



# A Guide to a Property and Financial Affairs Attorney

**POWER OF ATTORNEY**

...ates attempt to be as accurate as possible. However  
...er content of this site is accurate, compl  
...at as described, your sole remedy i  
...able, or  
...return it in u  
**WARRANTY OF LIABILITY**  
...IS" AN

# A Guide

## Property and Financial Affairs Attorney

---

Being an attorney, requires you to take on certain responsibilities, and act in a particular way. This guidance provides important information to help you act as a financial attorney and will help you avoid problems.

The person who appointed you as their attorney is referred to in this guidance as 'the donor'.

### **What the lasting power allows you to do?**

The lasting power of attorney gives you power to make decisions about the donor's property and financial affairs. These decisions include:

- claiming welfare benefits
- opening, closing and operating a financial account
- arranging and managing investments
- buying or selling property
- paying bills
- dealing with tax affairs

You should read the power of attorney document itself, as it may contain useful guidance and/or set out limits on the decisions you can make.

It does not give you power to make health or welfare decisions, such as what medical treatment the donor should have, or where they should live.

The donor may have signed a separate health and welfare lasting power of attorney to give you such authority.

# A Guide

## Property and Financial Affairs Attorney

---

### **Can you make decisions immediately?**

If the power has not been registered with the Office of the Public Guardian, you cannot use it to make decisions. Either you or the donor can apply for the power to be registered.

Once the power has been registered, and provided there are no conditions or restrictions preventing you from acting at this point, you may use the power immediately, either because the donor has asked you to, or because they do not have capacity to make financial decisions. You will be able to act for the donor for the rest of their life (as long as the power is not cancelled).

If there is a condition in the power which prevents you from using the power until the donor is mentally incapable of managing their financial affairs, you will usually need to produce evidence of the donor's incapacity to third parties, such as banks and building societies, before they will accept your authority.

### **Making decisions with others**

If you have been appointed to act with another person, it may be that you have to:

- deal with all matters together (a joint appointment); or
- act together or independently (joint and several appointment); or
- make some decisions together and some independently (a hybrid appointment).

Even if one of you makes more decisions under the power than another, attorneys are expected to consult with each other about what they are doing and keep each other informed.

You cannot delegate your responsibilities to a person who is not an attorney: the appointment is personal to you.

# A Guide

## Property and Financial Affairs Attorney

---

### Following the Principles of the Mental Capacity Act 2005 and Code of Practice

When making decisions you must follow the Principles set out in Mental Capacity Act 2005 and have regard to its Code of Practice. This means:

- You must assume that the donor can make their own decisions, unless it is established that they cannot do so because they lack mental capacity.
- You must help the donor to make as many of their own decisions as possible.
- You must not treat the donor as unable to make the decision in question unless all practicable steps to help them to do so have been made without success.
- You must not treat the donor as unable to make the decision in question simply because the donor wishes to make a decision you consider is unwise.
- You must make decisions and act in the donor's best interests when they are unable to make the decision in question.
- Before you make the decision in question or act for the donor, you must consider whether you can make the decision or act in a way that is less restrictive of the donor's rights and freedom but still achieves the purpose.
- The Code of Practice, provides important guidance and information to help you follow the legislation, which you can obtain from: **Mental Capacity Act Code of Practice - GOV.UK**

### Guidance in the Code of Practice

The following chapters of the Code are particularly helpful:

- **Chapter 2:** What are the statutory principles and how should they be applied?
- **Chapter 3:** How should people be helped to make their own decisions?
- **Chapter 4:** How does the Act define a person's capacity and how should capacity be assessed?
- **Chapter 5:** What does the Act mean when it talks about 'best interests'?
- **Chapter 7:** What does the Act say about Lasting Powers of Attorney?

# A Guide

## Property and Financial Affairs Attorney

---

### **What is meant by ‘mental capacity?’**

A person lacks capacity, if they are unable to make a specific decision, at the time it needs to be made, because of an impairment of, or disturbance, in the functioning of their mind or brain. A person can lack capacity permanently or temporarily, and it is not based on a diagnosis.

A person is considered to lack capacity to make a decision, if they are unable to understand, retain, use and weigh, information relevant to the decision, or communicate their decision by any means.

