

# A GUIDE TO: THE LASTING POWER OF ATTORNEY



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This booklet provides an overview of what the Lasting Power of Attorney is and what you should do if you decide to make one.

The scenarios and examples in this guide are for illustration only. The characters and situations used are fictitious. They are not a substitute for professional advice in appropriate cases and are not in any way to be taken as precedents for decisions that need to be made in similar situations. They are also not indicative of how a court would decide any particular case, as that would depend on the actual facts of each case before the court, which may include relevant facts that are not considered in the examples.

# BEFORE WE BEGIN

# PART A

## WHAT IS THE MENTAL CAPACITY ACT AND WHAT DO I NEED TO KNOW?

### A1. WHAT IS MENTAL CAPACITY?

Mental capacity is the ability of a person to make a specific decision at a particular time.

Mental capacity is assessed on a case-by-case basis and cannot be assumed based only on the person suffering a particular medical condition. Furthermore, a person's lack of mental capacity cannot be based only on his age, appearance, condition or behaviour.

A person may have the capacity to make some decisions at a particular time, but not others. For example, a person may be able to go to the market and buy food, but not able to handle large sums of money to make investment decisions. Mental capacity may improve, degrade or even fluctuate over time.

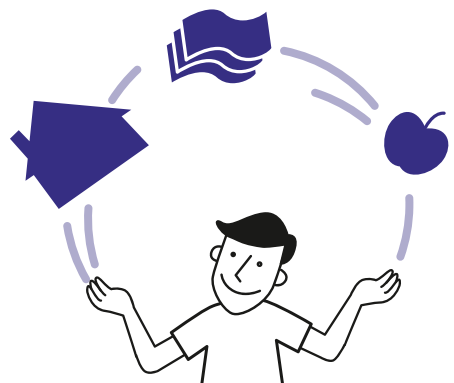
### A2. WHAT IS THE MENTAL CAPACITY ACT AND WHY IS IT IMPORTANT?

The Mental Capacity Act (the Act) enables people to plan ahead and gives them the power to make choices for their future before they lose their mental capacity. It addresses the need to make decisions for persons who are 21 years or older when they lack mental capacity to make those decisions for themselves.

The Act also:

- a. allows people to voluntarily make a Lasting Power of Attorney (LPA) to appoint one or more persons (Donee(s)) to make decisions and act on their behalf if and when they lack mental capacity in the future;

- b. allows the court to appoint a Deputy to make decisions and act on behalf of a person who lacks mental capacity where a decision is required but the person does not have a proxy decision maker;
- c. allows parents of children with intellectual disabilities to apply to court to appoint themselves as Deputies for their children and another person as a Successor Deputy in the event the parents pass away or lose their mental capacity;
- d. gives legal protection for acts done by anyone in connection with the care and treatment of a person who lacks mental capacity if certain conditions are met, including the requirement that the act is done in the best interests of that person;
- e. provides safeguards to protect persons who lack mental capacity;
- f. has five statutory principles that anyone making any decision or taking any action for a person who appears to lack capacity must follow; and
- g. creates an officer called the Public Guardian whose functions include maintaining a register of LPAs and a register of court orders appointing Deputies, supervising Deputies and dealing with allegations of abuse by Donees and Deputies.
- h. allows for registered professionals to provide deputyship and doneeship services for remuneration.



## A3. WHAT DOES THE OFFICE OF THE PUBLIC GUARDIAN DO?

### The Public Guardian

The Public Guardian works towards protecting the dignity and interests of individuals who lack mental capacity and are vulnerable. The Public Guardian is the head of the Office of the Public Guardian (OPG).

### The functions of the Public Guardian

The Public Guardian carries out various functions towards enabling and protecting persons who lack capacity.

These functions include:

- a. maintaining a register of Lasting Powers of Attorney and a register of court orders that appoint Deputies;
- b. supervising Deputies;
- c. receiving reports from Deputies; and
- d. investigating any alleged violation of any provision in the Mental Capacity Act, including complaints about the way in which Donees and Deputies are exercising their powers.



