

Lasting Powers of Attorney or Deputies – guidance for health and social care staff

1. Does the person have capacity to make the health or care decision?

Yes – if they have capacity, an LPA or deputy (for health and welfare) has no effect. The person can make their own decisions and can give or refuse consent.

No – if they currently lack capacity in relation to health or care then an appropriate LPA or deputy could have an effect. Go to question 3.

2. Does the person have capacity to make financial decisions?

Yes – a deputy for finances has no power to act for them. If the LPA is for finances, the attorney **may** have authority depending on what the LPA states. Go to next question.

No – a deputy or LPA for finances will have authority to make decisions over finances. Go to next question.

3. Does the person have any evidence that they are an attorney or deputy?

Request evidence from the person stating they are an attorney or deputy. They should be able to present the registered LPA form or a Court of Protection order for deputies. The OPG has pictures of what registered LPAs look like on its website:

www.gov.uk/government/publications/lasting-power-of-attorney-valid-examples.

Examples of what valid deputyship orders like live are available on:

www.gov.uk/government/publications/deputy-court-order-valid-example

If you are not satisfied by the attorney or deputy's evidence, go to point 4.

If you are satisfied, go to point 5.

Note: until you see evidence of the person being an attorney or deputy you should continue to deliver care and treatment under the MCA as usual. A common mistake is people stating they are an attorney for health and welfare and in fact they only have authority for financial decisions.

4. If the evidence is absent or doubtful.

If staff are still concerned about the validity of the attorney's or deputies evidence, or they cannot produce it, staff can search the national register of attorneys and deputies. This is a free service using form OPG100 and can be returned within 24 hours:

www.gov.uk/government/publications/search-public-guardian-registers

Check your local policy on how to do this. For example, some organisations want staff to go through their legal department or a senior member of staff. If the Office of the Public Guardian does not have a record of the LPA or deputy then continue to deliver care and treatment using the Act. Record the actions you have taken for any future issues. If the OPG confirms the attorney or deputy has been appointed, go to next point.

5. You have confirmed there is an LPA or deputy.

Take a copy (or scan) of the document and keep it on record.

6. Does the LPA form or deputyship order cover the decision concerned?

Yes – the decision-maker becomes the attorney or deputy in this case. They must follow the Act and make a best interests decision. The attorney or deputy is responsible for making the final decision.

No – you make the care, treatment or financial decisions as before under the Act in the person's best interests. This will mean consulting others including any attorney or deputy who wishes to be consulted.