

Subsidiary Legislation made under s.16.

**LASTING POWERS OF ATTORNEY CODE OF  
PRACTICE**

**(LN. 2018/097)**

*Commencement*      **23.4.2018**

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*In exercise of the powers conferred on him by section 16 of the Lasting Powers of Attorney and Capacity Act 2018, the Minister has published the following Code of Practice which has been issued by him.*

**CODE OF PRACTICE**

This code is issued in accordance with section 16 of the Lasting Powers of Attorney and Capacity Act 2018, (the “Act”).

It explains what Lasting Powers of Attorney, (LPAs), are and how they should be used. It also sets out:

- J the types of decisions that people can appoint attorneys to make, (called “donees” in the Act and the Regulations);
- J situations in which an LPA can and cannot be used;
- J the duties and responsibilities of attorneys;
- J the standards required of attorneys; and
- J measures for dealing with attorneys who do not meet the appropriate standards.

**What is a Lasting Power of Attorney (LPA)?**

Sometimes one person will want to give another person authority to make a decision on their behalf. A power of attorney is a legal document that allows them to do so. Under a power of attorney, the chosen person, (the attorney

or donee), can make decisions that are as valid as one made by the person, (the donor).

Before the Act, every power of attorney automatically became invalid as soon as the donor lacked the capacity to make their own decision. The Act allows an attorney to make decisions about property and financial matters or health and welfare matters, even if the donor lacks capacity to manage their own affairs.

There are two types of LPA:

1. Property and Financial; and
2. Health and Welfare.

The donor can choose one person or several persons to make different kinds of decisions for them.

**An attorney acting under an LPA has a binding duty to have regard to the guidance set out in this Code of Practice.**

**Anyone asked to be an attorney should:**

- J consider whether they have the skills and ability to act as an attorney, (especially if it is for a Property and Financial LPA); and
- J ask themselves whether they actually want to be an attorney and take on the duties and responsibilities of the role.

Before acting under an LPA, attorneys must:

- J make sure the LPA has been registered in accordance with the Lasting Powers of Attorney (Registration) Regulations 2018, (the “Regulations”); and
- J take all practical and appropriate steps to help the donor make the particular decision for themselves.

**When acting as attorney under an LPA:**

- J make sure that the statutory principles set out in sections 86 to 89 of the Mental Health Act 2016, (the “MHA 2016”), are followed; and
- J check whether the person has the capacity to make that particular decision for themselves. A person’s capacity, (or lack of capacity), refers specifically to their capacity to make a particular decision at the time it needs to be made.

If they do have capacity to make a particular decision:

- J a Health and Welfare LPA cannot be used – the person must make the decision;
- J a Property and Financial LPA can be used, unless they have stated in the LPA that they should make decisions for themselves when they have capacity to do so.

At all times, remember:

- J anything done under the authority of the LPA must be in the person's best interests. The considerations to be made to determine what a person's best interests are, can be found in section 89 of the MHA 2016;
- J anyone acting as an attorney must have regard to guidance in this Code that is relevant to the decision that is to be made; and
- J attorneys must fulfil their responsibilities and duties to the person who lacks capacity.

**How does a donor create an LPA?**

The donor must follow the right procedure in order to create and register an LPA as set out in the Act and the Regulations, (summarised below), otherwise the LPA might not be valid. It is not necessary to obtain legal advice, but it is strongly recommended, especially if the donor's circumstances are complicated.

Only adults aged 18 or over can make an LPA, and they can only make an LPA if they have the capacity to do so. For an LPA to be valid:

- J it must be in writing;
- J it must include prescribed information about the purpose and effect of the LPA;
- J the donor must sign a statement saying that they have read the prescribed information, (or somebody has read it to them), and that they want the LPA to apply when they no longer have capacity;
- J the attorneys must sign a statement saying that they have read the prescribed information and that they understand their duties – in particular the duty to act in the donor's best interests; and

- ) it must be signed by the donor in the presence of two witnesses.

The LPA must include a certificate completed by an independent third party, (described in section 10 of the Act), confirming that:

- ) in their opinion, the donor understands the LPA's purpose;
- ) nobody has used fraud or undue pressure to trick or force the donor into making the LPA; and
- ) there is nothing to stop the LPA being created.

