LPA104

Office of the Public Guardian

Lasting Powers of Attorney

A guide for people taking on the role of a Personal Welfare Attorney under a Lasting Power of Attorney

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Contents

Introduction

This booklet is a guide for people taking on the role of Personal Welfare Attorney or people who are intending to register a personal welfare Lasting Power of Attorney (LPA). Please note there is separate guidance available from the Office of the Public Guardian (OPG) for Property and Affairs Attorneys.

The booklet is divided into three parts:

Part A explains what an LPA is, who can be an Attorney and sets out what the duties of an Attorney are. It also explains what you need to know and what you should think about when deciding whether to agree to be an Attorney.

Part B helps Attorneys to understand the types of decisions they might make and the circumstances in which they might make them.

Part C explains registration of LPAs, who can object to registration and provides information about the LPA register.

While it is not necessary for the Donor (the person who makes the LPA) to read this booklet, it may be useful for them to do so to enable them to understand all the issues involved for the person they appoint as an Attorney.

It may also help you to read our booklet on making an LPA, which describes how to make an LPA and what to consider when appointing an Attorney. In this way, you and the Donor can plan together for a time when they may lack capacity.

The Office of the Public Guardian

The Office of the Public Guardian (OPG) is an executive agency of the Ministry of Justice. It is headed by the Public Guardian, who is responsible for the registration of LPAs and for maintaining the register of LPAs.

The OPG deals with any representations (including complaints) about the way in which an Attorney appointed under a registered LPA is exercising their powers. Dealing with representations includes checking the Attorney and could involve a Court of Protection visitor visiting them.

If anyone has a concern or complaint about an Attorney or the way in which the registration of an LPA has been dealt with, they can contact us for advice.

The Mental Capacity Act

The Mental Capacity Act 2005 for England and Wales potentially affects everyone aged over 16 (and in some cases people under 16) and provides a statutory framework to empower and protect people who may not be able to make some decisions for themselves, for example, people with dementia, learning disabilities, mental health problems, stroke or head injuries.

It makes it clear who can take decisions in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose capacity.

The Act covers major decisions about someone's property and affairs, healthcare treatment or where the person lives, as well as everyday decisions about personal care or what someone eats, where the person lacks capacity to make those decisions themselves.

The Code of Practice

The Code of Practice supports the Act and provides guidance and information to all those working under the legislation.

It provides guidance for people working with and/or caring for adults who lack capacity, including family members, professionals and carers. It describes their responsibilities when acting or making decisions with, or on behalf of, individuals who lack the capacity to do so themselves.

Attorneys and other people who have a duty of care to someone lacking capacity, such as professionals and paid carers, **must have regard** to the Code.

Part A – The Lasting Power of Attorney and what to think about when considering whether to be an Attorney

Section 1 – The Lasting Power of Attorney (LPA)

What is a Personal Welfare LPA?

A Personal Welfare LPA is a legal document that allows a person **(known as a Donor)** to choose someone they trust **(known as an Attorney)** to make decisions on their behalf about their personal welfare; this does not include decisions about money or property. It can only be used when the Donor lacks the capacity to make these decisions for themselves.

An Attorney will not be able to make decisions about a Donor's property and affairs unless they have also been appointed as a Property and Affairs Attorney using a separate LPA.

An LPA **can only be used** once registered with the OPG.

Why might someone make an LPA?

An LPA enables someone to plan in advance the decisions and actions they might want taken on their behalf at a time when they do not have capacity.

Using an LPA people can choose someone they trust to make decisions about their personal welfare, on their behalf, at a time in the future when they might not have the capacity to make them for themselves, for example due to the onset of dementia in later life or as a result of a brain injury.

This can include deciding where someone lives or what medical treatment they receive.

Section 2 – The Attorney

Being an Attorney

Agreeing to become an Attorney means taking on an important role.

Where you have assessed that the Donor lacks the capacity to be involved in making certain decisions, you must ensure that the decisions you make on their behalf are in their best interests.

It is therefore important that you understand the Donor's past and present wishes and feelings as this information will assist you in making decisions that are in the Donors best interests.

Further help on assessing capacity and understanding best interests is available in the Code of Practice chapters 4 and 5 and on pages 22 – 24 of this booklet.

Can I be an Attorney?

