***Why safeguards should be included***

***in property and financial affairs lasting powers of attorney***

It is a fact that an LPA is relatively easy to make and very easy to abuse or misuse. It is impossible to know the number of powers abused or misused, but the donor should be advised of the risk and what they can do to prevent things going wrong.

Not only should the attorney be trustworthy, but they should also be a good decision maker. The proposed attorney might for example, be disorganised, indecisive, challenging, self-serving, domineering, or easily influenced by others, which impacts on their ability to make good decisions.

Case law has demonstrated that where the attorney makes poor decisions, they generally do so due to lack of knowledge and information, and because they define their role by reference to their relationship with the donor, and not as an attorney, with associated statutory and fiduciary responsibilities.

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| **The professional adviser is a safeguard** |
| The professional adviser acts as a vital safeguard for the donor to:   * ensure the donor wants to make the power and is not acting under the undue pressure or influence of the attorney * ensure the donor has the required capacity to make the power * ensure the donor understands what the attorney will be able to do, and any limits * draft the power to include safeguards to reduce the risk of abuse or misuse * draft the power to include appropriate administrative provisions * ensure the attorney is provided with relevant information as to their role, the role of the OPG and Court of Protection * ensure the PFA attorney understands their limited power to make gifts * explain to the attorney what might happen if the attorney does not act in the donor’s best interests or exceeds their authority |

Legal advice is often focused on the drafting of the power, and getting it through the OPG registration process with less attention on the future operation of the power. It is a misconception that it is good practice to avoid including any restrictions or conditions in the power, in case the terms are rejected by the OPG ,which delay registration pending an application by the Public Guardian for severance of the offending term. Advisers should draft for use!

If it appears to the Public Guardian that the instrument contains a provision which:

1. would be ineffective as part of an LPA, or
2. would prevent the instrument from operating as a valid LPA,

the Public Guardian must apply to the Court for it to be determined under s23(1) and pending the determination, must not register the LPA (Sch 1, para 11(2), MCA 2005).

The OPG has developed a reputation of closely scrutinising LPAs and rejecting inserted provisions. In the majority of cases, the reason for rejection is because the person drafting the power has overlooked express statutory provisions, or common law rules. This is avoidable, if the person drafting the form has had appropriate training, and refers to the LPA regs, the MCA, and is aware of case law.

Advisers should find reassurance in the judgement of ***XY v Public Guardian*** [2015] EWCOP 35, when Senior Judge Lush said at para 39,

*‘….With respect to the Public Guardian, it is no part of his statutory duties to police the practicality or utility of individual aspects of an LPA. In the context of section 23 and Schedule 1, paragraph 11 of the MCA 2005 the phrase ‘ineffective as part of a lasting power of attorney’ clearly means ‘not capable of taking effect, according to its legal terms as part of an LPA.’*

*Examples of provisions which would be ineffective as part of a power of attorney would include:*

*(a) a provision which purported to permit the attorney to make gifts which go beyond the statutory restrictions found at section 12 MCA 2005.*

*(b) a provision which purported to go beyond what a person can do by an attorney (such as make a will or vote).*

*(c) a provision which purported to permit the attorney to consent to a marriage on behalf of the donor (see MCA section 27(1)(a).’*

As part of making a best interest decision under the MCA, the attorney must take into account the donor’s past, present wishes and feelings, and in particular ‘any written statement’ made by the donor when they had capacity. The written statement could be included in the power or as a separate statement/letter of wishes. It can be very hard for an attorney to know whether they are making the sort of decision the donor would want, if they do not know the donor’s views and wishes.

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| **Why include preferences and instructions?** |
| * To give the attorney specific authority, which is **required**, to avoid a breach of fiduciary duty, for example, a charging clause so the attorney can benefit from their role; * To give the attorney specific authority which **may** be needed to facilitate decision making, for example, consent to obtain medical evidence of capacity; * To provide **safeguards** against abuse/misuse and poor decision making; and * To assist the **attorney understand** the way they should make decisions, as attorneys don’t know what they don’t know! |

***Suggested safeguards***

**Precedent 1. Include some form of supervision clause so there is accountability to a third party.**

These can be complex or very simple, and enables a third party to see whether the attorney is acting within the scope of their authority.

