

# **GLOUCESTERSHIRE MULTI AGENCY MENTAL CAPACITY ACT POLICY**

## **APPENDIX 9**

## Lasting Powers of Attorney (LPA) Checklist

This is a checklist for assessing “Lasting Powers of Attorney” (Persons aged 18 and over).

Person First Name:	Date of Birth:
Person Surname:	PRN:

Under a Lasting Power of Attorney (LPA) the donor (the person) 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 an LPA or whether a donee under LPA is acting in the best interests of the donor (person), legal advice should be sought and an application made to the Court of Protection if necessary.

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

Please document clearly in the person’s case notes your reasons for answering “yes” or “no” for any of the questions below. This information must be recorded on ERIC.

1. Have you seen the LPA and is it registered with the Court of Protection?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
If “ <u>yes</u> ” proceed to question 2.		
If “ <u>no</u> ” the LPA is not valid and the views and wishes of the donee do not have to be followed.		

2. Does the donor/person have capacity in respect of this specific decision or action? YES  NO

If "yes" then the person can make the decision.

If "no" proceed to question 3.

3. Has the person made any subsequent advance decision that is valid and applicable to this decision? YES  NO

If "yes" then follow the advance decision.

If "no" proceed to question 4.

4. Does the LPA cover the person's property and affairs only? YES  NO

If "yes" the donee does not have the power to make decisions affecting the person's welfare?

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

5. Does the LPA 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/actions being proposed as well as the consequences of accepting or refusing the treatment / actions on behalf of the person? 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 person or do you believe that the person's best interests have not been properly considered (See *Best Interests checklist*)?

YES  NO

If "yes" consideration should be given to referring the matter to the Court of Protection 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 LPA contain express provision authorising the donee to give or to refuse consent to the carrying out or continuation of the life sustaining treatment

YES  NO

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

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 person'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" proceed as planned.

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

I can confirm that I have understood and reviewed this checklist in respect of the above person.

Signature of Health/Social Care Professional	Date	Print Name & Position of Health/Social Care Professional

*This checklist is only intended to provide guidance and a framework when considering a Lasting Power of Attorney. Where there are any doubts considering the validity and applicability of the lasting power of attorney further medical and or legal advice should be sought.*