Anyone aged 18 or over and who has the mental capacity can be a Personal Welfare Attorney.

If you are the Donor's spouse or civil partner it is important to remember that, should your marriage or civil partnership be dissolved or annulled, the LPA may cease unless the Donor:

- has included a condition within the LPA that any spouse or civil partner can continue to act as Attorney in such circumstances;
- has appointed a replacement Attorney able to replace them (see page 32 and 33 for information on replacement Attorneys); or
- has appointed Attorneys to act together and independently (see page 12 and 13 for information on appointing Attorneys to act together and independently).

The Attorney(s) must always be a named **individual** on the LPA and not listed as an office holder or the name of a solicitor's firm; for example, you cannot be appointed as the 'Director of Social Services' or 'Joe Bloggs & Co Solicitors'.

Note: Office holders can still be appointed; however, their **name** must be specified on the LPA instrument (the form used to make an LPA).

What will be my role as a Personal Welfare Attorney?

Your role begins when you agree to be an Attorney and sign the LPA, although you or any other Attorneys cannot use the LPA until it is registered with the OPG. **You can only act and take decisions on the Donor's behalf when the Donor lacks capacity to make those decisions.**

Depending on how you have been appointed under the LPA – solely, together, together and independently or together in relation to some matters but together and independently in relation to others – you may be able to make all personal welfare decisions that the Donor could have made themselves before they lost the capacity to do so.

The LPA may contain restrictions and/or conditions that place limits on the decisions you can take, for example you may only be allowed to make decisions about where the Donor lives. You must adhere to these restrictions and conditions.

The Donor will talk to you about their wishes and feelings and may also include guidance in their LPA to assist you when making best interests decisions on their behalf. You should take account of this guidance when making decisions for them.

What will my role be if I am asked to act with another Attorney?

This will depend on how you have been appointed to act by the Donor in the LPA.

You may be appointed to act:

Together – This means **all** Attorneys appointed in the LPA must agree on a decision, or all Attorneys must sign a relevant document. For example, all Attorneys appointed together **would have to** agree where the Donor was to live.

Appointing Attorneys to act together is sometimes used as a safeguard by the Donor. However, appointing lots of Attorneys can mean:

- it is difficult for them to act/make decisions; or
- the LPA could be cancelled if Attorneys appointed together cannot work together or one of them dies or loses the capacity to act.

Together and independently – This means that each Attorney appointed can act on their own when making decisions on behalf of the Donor and that the Attorneys can also act together. This means that any one of the Attorneys appointed together and independently can decide on a particular issue.

Even if you are appointed with other Attorneys to act together and independently it is important to discuss any decisions you are making with the other Attorneys, where relevant, before you make them, to avoid any conflicts whilst the LPA is being operated.

Together in respect of some matters and together and independently in respect of other matters – This means that **all** Attorneys are required to agree on certain specified decisions but can act on their own when making other decisions. For example, the Donor may state that all Attorneys must agree on any decision relating to medical treatment, but can act on their own in deciding in which nursing home they live.

The Donor will need to clearly set out what these matters are in their LPA.

Please note: It is very important to remember that if the Donor decides to appoint more than one Attorney but does not specify in the **LPA how they have appointed them,** they will automatically be appointed to act together.

In an LPA 'together' means jointly and 'together and independently' means jointly and severally for the purposes of the Mental Capacity Act 2005.

Can I claim out-of-pocket expenses or charge for my services?

You can claim out-of-pocket expenses provided that they are directly in proportion to the Donor's estate and the duties you undertake. Out-of-pocket expenses include things such as telephone calls, postage charges and transport costs that are incurred whilst specifically undertaking your duties as Attorney.

If you are a professional Attorney then the Donor can decide to pay you for acting on their behalf. It would be wise to keep a record of any agreed fees and there is a space on the LPA form for the Donor to record the fees that you have agreed with them.

Section 3 – Your duties as an Attorney (under the Act)

What are my duties as Personal Welfare Attorney?

The Mental Capacity Act 2005 imposes some specific duties. **When acting under an LPA you have a duty:**

- to act in accordance with the Act's principles;
- in particular to act or make decisions in the Donor's best interests;
- to have regard to the guidance in the Code of Practice; and
- to act only within the scope of your authority as Attorney.

When agreeing to act as Attorney under an LPA you are taking on a role that carries a great deal of power which you must use carefully and responsibly.

