's best interests.



For more information contact the Older and Vulnerable Person's team at HCR Law.

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