

# Mental Capacity Act 2005

## Checklist for assessing “Lasting Powers of Attorney” for patients aged 18 or above.

\_\_\_\_\_  
Patient’s name and date of birth

\_\_\_\_\_  
Hospital number

Under a Lasting Power of Attorney (LPA) the donor (the patient) confers upon individuals named in the document known as the “donee”, or “donees” if more than one, authority to make decisions about the donor’s personal welfare, property and affairs or specified matters concerning those.

This includes authority to make decisions when the donor no longer has capacity. However the following conditions must be satisfied for a valid LPA to be created:

- The donor must be 18 years old or above and have capacity when executing an LPA
- The donee must be at least 18 years old
- The instrument conferring authority (LPA) must be in specific terms and have been registered with the Public Guardian Office

Where the LPA allows decisions to be made as to the donor’s personal welfare and these decisions concern life-sustaining treatment a donee cannot refuse life-sustaining treatment unless the LPA expressly allows for this.

Where there is any doubt as to the validity of a LPA, or whether a donee under a LPA is acting in the best interests of the donor, legal advice should be sought and an application can be made to the Court of Protection if necessary.

Any decision in relation to powers conferred on a donee of a Lasting Power of Attorney should be considered with reference to the principles in section 1 of the Act and section 4 “best interests” provisions in the Act.

Please document clearly in the patient’s records or overleaf your reason for answering “yes” or “no” for any of the questions below. This form must be placed in the patient’s records.

**1. Have you seen the LPA and is it registered at the Court of Protection?**

YES / NO

If “yes” proceed to question 2

If “no” the LPA is not valid and the views and wishes of the donee do not have to be followed.

**2. Does the donor / patient have capacity?**

YES / NO

If “yes” the patient can make the decision.

If “no” proceed to question 3.

**3. Has the patient made any subsequent advance decision that is valid and applicable to this decision?**

YES / NO

If “yes” follow the advance decision.

If “no” proceed to question 4.

**4. Does the LPA cover the patient’s property and affairs only?**

YES / NO

If “yes” the donee does not have power to make decisions regarding the patient’s welfare.

If “no” and it is clear that it covers welfare issues also proceed to question 5.

**5. Does the Lasting Power of Attorney allow for a second donee and if so have they been consulted?**

YES / NO

If “yes” and the document states that the donees have “joint and several” responsibility then either donee may give the necessary authority. If it is only “joint” then both must agree to the proposed management.

If “no” then proceed with the relevant authority from the single donee.

6. Has the donee been fully informed of the nature, risks and consequences of the treatment being proposed as well as the consequences of accepting or refusing the treatment on behalf of the patient?

YES / NO

If "yes" proceed to question 7.

If "no" you must do so before the donee or donees take any decision.

7. Does the decision of the donee conflict with the views of health professionals looking after the patient or do you believe that the patient's best interests have not been properly considered (see the Best Interests checklist)?

If "yes" consideration should be given to referring the matter to the Office of the Public Guardian, if time permits, and the case should be reported to senior staff in order to obtain legal advice in the first instance.

If "no" then proceed in accordance with the wishes of the "donee".

## Life-sustaining treatment

8. Does the Lasting Power of Attorney contain express provision authorising the donee to give or to refuse consent to the carrying out or continuation of life sustaining-treatment?

YES / NO

If "yes" then this is valid but consider question 9 also.

If "no" and life-sustaining treatment is necessary then it must be given.

Where there is any dispute with the health professional about the assessment of the patient's capacity which remains unresolved legal advice should be sought in order that the matter can be referred to the Court of Protection.

9. Do all relatives and carers agree with the proposed management and the wishes of the donee?

YES / NO

If "yes" then proceed as planned.

If "no" then this presents a potential risk and further advice should be sought.

**I confirm I have understood and reviewed this checklist in respect of the above-named patient.**

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Signature of health professional

Date

Name and position of health professional

*This checklist is only intended to provide guidance and a framework when considering an advance decision. Where there are any doubts concerning the validity or applicability of an advance decision further medical and/or legal advice should be sought.*

Notes:

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Always obtain professional advice before applying this information to particular circumstances. Capsticks accepts no liability for errors of fact or opinion contained within this document which is based on the law as at 24 March 2020.

Capsticks has no objection to healthcare professionals copying this form for clinical and educational purposes. We would welcome any comments or suggestions for improvement of this document. Please e-mail [info@capsticks.com](mailto:info@capsticks.com).

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