Other duties and obligations are set out in chapter 7 of the Code of Practice. They include:

- a duty **of due care** when making decisions on behalf of the Donor;
- **to carry out instructions** as required by the LPA;
- a duty **not to delegate** the powers given to you under the LPA unless you have been authorised to do so;
- **not to benefit yourself but to benefit the Donor,** this means avoiding conflicts of interest and in particular not to profit or acquire personal benefit from your position;

- **a duty of good faith,** which means to act with honesty and integrity;
- a duty of **confidentiality;** to keep the Donor's affairs confidential unless the Donor has consented otherwise;
- **to comply with the directions of the Court of Protection;** and
- **not to give up the role without telling the Donor and the Court.**

These duties are described in greater detail in the Code of Practice, which you should read if you are deciding whether to take on the role of Attorney. If you become an Attorney you will have a legal duty to have regard to the Code.

If you do not perform your duties properly, you may be ordered to compensate the Donor for any losses they have suffered as a result. Anyone ill-treating or wilfully neglecting someone they have care of who lacks capacity, or to whom an LPA appointment relates, can be found guilty of a criminal offence. The penalty for such an offence is a fine and/or a sentence of imprisonment of up to five years.

Part B – The decisions an Attorney can make

Section 4 – Additional LPAs or EPAs

The Donor has another EPA/LPA, what should I do?

If the other power(s) are unregistered you should contact the OPG to discuss the circumstances and for advice on what steps to take next. If the powers are registered you should liaise with the Attorney(s) appointed to act.

What happens if the Donor dies?

The LPA will automatically come to an end. You should send the original LPA and a death certificate to the OPG as soon as possible. We cannot give advice on how to deal with the Donor's estate. You should contact a legal adviser or a District Probate Registry for this advice.

Section 5 – Guidance on decision-making

When do I start making decisions on the Donor's behalf?

The LPA **must** be registered with the OPG before you can use it and before any decisions can be made by you as an Attorney.

You can only start making decisions on the Donor's behalf when they have lost the capacity to make those particular decisions for themselves. You will need to assess their capacity to make such decisions before proceeding to make them on their behalf. The Code of Practice (chapter 4) gives detailed guidance on assessing capacity and it is also covered later in this booklet.

Can I make ANY decisions about the Donor's property and affairs?

Decisions about the Donor's Property and Affairs can only be made by an Attorney acting under a property and affairs LPA, an EPA, or by someone given the authority to do so by the Court of Protection.

However, if you are also appointed to perform any of these roles for the Donor then you will be able to take those decisions within the limits of the powers given to you.

If I disagree with a decision of another Attorney or other appointed decision-maker, who can I approach with my concerns or objections?

If you believe that an Attorney or decision-maker is acting outside the scope of their powers, neglecting his or her responsibilities or not acting in the Donor's best interests, in the first instance you should raise your concerns with the other Attorney(s) or appointed decision-makers.

If you are still not satisfied and are still concerned that the decisions are not in the Donor's best interests you can raise your concerns with the OPG.

Disagreements occur about the outcome of decisions. If you are challenging a decision-maker or raising concerns about them, you should remember that the key point is the best interests of the person who lacks capacity. If you are challenging a decision, you should be able to support your claim with evidence that the decision-maker is not acting in the Donor's best interests. It is not enough simply to disagree with their decision.

Can the Donor still make decisions about their affairs after the LPA is registered?

Yes. The Act says that every adult should be assumed to have capacity to make a particular decision unless it is established that they lack capacity to do so.

It is also important to remember the third principle of the Act that 'a person is not to be treated as unable to make a decision merely because he makes an unwise decision'. This means just because you might consider a decision that the Donor makes as unwise, this does not show that they lack the capacity to make that decision.

Do I need to consult the Donor on every decision I make?

The Act says that you must have a reasonable belief that the Donor lacks the capacity to make a decision before you can act on their behalf and that you must give them all appropriate help to make that decision themselves.

The word 'reasonable' is important – a Donor's capacity can change; they could have capacity to make a decision one day but not the next day.

You will therefore need to decide what is a reasonable way to take account of this. For example, if the Donor has capacity that fluctuates, you might need to re-assess their capacity from time to time.

However, if the Donor has a constant or degenerative condition, it might not be reasonable to expect you to make a new assessment of capacity every day for decisions about what the Donor should wear or should eat.