### **Who can be an attorney?**

A donor should think carefully before choosing someone to be their attorney. An attorney should be someone who is trustworthy, competent and reliable. They should have the skills and ability to carry out the necessary tasks.

Attorneys must be at least 18 years of age.

If an attorney nominated under a Property and Financial LPA becomes bankrupt at any point, they will no longer be allowed to act as an attorney for a Property and Financial LPA. People who are bankrupt can still act as an attorney under a Health and Welfare LPA.

The donor must name an individual rather than a job title in a company or organisation, (for example, 'my solicitor' would not be sufficient).

Section 9(3) of the Act allows the donor to appoint two or more attorneys and to specify whether they should act 'jointly', 'jointly and severally', or 'jointly in respect of some matters and jointly and severally in respect of others':

- ) joint attorneys must always act together. All attorneys must agree decisions and all sign any relevant documents; and
- ) joint and several attorneys can act together but may also act independently if they wish. Any action taken by any attorney alone is as valid as if they were the only attorney.

The donor may want to appoint attorneys to act jointly in some matters but jointly and severally in others. For example, a donor could choose to appoint two or more Property and Financial LPA attorneys jointly and severally, but can specify in the LPA that when selling the donor's house, the attorneys must act jointly.

The donor may appoint Health and Welfare LPA attorneys to act jointly and severally but specify that they must act jointly in relation to giving consent to surgery. If a donor who has appointed two or more attorneys does not specify how they should act, they must always act jointly.

Donors may choose to name replacement attorneys to take over the duties in certain circumstances, (for example, in the event of an attorney's death). The donor may name a specific attorney to be replaced, or the replacements can take over from any attorney, if necessary. Donors cannot give their attorneys the right to appoint a substitute or successor.

## **How should somebody register and use an LPA?**

An LPA must be registered in the LPA Register before it can be used. An unregistered LPA will not give the attorney any legal powers to make a decision for the donor. The donor can register the LPA while they are still capable, or the attorney can apply to register the LPA on the donor's behalf, but the application for registration must be made within 90 calendar days from the date of the LPA.

It is a good idea to register the LPA as soon as possible after the donor makes it, to ensure that there is no delay when the LPA needs to be used. If an LPA is unregistered and the 90 calendar days' time period has passed, an application for a late registration would have to be made, before an attorney can make any decisions under the LPA.

While they still have capacity, donors should let the LPA Registrar know of permanent changes of address for the donor or the attorney or any other changes in circumstances. Examples include an attorney of a Property and Financial LPA becoming bankrupt or the ending of a marriage between the donor and their attorney, (if the LPA specifies it should end upon a divorce). If the donor no longer has capacity to inform the LPA Registrar of such changes in circumstances, attorneys should do so on their behalf. This will help keep the LPA Registry's records up to date, and will make sure that attorneys do not make decisions that they no longer have the authority to make.

## **What guidance should an attorney follow?**

Attorneys must meet the requirements set out in the Act. Most importantly, they have to follow the statutory principles and make decisions in the best interests of the person who lacks capacity. They must also respect any conditions or restrictions that the LPA document contains.

Assessments of capacity or best interests must not be based merely on:

- ) a donor's age or appearance; or

- ) unjustified assumptions about any condition they might have or their behaviour.

When deciding what is in the donor's best interests, attorneys should consider the donor's past and present wishes and feelings, beliefs and values. Where practical and appropriate, they should consult with:

- ) anyone involved in caring for the donor;
- ) close relatives and anyone else with an interest in their health and welfare; and/or
- ) other attorneys appointed by the donor.

Scenario: Making decisions in a donor's best interests

Mr Smith has been an active member of an environmental group for a long time. He has appointed Mr X as his attorney under a Property and Financial LPA, but Mr Smith did not state in the LPA that investments made on his behalf must be ethical investments.

When the attorney assesses Mr Smith's best interests, however, he considers the donor's past wishes, values and beliefs. Mr X makes sure that he only invests in companies that are socially and environmentally responsible.