The relevant information will vary depending on the decision, but usually includes the nature of the decision, its purpose, the consequence, and any options or alternatives.

You should try to help the donor make their own decisions, but if you form a view that it is more likely than not, that the donor lacks capacity to make a particular decision, at the time it needs to be made, you can make the decision for them.

If the power does not prevent you from acting when the donor has mental capacity, you can make decisions for them. You should do this with the donor’s agreement.

# A Guide

## Property and Financial Affairs Attorney

---

### **What is meant by ‘the donor’s best interests?’**

If the donor lacks capacity to make a decision, then you can make the decision, on their behalf, in their best interests.

You should:

- Consider all the relevant circumstances, particularly:
  - the likelihood of the donor recovering in the foreseeable future and being able to make the decision;
  - the donor’s past and present wishes and feelings;
  - the donor’s beliefs and values that would be likely to influence their decision, if they had capacity; and
  - other factors that the donor would be likely to consider, if they were able to do so.
- Involve the donor in the decisions, so far as practical.
- If practicable and appropriate, consult with carers, relatives, friends, co-attorney or court-appointed deputy, who have an interest in the donor’s welfare.
- If possible, try and achieve the outcome the donor would want.

### **Instructions and preferences**

The donor may have included restrictions or conditions (instructions) and/or guidance (preferences) in the power, which set out how you should make decisions. It is important that you follow these. If you exceed your authority, you could be removed as attorney. If the LPA is restricted, and you need wider powers you should apply to the Court of Protection for authority.

If you have any doubt about how you should make decisions, you should seek professional legal advice.



# A Guide

## Property and Financial Affairs Attorney

---

### **Limit on making gifts**

You may make limited gifts on 'customary occasions', such as religious festivals, birthdays, and weddings, provided it is for a friend or relative, (including yourself).

Gifts can also be made to a charity, if the donor has made gifts to the charity in the past or if not, in the circumstances they might be expected to make gifts to the charity.

However, in all cases, the size of the gift must be reasonable in the circumstances and in relation to the size of the total value of the donor's assets.

You should be cautious and avoid interfering in succession plans under the donor's Will. In all cases, you should consider if the donor might need the asset for their own use in the future, for example to fund their care and outgoings.

It is important to have sight of the donor's Will, (if they had one), so you are informed about their wishes, and in particular you may need to:

1. take and act upon appropriate professional advice;
2. make appropriate investments;
3. apply to the Court for an order to save a specific legacy (so far as possible), where disposal of the asset is required;
4. apply to the Court for a Statutory Will to ensure that it reflects the intentions of donor and the circumstances; and
5. arrange for safekeeping and storage of the asset.

You may obtain a copy of the Will, if it is held with a solicitor.

If you have any doubt or wish to make gifts not covered by the above, you should seek professional legal advice.

# A Guide

## Property and Financial Affairs Attorney

---

### **Maintaining others**

You are able to use the donor's money to maintain their spouse, civil partner, cohabitee, or the donor's child if under 18 years of age (if any). The donor may have named other people, they would expect you to maintain, within the power. Any maintenance payment must be reasonable in the circumstances and affordable for the donor. There is no set sum you can give for maintenance- it depends on the donor's financial position, their own financial needs and the circumstances.

### **Managing finances**

Banks and other financial institutions have different ways of dealing with attorneys. Some will allow you to continue to operate the donor's account, whilst others will want a new account to be opened. Many financial institutions allow jointly held accounts to operate as normal, once the power has been registered with them.

If you operate an account for the donor, you should sign your usual signature and then underneath your signature add the words 'as attorney'. If you have to open a new account, it should be opened in your name 'as attorney for' the donor. You will then only have to sign your usual signature to deal with the account.

You should not open an account in your own name without identifying that the asset belongs to the donor, as this may cause complications with your own tax and financial affairs, including succession under your own Will or if you do not have one, your intestacy. If it is not possible to hold the asset in this way, it is appropriate to identify the true ownership in a 'Declaration of Trust'. Legal advice should be sought in such situations.