You should make every effort to encourage and support the Donor to make as many decisions as possible and in doing so you should consider:

- Does the Donor have all the relevant information needed to make the decision? If there is a choice, has information been given on the alternatives?
- Could the information be explained or presented in a way that is easier for the person to understand? Help should be given to communicate information wherever necessary, for example using pictures, photographs, videos, tapes or sign language.
- Are there particular times of the day that a person's understanding is better, or is there a particular place where they feel more at ease and able to make a decision?
- Can anyone else help or support the Donor to make a choice or express a view? For example, a relative or friend or other person where possible.

It is important to remember that you should only make a decision on behalf of the Donor if you reasonably believe that they lack mental capacity to make that particular decision themselves.

How do I assess the Donor's capacity to make a decision?

You are not expected to be an expert in assessing capacity, but when deciding to make a decision on behalf of the Donor you must 'reasonably believe' that they lack the mental capacity to make that particular decision.

When assessing the Donor's mental capacity you will need to think about whether:

- the Donor has a general understanding of what the decision is that needs to be made;
- the Donor has a general understanding of the consequences of this decision;
- the Donor can weigh up this information and use it to make the decision;
- there is any way you could help the Donor to make the decision for themselves; and
- there is any way you can help the Donor communicate their decision or their wishes and feelings.

You will need to think about these things for 'big' decisions such as where the Donor is to live.

For more detailed information about the assessment of capacity, please refer to chapter 4 of the Code of Practice.

What if the Donor disagrees with a decision I am making using a registered LPA?

If the Donor still has capacity to make a decision you must not make that decision at all. You can only make a decision where the Donor lacks capacity to do so. If you reasonably believe that this is the case you can make the decision provided there are no restrictions in the LPA preventing you from doing so, provided it is a decision permitted by the Act, and provided you think it is in the Donor's best interests.

If you are unsure about the Donor's capacity or are experiencing difficulties in acting as Attorney, you should contact the OPG immediately.

You should be aware that the Donor could also contact the OPG if they are unhappy about decisions you are making.

How do I decide what is in the Donor's best interests?

Although there is no single definition of what would be in a person's best interests, the Act gives a non-exhaustive checklist of things that must be considered when you are making a decision on behalf of the Donor:

- The Donor's past or present wishes and feelings, values and beliefs. It is therefore important that you communicate with the Donor, and familiarise yourself and understand their wishes, feelings and views. This places the Donor at the centre of any decision being made on their behalf.
- Any views the Donor has expressed in the past that would help you to understand what their wishes and feelings might be. This might be things they have written down, said to other people, or how they may have behaved in similar circumstances in the past.
- The Donor's beliefs or values, which might influence the decision. This might include religious beliefs, cultural background or moral views.
- Family members, parents, carers and other relevant people who care for the Donor or are interested in the Donor's welfare should be consulted if this is practical and appropriate.

- The possibility that the Donor may regain the ability to make their own decisions in the future through, for example, learning new skills.
- The law says that when someone is working out what is in a person's best interests they cannot make a decision based just on the person's appearance, age, condition, or behaviour.
- If the decision is about the provision or withdrawal of life-sustaining treatment the decision-maker must not be motivated by a desire to end a person's life.

Not all of the checklist factors above will be applicable, but you should still consider each of these, even if you find that they are not relevant to the particular decision. Also, there may be other issues which are not included in the checklist, but which you may need to take into account.

Further guidance on deciding what is in the Donor's best interests can be found in chapter 5 of the Code of Practice.

Should I involve others like family members or carers in deciding what is in the Donor's best interests?

Yes, you should consult family members or carers or anyone interested in the Donor's welfare if this is practical and appropriate. This is one of the things that must be considered under the best interests checklist. However it is you, as the Donor's chosen Attorney, who is making a decision on their behalf or asserting what you believe to be in their best interests.

What do I do if there is a dispute over what is considered to be in the Donor's best interests?

Family, friends, carers and other professionals will not always agree about what is in the best interests of the Donor. As the Attorney, it would be advisable to demonstrate clearly, by keeping notes and records of conversations and discussions, that you have taken into account all the conflicting views and come to your own decision about what is in the Donor's best interests.

In the first instance you should to try to reach an agreement on what is in the Donor's best interests by talking to others.