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| Provision for audited accounts to be prepared (property and financial affairs LPA)  My attorney(s) shall, within [two] months of the first anniversary of the [registration][use] of this power and each subsequent anniversary, have prepared [and audited] by [a/my] chartered accountant[s] [*specifically* *insert name*], accounts of their dealings as my attorneys. [I further direct that the said accounts shall be disclosed by my attorneys to [*name*] within [*xx weeks*] of the date of their preparation].  **Note:** This would be appropriate for a donor with a high value estate, particularly where they have previously had accountants involved in their tax affairs. The accounts could be shared with a trusted non- attorney so they can look over these, may act as a safeguard against poor decision making. The donor would need advice as to who would be best placed to receive copies of the accounts. Any professional who oversees the accounts would be entitled to charge for this service. There is no need to include a charging clause in the power for this service, as they ‘supervisor’ is not an attorney.  Provision for unaudited accounts to be prepared (property and financial affairs LPA)  My attorney(s) must keep accounts and records of all their dealings with my property and financial affairs [and submit it [annually][half yearly] to [*insert name(s)*], [and for the avoidance of doubt, it does not create any legal obligation on [*insert name(s)*] to perform this function, or any right to challenge [him/her/them] in the event of a failure or omission to identify any transaction which should not have occurred.  **Note:** Paragraph 7.67 of the Mental Capacity Act 2005 Code of Practice states that: ‘Property and affairs attorneys must keep accounts of transactions carried out on the donor’s behalf. Sometimes the Court of Protection will ask to see accounts. If the attorney is not a financial expert and the donor’s accounts 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.’  The accounts could be shared with a trusted non- attorney so they can look over these, may act as a safeguard against poor decision making. The donor would need advice as to who would be best placed to receive copies of the accounts.  Any professional who oversees the accounts would be entitled to charge for this service. There is no need to include a charging clause in the power for this service, as the ‘supervisor’ is not an attorney.  Provision for copies of financial statements to be provided to a non- attorney (property and financial affairs LPA)  My attorneys must provide copies of my financial statements on a [monthly/quarterly/annual] basis to my [friend/brother/sister/daughter/son etc]. [For the avoidance of doubt, it does not create any legal obligation on [*insert name(s)*] to perform this function, or any right to challenge [him/her/them] in the event of a failure or omission to identify any transaction which should not have occurred.  **Note:** Paragraph 7.39 of the Mental Capacity Act 2005 Code of Practice suggests that ‘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 affairs when they lack the 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 signed LPA document. The LPA should also say whether the person can charge a fee for this service.’  The donor would need advice as to who would be best placed to receive copies of the statements.  Any professional who oversees the accounts would be entitled to charge for this service. There is no need to include a charging clause in the power for this service, as the ‘supervisor’ is not an attorney. |

**Precedent 2. Expressly include people the attorney should consult with.**

This helps best interest decision making, so the attorney knows who should be consulted, and for a stated purpose. Consultees also help to keep the attorney in check.

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| People the attorney should consult with (property and financial affairs LPA)  If it is practicable and appropriate, in determining what is in my best interests, my attorney(s) must consult with [my (explain relationship(s))], [*insert name(s)]* and take into account [his/her/their views] [if and when decisions are proposed to be made about [gifts over [£50]], [the sale of my home,] [investments][and /or any application is made to the Court of Protection which concerns me.]  **Note:** MCA 2005, s4(2) states that when making the determination as to what is in the best interests of an individual who lacks capacity, the substitute decision-maker ‘must consider all the relevant circumstances and, in particular, take the following steps’. These steps include s4(7)(a), which provides that a decision-maker must take into account the views of anyone named by the person as someone to be consulted on the matter in question or on matters of that kind. This helps best interest decision making, so the attorney knows who should be consulted, and for a stated purpose. Consultees also help keep the attorney in check. |

**Precedent 3. Express requirement to support and consult the donor and take into account his views.**

Lay attorneys are unlikely to seek out and read the Mental Capacity Act 2005 or its Code of Practice. They are also unlikely to read the peripheral information contained in the prescribed form. By expressly including a provision, the attorney’s attention is drawn to what they should do, to support the donor to make those decisions he or she can make, involve him or her when making a decision on his or her behalf, and understand the weight to be attached to the donor’s views, wishes, feelings and beliefs.

