

The Newcastle Upon Tyne Hospitals NHS Foundation Trust

Policy on Lasting Power of Attorney and Court of Protection

Effective December 2007

Review: March 2012

1. Introduction

- 1.1 Lasting Powers of Attorney (LPA) are to be introduced with effect from October 2007 and will replace Enduring Power of Attorney and introduce new safeguards against abuse and exploitation.
- 1.2 The Enduring Power of Attorney Act 1985 introduced Enduring Powers of Attorney (EPA). An EPA allowed an Attorney to make decisions solely about property and affairs both before and after loss of capacity (or during periods of fluctuation) according to the person's wishes. Enduring Powers of Attorney signed and dated on, or prior to, 30 September 2007 will remain valid after the introduction of the new LPA although new ones cannot be drawn up after this time.
- 1.3 Enduring Powers of Attorney did not give the attorney rights to decide the medical or welfare care of the donor. LPA (Welfare) now gives the attorney the legal right to decide on the care the patient receives based on the wishes expressed in the LPA

2. Documentation

- 2.1 A LPA is a legal document by which one person (the donor) aged 18 or over, gives another person(s) the authority to act on their behalf. This may be in relation to property or financial affairs, personal welfare, healthcare and consent to medical treatment.
- 2.2 The LPA must be executed in a prescribed form and it must be registered with the Office of the Public Guardian before it can be used. See sample document attached as Appendix I.
- 2.3 The LPA will be completed by the Donor whilst they have capacity and a 'Certificate Provider' will be required to complete documentation to the effect that the Donor had capacity and did not complete the LPA under duress.
- 2.4 The LPA is not activated until it has been registered with the Office of the Public Guardian (OPG). It is the role of the OPG to scrutinize the legality of the document; it is not their role to comment on the content of the document. Whilst the OPG, in its guidance notes, recommends that the Donor makes their wishes clear and easily understood e.g. "when I reach X stage in my life I do not want artificial hydration or nutrition" it is not their role to ask the donor to clarify their wishes. If the LPA is unclear the Trust will approach the Court of Protection for clarification. Until such times as the decision of the Court is made, clinicians must act in what they believe to be the patient's best interest, in accordance with the Mental Capacity Act. The application to the Court of Protection will be made through the Legal Services Department.

- 2.5 An LPA can only be made if the person has capacity to do so. If staff feel that there is any suspicion that there is anything amiss the OPG should be contacted through the Legal Services Department.
- 2.6 When perusing the LPA for authenticity staff must ensure that all pages are numbered sequentially and that every page has the OPG's Holographic Registration sticker applied. If pages are missing or the Holographic sticker is missing, the form will be classed as void until such times as confirmation can be obtained from the OPG.
- 2.7 Checking the Registration of a LPA will be carried out through the Legal Services Department. The OPG can be contacted during normal working hours
- 2.8 A LPA in relation to property, affairs and finance can be used both before and after the donor loses capacity, according to the donor's wishes. LPA (Welfare) in relation to personal welfare, healthcare and medical treatment can only be used when the donor lacks capacity to make a decision in this respect.
- 2.9 When a patient or their representative makes known the existence of an LPA staff will check the LPA for validity and appropriateness and maintain a copy in the patient's records. Clinical staff must consult with the Attorney appointed under a valid LPA (where known) when the decision required is appropriate to the LPA.
- 2.10 Patients subject to the Mental Health Act 1983 are able to make a LPA, if they have the capacity to do so. An Attorney cannot consent to or refuse treatment for a mental disorder for a service user detained under Section 28 of the Mental Health Act.
- 2.11 An Attorney is the personal choice of the patient. Trust employees should not act as an Attorney during the course of their work.

3. Court of Protection and the appointment of deputies.

- 3.1 The Mental Capacity Act 2005 establishes a new specialist court, known as the Court of Protection, with a new jurisdiction to deal with decision making for adults who lack capacity. The new court will be able to make decisions about property and affairs and personal welfare (welfare and healthcare) matters. The Court of Protection has the power to:
- decide whether the person has capacity to make a particular decisions for themselves
 - make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make such decision
 - appoint deputies to make decisions for people lacking capacity to make those decisions
 - decide whether a Lasting Power of Attorney or Enduring Power of Attorney is valid
 - remove deputies or attorneys who fail to carry out their duties.

- 3.2 If a patient has not appointed or is unable to appoint an Attorney (LPA) and they need certain decisions made on their behalf, which cannot be taken other than by bringing the matter to a court, then an application will be made to the Court of Protection. In most cases, the application will be made by the patient's family or carers, but occasionally by the Trust, where no other appropriate person can be identified.
- 3.3 Trust employees will abide by the procedures of the new Court of Protection made under the authority of the Lord Chief Justice with the agreement of the Lord Chancellor and published by the OPG. Employees will use the guidance and procedures as defined within the Court of Protection Rules and Practice Directions issued by the Court.
- 3.4 All applications to the Court of Protection will be made through Legal Services Department and the Trust's Legal Advisor. Employees should not make an application directly to the Court of Protection without the prior agreement of the Legal Services Department.
- 3.5 The OPG responsible for the supervision and support of Deputies and if it is felt that possible abuse or exploitation has or is taking place by any Deputy appointed by the Court of Protection, the Trust has a duty to inform the OPG immediately.

4. Court of Protection and cases involving young people aged 16/17 years

- 4.1 Either a court dealing with family proceedings or the Court of Protection can hear cases involving young people aged 16 or 17 who lack capacity. In some cases, the Court of Protection can hear cases involving people younger than 16. Under section 21 of the Mental Capacity Act, the Court of Protection can transfer cases concerning children to a court that has powers under the Children Act 1989. Such a court can also transfer cases to the Court of Protection.