If an agreement cannot be reached you should contact the OPG for advice on what steps you might take next.

Should I record the decisions I make about my assessment of the Donor's capacity every time I make a decision on their behalf?

It is not a requirement of an LPA to do this. However, you may wish to record the decisions you make about the assessment of the Donor's mental capacity, and the determination of what is in the Donor's best interests when making **significant** decisions on their behalf, such as where the Donor lives or about life-sustaining treatment.

What if someone disagrees with decisions I am making as Attorney?

If someone does not agree with your decisions as an Attorney and believes that you are not acting in the Donor's best interests, they can advise the OPG.

The OPG will then investigate the claims and decide what, if any, action to take.

Can I access personal information about the Donor to help me make a decision?

There may be times when carrying out your duties as an Attorney that you need to access personal information about the Donor, for example from a doctor, a bank or solicitor, to help make a decision that is in the Donor's best interests. Most of this information will be personal information relating to the Donor and much of it will be sensitive and/or confidential.

Provided you are acting within the powers given to you in the LPA, you are entitled to ask for this information in the same way the Donor would have done if they had the capacity to do so, subject to some limitations.

Where possible you should only ask for the information that will assist you in making the decision that you need to make on behalf of the Donor.

It is important to remember that when making any request for personal information about the Donor you should always bear in mind the requirements of the Act, namely that any action or decision made under the Act must be in the best interests of the Donor.

For further guidance on requesting information please see chapter 16 of the Code of Practice.

What is the role of the Office of the Public Guardian (OPG) in the LPA?

Whilst our role is not to be involved in every decision you make on behalf of the Donor, we do have a responsibility to deal with any representations (including complaints) about the way in which an Attorney is exercising their powers.

We can if necessary ask you to explain the decisions you have taken on behalf of the Donor.

Section 6 – The types of decisions you may be required to make

Can I decide where the Donor lives?

Yes, provided that there are no restrictions within the LPA stopping you from doing this.

However, it may be appropriate to discuss this decision with any Attorneys appointed under an EPA or a Property and Affairs LPA as your decision may be dependent on the Donor's financial situation.

Can I sell the Donor's house?

No. A Personal Welfare LPA does not cover decisions of this type. However, any sale of the Donor's property may impact on where the Donor lives. This means it would be appropriate for any decision being made about the Donor's property to be discussed with you beforehand.

Can I consent to or refuse medical treatment on the Donor's behalf?

Yes, unless the Donor has included a restriction in the LPA preventing you from doing so. You must make such decisions in the Donor's best interests, taking into account their wishes and feelings as well as any conditions they have included in the LPA.

Can I make decisions about life-sustaining medical treatment on the Donor's behalf?

You can only make such decisions if the Donor has signed section 6 of their LPA and indicated that they wish you to make such decisions. If you are making a decision about the provision or withdrawal of life-sustaining treatment you must not be motivated by a desire to bring about the person's death. However, you could decide to withhold treatment, even if this means the person will die, if this would be in their best interests, for example, if the treatment is burdensome or is not having any effect.

Are there certain decisions I cannot make?

It is important to remember that you must only act within the powers of the LPA, including any restrictions or conditions.

However, the Act prevents you from making decisions on behalf of the Donor on the following matters:

- consenting to marriage or civil partnership;
- consenting to a decree of divorce being granted on the basis of two years' separation;
- consenting to a dissolution order being made in relation to a civil partnership on the basis of two years' separation;
- consenting to sexual relations;

- giving the Donor medical treatment for a mental disorder or consenting to the Donor being given medical treatment for a mental disorder if the person's treatment is regulated by Part 4 of the Mental Health Act 1983; and
- deciding to vote.

Can you give me further advice on how to carry out my role?

Yes, if you contact the OPG we will be happy to answer any questions about the role of an Attorney or you can visit our website for further information.

Please note: The OPG cannot provide legal advice.

Part C – Registering the LPA, objections to the LPA and the LPA register

Section 7 – Applying to register an LPA

When should the LPA be registered with the OPG?

The LPA can be registered at any time after it is made, although it is important to note that if you apply to register it a long time before you need to use it, you will need to look at it again from time to time to make sure that its contents are still relevant to the Donor's circumstances.

Please note: Changes cannot be made to **any part** of a signed and certified LPA.