If the donor has views etc, this should be captured within the preference box in section 7 or on the continuation sheet. These can be updated by a side letter, as these all form 'written statements', which should be taken into account when making a decision in the donor’s best interests.

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| Express requirement to support and consult the donor and take into account his views  My attorney(s) must:  (i)  apply the principles set out in section 1 of the Mental Capacity Act 2005 and have regard to the guidance in the Code of Practice to the Act, and in particular, support me to make those decisions I am capable of making, and in this respect, have regard to chapter 3 of the Code;  (ii) if I cannot make my own decisions or choose to not make a decision, my attorney(s), so far as is reasonably practical, should encourage my participation, and take into account my (current and past) views, feelings, beliefs and values and any other factor that I would consider important, in making a decision which is in my best interests; and  (iii) try to achieve the outcome I would want, where my views are rational, sensible, responsible and pragmatically capable of implementation in the circumstances.  **Note:** Lay attorneys are unlikely to seek out and read the Mental Capacity Act 2005 or its Code of Practice. They are also unlikely to read the peripheral information contained in the prescribed form. By expressly including a provision, the attorney’s attention is drawn to what they should do, to support the donor to make those decisions he can make, involve him when making a decision on his behalf, and understand the weight to be attached to the donor’s views, wishes, feelings and beliefs.  These can be updated by a side letter, as these all form 'written statements', which should be taken into account when making a decision in the donor’s best interests. |

**Precedent 4. Expressly state the limited power to make gifts.**

Strictly speaking, there is no need to insert this provision into the property & financial affairs Lasting Power of Attorney, because this limited authority is conferred on the attorney(s) by virtue of section 12(2) of the Mental Capacity Act 2005. Nevertheless, it may be sensible to include it in the power as a reminder or prompt to the attorney(s) of the limited scope to make gifts, but it also puts third parties, such as financial institutions on notice of any transaction where the attorney or someone close to the attorney is benefiting from a gift, which may exceed their authority.

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| Customary occasion gifts limit (property and financial affairs LPA)  (i) My attorneys may make gifts:  (a) on customary occasions to persons (including themselves) who are related to or connected with me, or  (b) to any charity to which I made or might have been expected to make gifts,  provided that the value of each such gift is not unreasonable having regard to all the circumstances, and in particular the size of my estate.  (ii) such gifts must not exceed the total value of £[ ] to any one person in each calendar year;  (iii) such gift to any charity should not exceed the total value of £[ ] in each calendar year.  **Note:** Strictly speaking, there is no need to insert (i) (a) and (b) into the property & financial affairs LPA, because this limited authority is conferred on the attorney(s) by virtue of section 12(2) of the Mental Capacity Act 2005. Nevertheless, it may be sensible to include it in the LPA as a reminder to the attorney(s) of the limited scope to make gifts, but it also puts third parties, such as financial institutions on notice of any transaction where the attorney or someone close to the attorney is benefiting from a gift, which may exceed their authority. |

**Precedent 5: Include an investment clause which is largely aligned to a deputyship order.**

Lay attorneys are unlikely to know how to invest and need to be prompted to obtain proper advice. Abuse can occur where an attorney invests in their own name, their own business, lends themselves or someone connected to them the donor’s money, or invests in high risk, long term investments with the aim of benefiting eventual beneficiaries, rather than the donor.