### **Keeping accounts**

The power may include a condition that you prepare and produce accounts or provide financial statements to be checked by someone else. Even if the power does not say this, you still have a duty to keep accounts. It is sensible to keep financial statements and retain all receipts in one place. This is because the Office of the Public Guardian could ask you to account for your dealings with the donor's money. You should also keep the donor's money separate from your own.



# A Guide

## Property and Financial Affairs Attorney

---

### **You must not benefit from your position**

You must not use the donor's money or property for your own benefit, even if it were a loan or you believe, if they had mental capacity, they would agree to this. Such action must be authorised by the Court of Protection. It is better to avoid a problem by seeking legal advice.

### **Other responsibilities**

An attorney must act with honesty, integrity and in good faith, using reasonable standards of care and skill. You must keep the donor's affairs confidential, unless you are legally required, such as a request from the Office of the Public Guardian, an order from the Court, or if there is good reason to disclose information.

### **Financial advice**

You must act using reasonable standards of care and skill. You should consider taking independent financial advice on how best to invest and hold funds belonging to the donor. How and where funds should be invested and managed will largely depend on the following:

- The donor's age and life expectancy
- The value and nature of the donor's resources, taking into account tax and costs implications of making changes
- The donor's financial needs including any responsibility to others
- The donor's attitude to risk and views of others
- The impact of any investment on state support
- The terms of the donor's Will

Any investment will need to be suitable and spread between different investments to limit the risk of a poor return. From time to time the investments will need to be reviewed.

# A Guide

## Property and Financial Affairs Attorney

---

### **Paying yourself and reimbursement of personal expenses**

You are not allowed to be paid for acting as an attorney, unless the donor has authorised it in the power. You can however recover reasonable out of pocket expenses, which have been personally incurred such as petrol and stamps, and in most cases, this is unlikely to exceed more than a few hundred pounds a year. The donor's own expenses, such as care costs and items they need for their own use, such as clothes, day to day outgoings and holidays, as well as any legal fees are paid out of the donor's funds.

If you believe you should be recompensed for your role as an attorney, you should apply to the Court of Protection for this to be authorised. You should take legal advice on this.

### **Your right to retire**

You do not have to take on this role indefinitely, and have the right to retire, by 'disclaiming your appointment'. But if you decide to do this you will need to tell the donor and send the original power to the Office of the Public Guardian, with Form LPA 005, which is available on <https://www.gov.uk/government/publications/disclaim-a-lasting-power-of-attorney>

If the donor has appointed a replacement attorney, that person will act in your place.

### **What could happen if an attorney does not act in the donor's best interests?**

The Office of the Public Guardian may investigate any concerns about the decisions an attorney has made. If the concerns are not addressed or resolved, an application can be made to the Court of Protection for the attorney's removal. The Court of Protection may make additional orders to safeguard the donor and could agree that the press can publish the name of an attorney who has been removed.

# A Guide

## Property and Financial Affairs Attorney

---

### What happens when the donor dies?

Your authority to act under the LPA ends when the donor dies.

You must send the original LPA to the Office of the Public Guardian so they can cancel the LPA. The address is:

Office of the Public Guardian  
PO Box 16185  
Birmingham  
B2 2WH

You may need to account to the donor's Personal Representatives for any money you hold.

### Office of the Public Guardian Guidance

The Office of the Public Guardian has the following useful guidance on its website:

LP11: Getting Started as a Property and Financial Affairs Attorney  
[lp11-getting-started-as-an-attorney-property-and-affairs-web.pdf](#)

LP14: How to act as a Property and Financial Affairs Attorney  
[LP14: How to be a property and finances attorney \(web version\) - GOV.UK](#)

Investing for someone as their attorney or deputy  
<https://www.gov.uk/guidance/investing-for-someone-as-their-attorney-or-deputy>

OPG18: Supporting customers who do not make their own decisions (for financial institutions, and utility companies)  
<https://www.ukrn.org.uk/wp-content/uploads/2019/05/OPG18-UKRN-guidance-final-20190502.pdf>

PN7: Giving gifts: a guide to the legal background for deputies and attorneys  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/681929/Giving-gifts-practice-note-PN7.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681929/Giving-gifts-practice-note-PN7.pdf)

# Heritage Estate Planning

*For peace of mind that you've  
planned for the future*