If circumstances have changed and the Donor wishes to make changes to the LPA such as to the types of restrictions or conditions they have included or they wish to appoint a new Attorney, they should seek guidance from the OPG and consider making a new LPA.

If contact details for named persons or Attorneys have changed details of these changes should be recorded on a separate sheet and kept with the LPA.

Can I use the LPA before registering it?

No, the LPA must be registered with the OPG before it can be used.

Who can apply to register an LPA?

The Donor, one or more of the Attorneys (depending on how they are appointed), a replacement Attorney if in place, or someone acting on either the Donor's or Attorney's behalf can apply to register the LPA.

How is the LPA registered?

The application to register the LPA must be made on the correct forms, and the named persons listed on the LPA must be notified.

A guide to registering a Lasting Power of Attorney, which provides further information about how to register an LPA, is available by calling us or can be downloaded from our website.

Can I stop being a Personal Welfare Attorney?

Yes, you can stop acting as the Attorney at any time. If the LPA is registered you will need to **complete form LP5 Disclaiming Your Appointment** and send this to the OPG. Contact the OPG immediately if you need to discuss this.

You should also inform any other Attorneys appointed on the LPA, and the Donor if they still have the capacity to understand your decision.

Will anyone replace me and if so, who?

Possibly. If you decide to stop or cannot continue as Attorney, a replacement Attorney could act as a replacement if the Donor has made arrangements for this in the LPA document.

Please note: The Donor can appoint a replacement Attorney either to only act as a replacement for a specific Attorney or alternatively, can specifically exclude you from being replaced.

What if I am one of the Attorneys appointed to act together?

If there is no replacement Attorney(s) named or you are unable to be replaced due to a condition included in the LPA and the Donor does not have the capacity to make a new LPA, the remaining Attorney(s) **cannot** carry on and the LPA will end.

The OPG will then consider whether other decision-making arrangements are needed.

What if I am an Attorney appointed to act with others together and independently?

If you are appointed to act together and independently and the Donor has not appointed a replacement Attorney(s) the LPA will continue providing there is at least one remaining Attorney acting on behalf of the Donor.

Can another Attorney be added after the LPA has been registered?

No, unless the Donor has the capacity to cancel the existing LPA and make a new one appointing a new Attorney.

I am acting as a replacement Attorney, should I let the OPG know?

Yes, if you are a replacement Attorney you are required to advise the OPG that you are now acting as Attorney. You must ensure that the LPA is returned to us to note the change on the LPA and to update the LPA register.

Please note: If the LPA does not have note of the change the replacement Attorney may not be able to act.

If the LPA is no longer valid can the Donor make another?

Yes, but only if the Donor still has the capacity to do so.

What happens if the LPA cannot be registered?

If the Donor does not have the capacity to make another LPA, the OPG may contact someone such as an Attorney or other relevant person and ask them to apply to the Court for an order covering the decisions that need to be made on the Donor's behalf.

Can the registered LPA be cancelled or revoked?

Yes, the OPG can cancel registration on factual grounds (such as bankruptcy of the Attorney) and the Court can terminate an LPA for other reasons (such as where the Attorney is not carrying out his or her duties correctly). Alternatively, if the Donor still has the capacity they can revoke the LPA. They will be required to advise their Attorneys and the OPG of the revocation so that we can remove the LPA from the register.

Section 8 – The LPA register

What is the LPA register?

The LPA register is a searchable database containing the details of all registered LPAs. It is important to remember that once the LPA you are appointed Attorney for is registered, certain pieces of personal information will be available **to anyone who applies to search the register.**

Why does the OPG have a register?

The Mental Capacity Act 2005 sets out the functions of the OPG. One of these is to establish and maintain a register of LPAs.

One of the purposes of the register is to allow those with an interest, such as healthcare professionals, to search the register to see whether an LPA has been registered by the OPG for a particular person.

What information will be on the register?

The type of information made available from the register will depend on the type of search that someone applies for. There are two types of search: a first tier and a second tier search, with each providing different levels of information to the applicant.

The first tier search provides limited data about you, the Donor and the LPA.