5. Court of Protection – Serious Healthcare and Medical Treatment

- 5.1 Decision makers have a duty to make an application to the Court of Protection for a declaration that a proposed action is lawful before that action is taken in the following situations: -
- Decisions about the proposed withholding or withdrawal of artificial nutrition and hydration from patients in a permanent vegetative state.
 - Cases involving organ or bone marrow donation by a person who lacks capacity to consent.
 - Cases involving the proposed non-therapeutic sterilisation of a person who lacks capacity to consent to this.
 - All other cases where there is a doubt or dispute about whether a particular treatment will be in a person's best interests.

All applications will be made through the Trust's Legal Services Department and Legal Representative.

The Trust will use the guidance provided by the Court of Protection and OPG and will produce appropriate internal processes and procedures to support the making of an application.

- 5.4 Section 20 of the Mental Capacity Act 2005 sets out specific restrictions on a Deputy’s powers. A Court Appointed Deputy or Receiver has no authority to make decisions or take actions in the following respect: -
- where the action is intended to restrain the person who lacks capacity
 - if they think that the person concerned has capacity to make a particular decision for themselves
 - if their decision goes against a decision made by an attorney acting under a Lasting Power of Attorney granted by the person before they lost capacity, or
 - to refuse the provision or continuation of life sustaining treatment for a person who lacks capacity to consent.
- 5.5 Deputies appointed by the Court of Protection will not be able to give consent on a patient’s behalf for treatment under Part 4 of the Mental Health Act 1983, where the patient is liable to be detained under the Mental Health Act.
- 5.6 Deputies will also not be able to take decisions about where a person subject to guardianship should live, or take decisions that conflict with decisions that a guardian has a legal right to make.

6. Monitoring of System

- 6.1 Ongoing review of applications to the Court of Protection will be carried out at the Clinical Risk Group to identify any failings in the Trust’s management of the LPA’s and to put in place organizational learning.

Author; Manager Clinical Governance and Risk	Accountable Director: Medical Director
Approved by: Clinical Policy Group	Area of Reference: Trust wide
Linked Documents: Record Keeping Policy Policy for Advance Decision (Living Wills/Advanced Refusal of Treatment) Incorporating the Mental Capacity Act 2005 Organ and Tissue Donation Policy	Further Advice: Clinical Governance and Risk Department

LPA PA 10.07

Lasting Power of Attorney Property and Affairs

For official use only
Date of registration

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This is a Lasting Power of Attorney (LPA). It allows you (the donor) to choose someone (the attorney) to make decisions on your behalf. Your attorney(s) can only use the completed LPA after it has been registered with the Office of the Public Guardian (OPG).

Getting started

Before you complete this LPA you **must** read the prescribed information on the next three pages so that you understand the purpose and legal consequences of making an LPA. You should refer to the separate notes on how to complete this LPA when you are directed to because they will help you to complete it.

Things you will need to do to complete this LPA


- decide who to appoint as your attorney(s) in the LPA
- decide if you want to appoint a replacement attorney in case your attorney(s) cannot act for you
- decide whether you want anyone to be notified when an application is made to register your LPA and, if you do, who you want to be notified
- choose at least one independent person to provide a certificate at Part B of the LPA
- fill in part A of the LPA. Your certificate provider(s) will need to complete Part B. Your attorney(s) will need to complete Part C
- have a witness to your signature at the end of Part A of the LPA

What to do after completing this LPA


An LPA can only be used after it has been registered with the OPG, so you will need to think about when you want it to be registered. There is a fee to register an LPA. Further information about how to register an LPA and what happens following registration is available from the OPG.

Information for you, your attorney(s) and your certificate provider(s) is available from the OPG. If you have any questions about how to complete this LPA please contact the OPG.

Office of the Public Guardian
Archway Tower
London N19 5SZ
0845 330 2900
www.publicguardian.gov.uk



If you have doubts about the authenticity of this document call 0845 330 2900



Registered by the Public Guardian

Important - This form cannot be used until it has been registered by the Office of the Public Guardian and stamped on every page.

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Lasting Power of Attorney Property and Affairs

Important

This LPA form cannot be used until it has been registered by the OPG and stamped on every page.

Before you complete this LPA form, you must read the prescribed information on pages 2, 3 and 4 and you should read the guidance produced by the OPG.

To help you complete the form, please refer to the Notes for completing an LPA — Property and Affairs.

PART A – Donor’s statement

Your details

1. My name and date of birth are:

See Note 1

Mr. Mrs. Ms. Miss Other

First name

Middle name(s)

Last name

Date of birth

D	D	M	M	Y			
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Any other names you are known by or have been known by in the past (e.g. maiden name)

See Note 2

2. My contact details and e-mail are:

See Note 3

Address

Postcode

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Telephone no.

Mobile no.

E-mail address



RACE AND EQUALITY IMPACT ASSESSMENT

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Name of Procedural Document Policy on Lasting Power of Attorney and Office of the Public Guardian

		Yes/No	Comments
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	Policy applies to those over 18 years
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	Applies to those patients that have either permanent or temporary loss of mental capacity following history of having capacity and covers all alternatives.
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	Not applicable	
4.	Is the impact of the policy/guidance likely to be negative?	No	
5.	If so can the impact be avoided?	No	
6.	What alternatives are there to achieving the policy/guidance without the impact?	Not applicable	
7.	Can we reduce the impact by taking different action?	No	

If you have identified a potential discriminatory impact of this procedural document, please refer it to Ian Warren, Manager Clinical Governance and Risk together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact Helen Lamont, Deputy Director Nursing and Patient Services