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| Investments and power to delegate (property and financial affairs LPA)  (i) My attorney(s) must exercise such care and skill as is reasonable in the circumstances when investing my assets.  (ii) My attorney(s) may make any kind of investment that I could make.  (iii) In exercising this power to invest, my attorney(s) must have regard to the standard investment criteria under the Trustee Act 2000, namely the suitability of the investments and the need for diversification, in so far as is appropriate in the circumstances which affect me.  (iv) My attorney(s) must from time to time review the investments and consider whether, having regard to the standard investment criteria, they should be varied.  (v) Unless my attorney(s) reasonably conclude(s) that in all the circumstances it is unnecessary or inappropriate to do so, before exercising any power to invest, my attorney(s) must obtain and consider proper advice about the way in which, having regard to the standard investment criteria, the power should be exercised. ‘Proper advice’ is the advice of a person who my attorney(s) reasonably believe(s) to be qualified to give it by his ability and practical experience of financial and other matters relating to the proposed investment.  (vi) If my attorney(s) consider(s) it is in my best interests to do so, [he/she/they] may appoint an investment manager, who is regulated and authorised to undertake investment business [in the United Kingdom] [or the Channel Islands or the Isle of Man] / [anywhere in the world] and to transfer any of my assets into a discretionary investment management regime to be manage under the standard terms and conditions applicable to such service from time-to-time, and to permit the investments to be held in the name of the investment manager nominee company.  (vii) If I already hold investments in a discretionary management regime, I want the regime to continue.  **Note:** Paragraph 7.38 of the Mental Capacity Act 2005 Code of Practice states that ‘the attorney must make these decisions personally and cannot generally give someone else authority to carry out their duties. But 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).’ |

**Precedent 6. Notify a third party after registration.**

This gives a non- attorney ‘permission’ to remain interested and raise any concerns with the OPG safeguarding team. It can be dovetailed with the supervision clause in the LPA, set out above.

Dear [x]

Re: [*insert the name of the donor*]

We act for [*insert the name of the client*], and [he/she] wishes you to be told [he/she] has made a [property and financial affairs] [and] [health and welfare] Lasting Power of Attorney, appointing [*insert relationship and name of attorney(s)*] to make decisions on [his/her] behalf.

The Power can be used, if and when [*insert the name of the client*] lacks mental capacity to make [his/her own] decisions.

[[*insert the name of the client*] has included provision in [his/her] power for you to be given financial information by the attorney(s), so you can see how money is being invested and spent.]

The attorney is able to make gifts to charities or people who are connected to [*insert the name of the client*] on customary occasions, such as birthdays, anniversaries or religious days, but these must always be reasonable is size and in the circumstances.

In most cases, an attorney acts appropriately, but to reduce the risk of its misuse, [*Insert the name of the client*] wants you to know about the Power, as [he/she] believes that if you had a concern about the way in which the attorney(s) were making decisions, you would raise it with the Office of the Public Guardian (OPG).

The OPG is a safeguarding body and can investigate concerns, and take action, if they think it is necessary. You can be assured they will handle any concern on a confidential basis.

The contact details are:

Office of the Public Guardian

Safeguarding Unit   
PO Box 16185   
Birmingham   
B2 2WH

[opg.safeguardingunit@publicguardian.gsi.gov.uk](mailto:opg.safeguardingunit@publicguardian.gsi.gov.uk)

Telephone: 0115 934 2777

Please keep this letter in a safe place, in case you later need to refer to it.

Yours sincerely,

**Precedent 7: Provide Guidance to the attorney, to nudge them into making good decisions**

guidance for a 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, 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.

**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 for 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 produced 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.

**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 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224660/Mental_Capacity_Act_code_of_practice.pdf>

**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 says about Lasting Powers of 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 your 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.

**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.

**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.

**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 have difficulties, read the consumer guide and the guidance framework for bank and building society staff available at: <https://www.bba.org.uk/publication/leaflets/guidance-for-people-wanting-to-manage-a-bank-account-for-someone-else-2/>

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.

**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.

**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.

**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

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738231/lp11-getting-started-as-an-attorney-property-and-affairs-web.pdf>

* LP14: How to act as a Property and Financial Affairs Attorney

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/539506/LP14-How-to-be-a-property-and-finances-attorney.pdf>

* 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>

* OPG2: Giving gifts for someone else A guide for attorneys and deputies

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/530275/OPG2-Giving-gifts-for-someone-else.pdf>

* SD14: OPG’s approach to family care payments

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641143/Family-care-payments-practice-note-SD14.pdf>

* Public Guardian practice note (02/2011): notification of death

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/640994/Notification-of-death-practice-note-02-2011.pdf>

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