The information provided would include:

- the record number the OPG has given to the registered LPA;
- the Donor's name;
- any other/previous names of the Donor;
- the type of LPA made: a Property and Affairs LPA or a Personal Welfare LPA or one of each **but not the contents of the LPA;**
- the date the LPA form was signed;
- the date the LPA was registered;
- whether or not the LPA is still active, for example, has it been cancelled;
- your full name and the full names of any other Attorney(s) appointed under the LPA;
- how you and any other Attorneys are appointed;
- the full name of any replacement Attorney(s);
- whether the LPA contains any restrictions, conditions or guidance **but not the details of the restrictions, conditions or guidance**; and
- whether a note has been attached to the LPA, **but no details of what the note says.**

The second tier search: Anyone can, on application and payment of a fee, undertake a second tier search.

However, this will require the applicant to explain in detail to the OPG why they require the information and to demonstrate that the request is in the Donor's best interests. There is not a defined list of the information disclosed in a second tier search because it will be different in every case, depending on what is required and what is in the Donor's best interests.

The Lasting Power of Attorney register booklet, provides further information about the LPA register and the information contained on it and is available by calling the OPG or can be downloaded from our website.

Section 9 – Objections

What if someone objects to me being appointed as an/the Attorney?

Only the Donor, the named persons or other Attorneys are able to object to the registration of an LPA.

Objections by a named person(s) or an Attorney(s) will have to be either:

On **factual grounds** – the OPG can be asked to stop the registration if:

- the Donor is bankrupt or interim bankrupt (for Property and Affairs LPAs only);
- the Attorney is bankrupt or interim bankrupt (for Property and Affairs LPAs only);
- the Attorney is a trust corporation and is wound up or dissolved (for Property and Affairs LPAs only);
- the Donor is dead;
- the Attorney is dead;
- there has been dissolution or annulment of a marriage or civil partnership between the Donor and Attorney (except if the LPA provided that such an event should not affect the instrument);
- the Attorney(s) lack the capacity to be an Attorney under the LPA; or
- the Attorney(s) have disclaimed their appointment.

On prescribed grounds – objections to the Court of Protection against registration of an LPA can only be made on the following grounds:

- that the power purported to be created by the instrument is not valid as an LPA. For example, the person objecting does not believe the Donor had capacity to make an LPA;
- that the power created by the instrument no longer exists – for example, the Donor revoked it at a time when he/she had capacity to do so;
- that fraud or undue pressure was used to induce the Donor to make the power; or
- the Attorney proposes to behave in a way that would contravene his/her authority or would not be in the Donor's best interests.

The OPG will require appropriate evidence to support any factual objection raised.

Objections by the Donor do not need to be on any specific grounds.

If the OPG or the Court of Protection receive an objection to your application to register an LPA, they will contact you to advise what steps you need to take next.

Section 10 – Contact us

Office of the Public Guardian
Archway Tower
2 Junction Road
London N19 5SZ

Phone Number: 0845 330 2900

Fax Number: 020 7664 7705

Email: customerservices@publicguardian.gsi.gov.uk

Website: www.publicguardian.gov.uk

DX: 141150 Archway 2

Textphone: 020 7664 7755 (If you have speech or hearing difficulties and have access to a textphone, you can call us for assistance.)

International Calls: +44 20 7664 7000

International Faxes: +44 20 7664 7705

Please note: The OPG provides advice about OPG processes only, and cannot provide legal advice or services to any party. The OPG recommends that you seek independent legal advice where appropriate. Information in this publication is believed to be correct at the time of printing, however the OPG does not accept liability for any error it may contain.

Section 11 – Useful Contacts

Organisation and what it is/does	Contact Information
Action for Advocacy A resource and support agency for the advocacy sector	PO Box 31856, Lorrimore Square, London, SE17 3XR www.actionforadvocacy.org.uk
Age Concern England The UK's largest organisation working to promote wellbeing of all older people. It provides vital services, information and support to thousands of older people	Astral House, 1268 London Road, London, SW16 4ER www.ageconcern.org.uk www.accymru.org.uk Information line 0800 00 99 66
Alzheimer's Society The UK's leading care and research charity for people with dementia, their families and carers	Gordon House, 10 Greencoat Place, London, SW1P 1PH www.alzheimers.org.uk Helpline 0845 300 0336