**PROPERTY AND FINANCIAL LPAS**

A donor can make an LPA giving an attorney the right to make decisions about their property and financial matters.

The donor can allow their attorney to make decisions either:

- ) as soon as the LPA has been registered; or
- ) only when the donor has lost mental capacity.

Most people choose the first option, (as soon as the LPA has been registered), because it is the most practical. It means that the donee can act both whilst the donor has capacity and once he/she does not have capacity. This option can be useful if the donor is able to make their own decisions but there is another reason the donor wants the donee to help them – for

example, the donor is away on holiday, or if the donor has a physical condition that makes it difficult to visit the bank, talk on the phone or sign documents.

Unless the donor states otherwise, once the LPA is registered, the attorney is allowed to make all decisions about the donor's property and financial matters, even if the donor still has capacity to make the decisions for themselves. In this situation, the LPA will continue to apply when the donor no longer has capacity.

Alternatively, (as set out above), a donor can state in the LPA document that the LPA should *only* apply when they lack capacity to make a relevant decision. It is the donor's responsibility to decide how their capacity should then be assessed. For example, the donor may trust the attorney to carry out an assessment, or they may say that the LPA only applies if their GP or another doctor confirms in writing that they lack capacity to make specific decisions about property or finances. This can mean a donee may be asked to prove the donor does not have mental capacity each time they use the LPA.

The fact that someone has made a Property and Financial LPA does not mean that they cannot continue to carry out financial transactions for themselves. The donor may have full capacity, but perhaps anticipates that they may lack capacity at some future time. In other cases, the donor may have fluctuating or partial capacity and therefore be able to make some decisions, (or at some times), but need an attorney to make others, (or at other times).

The attorney should allow and encourage the donor to do as much as possible, and should only act when the donor asks them to or to make those decisions the donor lacks capacity to make.

Occasionally, the donor may wish to hand over responsibility for all decisions to the attorney, even those they still have the capacity to make.

If the donor restricts the decisions an attorney can make, banks may ask the attorney to sign a declaration that protects the bank from liability if the attorney misuses the account.

If a donor does not restrict decisions the attorney can make, the attorney will be able to decide on any or all of the person's property and financial matters. This might include:

- ) buying or selling property;
- ) opening, closing or operating any bank, building society or other account;

- J giving access to the donor's financial information;
- J claiming, receiving and using, (on the donor's behalf), all benefits, pensions, allowances and rebates;
- J receiving any income, inheritance or other entitlement on behalf of the donor;
- J dealing with the donor's tax affairs;
- J paying the donor's mortgage, rent and household expenses;
- J insuring, maintaining and repairing the donor's property;
- J investing the donor's savings;
- J making limited gifts on the donor's behalf;
- J paying for private medical care and residential care or nursing home fees;
- J applying for any entitlement to funding for medical care, social care or adaptations;
- J using the donor's money to buy a vehicle or any equipment or other help they need; or
- J repaying interest and capital on any loan taken out by the donor.

A general Property and Financial LPA will allow the attorney to carry out any or all of the actions above, (although this is not a full list of the actions they can take). However, the donor may want to specify the types of powers they wish the attorney to have, or to exclude particular types of decisions. If the donor holds any assets as trustee, they should get legal advice about how the LPA may affect this.

The attorney must make decisions under the LPA personally and cannot generally give someone else authority to carry out their duties. If the donor wants the attorney to be able to give authority to a specialist to make specific decisions, they need to state this clearly in the LPA document, (for example, appointing an investment manager to make particular investment decisions).

Donors may like to appoint someone, (perhaps a family member or a professional), to go through their accounts with the attorney from time to time. This might help to reassure donors that somebody will check their

financial matters when they lack capacity to do so. It may also be helpful for attorneys to arrange a regular check that everything is being done properly. The donor should ensure that the person is willing to carry out this role and is prepared to ask for the accounts if the attorney does not provide them. They should include this arrangement in the LPA. The LPA should also say whether the person can charge a fee for this service.

## **What gifts can an attorney make under a Property and Financial LPA?**

An attorney can only make gifts of the donor's money or belongings to people who are related to or connected with the donor, (including the attorney), on specific occasions, including:

- ) births or birthdays;
- ) weddings or wedding anniversaries;
- ) civil partnership ceremonies or anniversaries; or
- ) any other occasion when families, friends or associates usually give presents.