Organisation and what it is/does	Contact Information
Carers UK Looks after family, partners or friends in need of help because they are ill, frail or have a disability. Aims to help carers' by providing unpaid care for ill, frail or disabled family members or friends	20/25 Glasshouse Yard, London, EC1A 4JT www.carersuk.org T 020 7566 7637 F 020 7490 8824
Down's Syndrome Association Provides information and support for people with Down's Syndrome, their families and carers	Langdon Down Centre, 2a Langdon Park, Teddington, Middlesex, TW11 9PS www.downs-syndrome.org.uk T 0845 230 0372 F 0845 230 0373
Foundation for People with Learning Disabilities Works with people with learning disabilities, their families and those who support them to improve the quality of their lives and promotes the rights, quality of life and opportunities of people with learning disabilities and their families	Sea Containers House, 20 Upper Ground, London, SE1 9QB www.learningdisabilities.org.uk T 020 7803 1100

Organisation and what it is/does	Contact Information
Headway – the brain injury association Promotes understanding of all aspects of brain injury; and provides information, support and services to people with a brain injury, their family and carers	4 King Edward Court Service, King Edward Street, Nottingham, NG1 1EW www.headway.org.uk Helpline 0808 800 2244
MENCAP Charity working with people with learning disabilities, their families and carers	123 Golden Lane, London, EC1Y ORT www.mencap.org.uk T 020 7454 0454
Mental Health Foundation A leading UK charity that provides information, carries out research, campaigns and works to improve services for anyone affected by mental health problems, whatever their age and wherever they live	Sea Containers House, 20 Upper Ground, London, SE1 9QB www.mentalhealth.org.uk T 020 7803 1100

Organisation and what it is/does	Contact Information
MIND Leading mental health charity, working to create a better life for everyone with experience of mental distress.	15-19 Broadway, Stratford, London, E15 4BQ www.mind.org.uk Infoline 0845 766 0163
National Autistic Society (NAS) Champions the rights and interests of all people with autism and provide accessible support and services to people with autism and their families	393 City Road, London, EC1V 1NG www.nas.org.uk Helpline 0845 070 4004
National Care Association (NCA) Provides easy access to information about the independent care sector to members of the public and care professionals	45-49 Leather Lane, London, EC1N 7JT www.nca.gb.com T 020 7831 7090
The National Family Carer Network A network that provides a focal point for issues affecting families that include an adult with a learning disability	Merchants House, Wapping Road, Bristol, BS1 4RW www.familycarers.org.uk T 0117 930 2600

Organisation and what it is/does	Contact Information
The Home Farm Trust Ltd. A network that provides support and information for family carers	Merchants House, Wapping Road, Bristol, BS1 4RW www.hft.org.uk T 0117 930 2600
Patient Concern An organisation committed to promoting choice and empowerment for all health service users.	PO Box 23732, London, SW5 9FY www.patientconcern.org.uk E patientconcern@hotmail.com
The Relatives and Residents Association An organisation for older people needing, or living in, residential care and the families and friends left behind. Offers support and information via a helpline	24 The Ivories, 6-18 Northampton Street, London, N1 2HY www.relres.org Helpline 020 7359 8136

Organisation and what it is/does	Contact Information
RESCARE The national society for children and adults with learning disabilities and their families	Steven Jackson House, 31 Buxton Road, Heaviley, Stockport, SK2 6LS www.rescare.org.uk Helpline 0800 032 7330
Scope Disability organisation in England and Wales, whose focus is people with cerebral palsy	6 Market Road, London, N7 9PW www.scope.org.uk Response line 0808 800 300 T 020 7619 7100
Sense Charity providing specialist information, advice and services to deaf blind people, their families, carers and the professionals who work with them. Funded to develop training materials which address the advocacy issues for deaf blind people	11-13 Clifton Terrace, Finsbury Park, London, N4 3SR www.sense.org.uk T 0845 127 0060 F 0845 127 0061 Text 0845 127 0062

Organisation and what it is/does	Contact Information
Turning Point The UK's leading social care organisation, providing services for people with complex needs, including those affected by drug and alcohol misuse, mental health problems and those with a learning disability	Standon House, 21 Mansell Street, London E1 8AA www.turning-point.co.uk T 020 7841 7600
United Response Supporting people with learning disabilities and mental health needs across England to live in the community	113-123 Upper Richmond Road, Putney, London, SW15 2TL www.unitedresponse.org.uk T 020 8246 5200 F 020 8780 9538 Minicom 020 8785 1706