If the donor previously made donations to any charity regularly or from time to time, the attorney can make donations from the person's funds.

This also applies if the donor could have been expected to make such payments. The value of any gift or donation must be reasonable and take into account the size of the donor's estate. For example, it would not be reasonable to buy expensive gifts at Christmas if the donor was living on modest means and had to do without essential items in order to pay for them.

The donor cannot use the LPA to make more extensive gifts than those allowed under the Act. The LPA can also impose strict conditions or restrictions on the attorney's powers to make gifts. They should state these restrictions clearly in the LPA document when they are creating it.

When deciding on appropriate gifts, the attorney should consider the donor's wishes and feelings to work out what would be in the donor's best interests. The attorney can apply to the Court of Protection for permission under section 18(4) of the Act to make gifts that are not included in the LPA, (for example, for tax planning purposes).

## **HEALTH AND WELFARE LPAS**

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LPAs can be used to appoint attorneys to make decisions about personal welfare, including healthcare and medical treatment decisions. Health and Welfare LPAs might include decisions about:

- ) where the donor should live and who they should live with;
- ) the donor's day-to-day care, including diet and dress;
- ) who the donor may have contact with;
- ) consenting to or refusing medical examination and treatment on the donor's behalf;
- ) arrangements needed for the donor to be given medical, dental or optical treatment;
- ) assessments for and provision of community care services;
- ) whether the donor should take part in social activities, leisure activities, education or training;
- ) the donor's personal correspondence and papers;
- ) rights of access to personal information about the donor; or
- ) complaints about the donor's care or treatment.

Donors can add restrictions or conditions to areas where they would not wish the attorney to have the power to act. For example, a donor might only want an attorney to make decisions about their social care and not their healthcare.

There are particular rules for LPAs authorising an attorney to make decisions about life-sustaining treatment.

A general Health and Welfare LPA gives the attorney the right to make all of the decisions set out above, although this is not a full list of the actions they can take or decisions they can make. However, a Health and Welfare LPA can only be used at a time when the donor lacks capacity to make those specific decisions.

Scenario: Denying attorneys the right to make certain decisions

Mrs Green is in the early stages of Alzheimer's disease. She is anxious to get all her affairs in order while she still has capacity to do so. She makes a Health and Welfare LPA, appointing her daughter as attorney. But Mrs Green knows that her daughter does not always get on with some members of the family – and she would not want her daughter to stop those relatives from seeing her.

She states in the LPA that her attorney does not have the authority to decide who can contact her or visit her. If her daughter wants to prevent anyone having contact with Mrs Green, she must ask the Court of Protection to decide.

Before making a decision under a Health and Welfare LPA, the attorney must be sure that:

- ) the LPA has been registered with the LPA Registrar;
- ) the donor lacks the capacity to make the particular decision or the attorney reasonably believes that the donor lacks capacity to take the decisions covered by the LPA, (having applied the MHA 2016's principles); and
- ) they are making the decision in the donor's best interests.

When healthcare or social care staff are involved in preparing a care plan for someone who has appointed a Health and Welfare attorney, they must first assess whether the donor has capacity to agree to the care plan or to parts of it. If the donor lacks capacity, professionals must then consult the attorney and get their agreement to the care plan. They will also need to consult the attorney when considering what action is in the person's best interests.

**Health and Welfare LPAs that authorise an attorney to make healthcare decisions**

A Health and Welfare LPA allows attorneys to make decisions to accept or refuse healthcare or treatment unless the donor has stated clearly in the LPA that they do not want their attorney to make these decisions.

Even where the LPA includes healthcare decisions, attorneys do not have the right to consent to or refuse treatment in situations where the donor has capacity to make the particular healthcare decision.

**An attorney has no decision-making power under a Health and Welfare LPA if the donor can make their own treatment decisions.**

If the donor has made an advance decision to refuse a specific proposed treatment, an attorney cannot consent to treatment if the donor has made a valid and applicable advance decision to refuse that treatment.

However, if the donor made an LPA after the advance decision, and gave the attorney the right to consent to or refuse the treatment, the attorney can choose not to follow the advance decision.

An attorney has no power to consent to or refuse life-sustaining treatment, unless the LPA document expressly authorises this.

Attorneys must always follow the principles of the Mental Health Act 2016 and make decisions in the donor's best interests. If the relevant healthcare staff disagree with the attorney's assessment of best interests, they should discuss the case with other medical experts and/or get a formal second opinion. Then they should discuss the matter further with the attorney. If they cannot settle the disagreement, they can apply to the Court of Protection. While the court is coming to a decision, healthcare staff can give life-sustaining treatment to prolong the donor's life or stop their condition getting worse.

An attorney can only consent to or refuse life-sustaining treatment on behalf of the donor if, when making the LPA, the donor has specifically stated in the LPA document that they want the attorney to have this authority.

As with all decisions, an attorney must act in the donor's best interests when making decisions about such treatment. This will involve applying the best interests checklist and consulting with carers, family members and others interested in the donor's welfare. In particular, the attorney must not be motivated in any way by the desire to bring about the donor's death.

Scenario: Making decisions about life-sustaining treatment Mrs Sullivan has never trusted doctors. She prefers to rely on alternative therapies. Because she saw her father suffer after invasive treatment for cancer, she is clear that she would refuse such treatment herself.

She is diagnosed with cancer and discusses her wishes with her husband. Mrs Sullivan knows that he would respect her wishes if he ever had to make a decision about her treatment. She makes a Health and Welfare LPA appointing him as her attorney with authority to make all her welfare and healthcare decisions. She includes a specific statement authorising him to consent to or refuse life-sustaining treatment.

He will then be able to consider her views and make decisions about treatment in her best interests if she later lacks capacity to make those decisions herself.

## **Are there any other restrictions on attorneys' powers?**

Attorneys are not protected from liability if they do something that is intended to physically restrain the donor's liberty, unless:

- )] the attorney reasonably believes that the donor lacks capacity to make the decision in question;
- )] the attorney reasonably believes that restraint is necessary to prevent harm to the donor; and
- )] the type of restraint used is in proportion to the likelihood and the seriousness of the harm.

Attorneys have no authority to take actions that result in the donor being significantly restricted of their liberty.

Any deprivation of liberty will only be lawful if this has been properly authorised and there is other protection available for the person who lacks capacity. An example would be the protection around detention under the Mental Health Act or a court ruling.

## **What powers does the court have over LPAs?**

The court has a range of powers to:

- )] determine whether an LPA is valid;
- )] give directions about using the LPA; and

) make such other directions as it considers necessary.

If somebody has doubts over whether an LPA is valid, they can ask the court to decide whether the LPA:

) meets the Act's requirements;

) has been revoked, (cancelled), by the donor; or

) has come to an end for any other reason.

The court can also stop somebody registering an LPA or revoke the LPA if:

) the donor made the LPA as a result of undue pressure or fraud; or

) the attorney behaves, has behaved or is planning to behave in a way that goes against their duties or is not in the donor's best interests.

The court can also clarify an LPA's meaning, if it is not clear, and it can tell attorneys how they should use an LPA. The court can, in accordance with section 18(4) of the Act, also authorise an attorney to give a gift that the Act does not normally allow under section 12, if it is in the donor's best interests.

All attorneys should keep records of their dealings with the donor's finances. The court can order attorneys to produce records, (for example, financial accounts), and to provide specific reports, information or documentation. If somebody has concerns about an attorney's payment or expenses, the court could resolve the matter.

### **What responsibilities do attorneys have?**

A donor cannot insist on somebody agreeing to become an attorney. It is down to the proposed attorney to decide whether to take on this responsibility. When an attorney accepts the role by signing the LPA document, this is confirmation that they are willing to act under the LPA once it is registered.

An attorney can withdraw from the appointment if they ever become unable or unwilling to act, but if the LPA has been registered they must follow the correct procedures for withdrawing. Once the attorney starts to act under an LPA, they must meet certain standards. If they do not carry out the duties below, they could be removed from the role. In some circumstances they could face charges of fraud or negligence.

### **What duties does the Act impose?**

Attorneys acting under an LPA have a duty to:

- ) follow the best interests principles and make decisions in the donor's best interests;
- ) have regard to the guidance in this Code of Practice; and
- ) only make those decisions the LPA gives them authority to make.

**Principles and best interests**

Attorneys must act in accordance with the Act and the principles set out in sections 86 (the principles) and 89 (best interests) of the MHA 2016. In particular, attorneys must consider whether the donor has capacity to make the decision for themselves. If not, they should consider whether the donor is likely to regain capacity to make the decision in the future. If so, it may be possible to delay the decision until the donor can make it.

**Only making decisions covered by an LPA**

A Health and Welfare attorney has no authority to make decisions about a donor's property and financial matters, (such as their finances). A Property and Financial attorney has no authority in decisions about a donor's personal care, (but the same person could be appointed in separate LPAs to carry out both these roles).

Under any LPA, the attorney will have authority in a wide range of decisions. If a donor includes restrictions in the LPA document, the attorney can only act within the limits set out in the LPA.

It is good practice for decision-makers to consult attorneys about any decision or action, whether or not it is covered by the LPA. This is because an attorney is likely to have known the donor for some time and may have important information about their wishes and feelings.

Scenario: Consulting attorneys

Mr Garcia makes and registers a Health and Welfare LPA appointing his son and daughter as his joint attorneys. He also makes a Property and Financial LPA, appointing his son and his solicitor to act jointly and severally to help with financial decisions.

Two years later, Mr Garcia has a stroke, is unable to speak and has difficulty communicating his wishes. He also lacks the capacity to make decisions about treatment. The attorneys under his Health and Welfare LPA would prefer to delay decisions about Mr Garcia's future care, because he might regain capacity to make the decisions himself, but at this time, they agree that some decisions cannot wait.

Although the solicitor has no authority to make welfare decisions, the welfare attorneys consult the solicitor about their father's best interests. They speak to him about immediate treatment decisions and their suggestion to delay making decisions about his future care. Similarly, the Property and Financial attorneys can consult the son and daughter about the financial decisions that Mr Garcia does not have the capacity to make himself.

**What are an attorney's other duties?**

An attorney appointed under an LPA is acting as the chosen agent of the donor and therefore, under the law of agency, the attorney has certain duties towards the donor. An attorney takes on a role which carries a great deal of power, which they must use carefully and responsibly. They have a duty to:

- J apply certain standards of care and skill, (duty of care), when making decisions;
- J carry out the donor's instructions;
- J not take advantage of their position and not benefit themselves, but benefit the donor, (fiduciary duty);
- J not delegate decisions, unless authorised to do so;
- J act in good faith;
- J respect confidentiality;
- J comply with the directions of the court;
- J not give up the role without telling the donor and the court.

In relation to Property and Financial LPAs, the attorneys have a duty to:

- ) keep accounts; and
- ) keep the donor's money and property separate from their own.

**Duty of care**

'Duty of care' means applying a certain standard of care and skill. The level of care and skills required varies depending on whether the attorney is paid for their services or holds relevant professional qualifications.

Attorneys who are not being paid must apply the same care, skill and diligence they would use to make decisions about their own life. An attorney who claims to have particular skills or qualifications must show greater skill in those particular areas than someone who does not make such claims.

If attorneys are being paid for their services, they should demonstrate a higher degree of care and skill.

Attorneys who undertake their duties in the course of their professional work, (such as solicitors), must display professional competence and follow their profession's rules and standards.

**Fiduciary duty**

A fiduciary duty means attorneys must not take advantage of their position, nor should they put themselves in a position where their personal interests conflict with their duties. They also must not allow any other influences to affect the way in which they act as an attorney. Decisions should always benefit the donor, and not the attorney.

Attorneys must not profit or get any personal benefit from their position, apart from receiving gifts where the Act allows it under sections 12 or 18(4), whether or not it is at the donor's expense.

**Duty not to delegate**

Attorneys cannot usually delegate their authority to someone else. They must carry out their duties personally. The attorney may seek professional or expert advice, (for example, investment advice from a financial adviser or advice on medical treatment from a doctor), but they cannot, as a general rule, allow someone else to make a decision that they have been appointed to make, unless this has been specifically authorised by the donor in the LPA.

In certain circumstances, attorneys may have limited powers to delegate, (for example, through necessity or unforeseen circumstances, or for specific tasks which the donor would not have expected the attorney to attend to personally). Attorneys should not delegate decisions that rely on their discretion.

**Duty of good faith**

Acting in good faith means acting with honesty and integrity. For example, an attorney must try to make sure that their decisions do not go against a decision the donor made while they still had capacity, (unless it would be in the donor's best interests to do so).

**Duty of confidentiality**

Attorneys have a duty to keep the donor's affairs confidential, unless:

- ) before they lost capacity to do so, the donor agreed that some personal or financial information may be revealed for a particular purpose, (for example, they have named someone they want to check their financial accounts); or
- ) there is some other good reason to release it, (for example, it is in the public interest or the best interests of the person who lacks capacity, or there is a risk of harm to the donor or others).

In the latter circumstances, it may be advisable for the attorney to get legal advice.

**Duty to comply with the directions of the court**

Under the Act, the court has wide-ranging powers to decide on issues relating to the operation or validity of an LPA. It can also:

- ) order them to produce records, (for example, financial accounts); or
- ) order them to provide specific information or documentation to the court.

Attorneys must comply with any decision or order that the court makes.

**Duty not to disclaim without notifying the donor and the LPA Registrar**

Once someone becomes an attorney, they cannot give up that role without notifying the donor and the LPA Registrar. If they decide to give up their

role, they should file a written disclaimer and submit this to the LPA Registrar.

## **Duty to keep accounts**

Property and Financial attorneys must keep accounts of transactions carried out on the donor's behalf. Sometimes the Court will ask to see accounts. If the attorney is not a financial expert and the donor's affairs are relatively straightforward, a record of the donor's income and expenditure, (for example, through bank statements), may be enough. The more complicated the donor's affairs, the more detailed the accounts may need to be.

## **Duty to keep the donor's money and property separate**

Property and Financial attorneys should usually keep the donor's money and property separate from their own or anyone else's. There may be occasions where donors and attorneys have agreed in the past to keep their money in a joint bank account, (for example, if a husband is acting as his wife's attorney). It might be possible to continue this under the LPA, but in most circumstances, attorneys must keep finances separate to avoid any possibility of mistakes or confusion.

## **How does the Act protect donors from abuse?**

Attorneys are in a position of trust, so there is always a risk of them abusing their position. Donors can help prevent abuse by carefully choosing a suitable and trustworthy attorney.

Signs that an attorney may be exploiting the donor, (or failing to act in the donor's best interests), include:

- J stopping relatives or friends contacting the donor – for example, the attorney may prevent contact or the donor may suddenly refuse visits or telephone calls from family and friends for no reason;
- J sudden unexplained changes in living arrangements, (for example, someone moves in to care for a donor they have had little contact with);
- J not allowing healthcare or social care staff to see the donor;
- J taking the donor out of hospital against medical advice, while the donor is having necessary medical treatment;
- J unpaid bills, (for example, residential care or nursing home fees);
- J an attorney opening a credit card account for the donor;

- J spending money on things that are not obviously related to the donor's needs;
- J the attorney spending money in an unusual or extravagant way; or
- J transferring financial assets to another country.

In cases of suspected physical or sexual abuse, theft or serious fraud, the person should contact the police. They might also be able to refer the matter to the Care Agency.

The court may revoke, (cancel), the LPA or, (through the LPA Registrar), prevent it being registered, if it decides that:

- J the LPA does not meet the legal requirements for creating an LPA;
- J the LPA has been revoked or come to an end for any other reason;
- J somebody has used fraud or undue pressure to get the donor to make the LPA;
- J the attorney has done something that they do not have authority to do;  
or
- J the attorney has behaved or is planning to behave in a way that is not in the donor's best interests.

The role of an attorney is a serious role. It is a criminal offence, (with a maximum penalty of ten years' imprisonment, a fine, or both) for anyone (including attorneys), to wilfully neglect or ill-treat a person in their care who lacks capacity to make decisions for themselves.