## The Office of the Public Guardian (OPG)

- The OPG supports the Public Guardian in carrying out her functions.
- The OPG is a division of the Ministry of Social and Family Development.

## Roles of the Board of Visitors

The Board of Visitors are to:

- visit persons who lack capacity, Donees or Deputies, as may be requested by the Public Guardian or the court, and
- check on the well-being of the person who lacks capacity.

There are two types of visitors:

- a. Special Visitors – who are registered medical practitioners or persons who have the relevant expertise about impairment of, or disturbance in, the functioning of the mind or brain, and
- b. General Visitors – who need not be medically qualified.



# PART B

## THE LASTING POWER OF ATTORNEY

A Lasting Power of Attorney (LPA) is a legal document that allows a person who is 21 years of age or older (Donor), and who has mental capacity, to voluntarily appoint one or more persons (Donee(s)), to make decisions and act on his behalf about his personal welfare, property & affairs matters or both matters when he lacks mental capacity to make those decisions in the future.

Unlike a Power of Attorney that generally ceases to have effect when the Donor loses his mental capacity, an LPA takes effect when the Donor loses capacity. The LPA allows individuals to plan for such a possible occurrence. The authority granted under the LPA to a Donee will not be effective until the time the Donor loses mental capacity.

There are two different prescribed LPA forms to cater to the needs of individuals:

1. LPA Form 1 is to be used if you wish to give your Donee(s) wide-ranging powers to make decisions on your behalf.
2. LPA Form 2 is to be used if you have more requirements to be included in your LPA, for example, if you wish to give specific powers to your Donee(s). You will need to engage a lawyer to make this LPA.

You may give your Donee(s) powers to decide on matters relating to:

- your personal welfare; or
- your property & affairs; or
- both your personal welfare and property & affairs.

You may fill up LPA Form 1 yourself but you should consult a lawyer if you do not know what it means to give such wide powers to your Donee(s) or if you are uncertain how to fill up the form.

## B1. WHO CAN BE MY DONEE?

Your Donee should be someone trustworthy, reliable and competent to make decisions for you.

- a. A Donee must be at least 21 years old.
- b. A Donee appointed to make decisions about personal welfare must be an individual.
- c. A Donee appointed to make decisions about property & affairs may be:
  - an individual (but he must not be a bankrupt), or
  - a licensed trust company as defined in the Trust Companies Act.

If you do not have suitable next-of-kin to appoint, you can appoint a registered professional as your Professional Donee. See **Part C** for more information.

## B2. HOW MANY DONEES CAN I HAVE?

You may appoint one or more Donee(s) as allowed in LPA Form 1. To appoint more than the maximum number of Donee(s) allowed in LPA Form 1, please use LPA Form 2.

However, you should not appoint too many Donees because it may be difficult for them to agree on decisions. People who deal with the Donees may become confused about which Donee to deal with and to take decisions from. You should choose Donees who are willing to work together so differences in opinions may be resolved amicably, thereby avoiding any deadlock.

### B3. IF I HAVE MORE THAN ONE DONEE, HOW SHOULD THEY DECIDE ON MATTERS ON MY BEHALF?

If you appoint more than one Donee to make decisions about the same matters, you can appoint them to act in any of the following manner:

- Jointly: The Donees have to act together and agree on all the decisions.
- Jointly and severally: The Donees can make the decisions together or separately.

If you appoint more than one Donee and do not specify how they are to act, the law assumes they are to act jointly.

Some decisions may involve both personal welfare and property & affairs. For example, a decision whether the Donor should live in a nursing home or a live-in nurse be engaged involves both the personal welfare of the Donor as well as access to the Donor's funds to pay for these services.

If the Donee for personal welfare decisions is also the Donee for property & affairs decisions, the same person can make these decisions.

If the Donees are different, they will have to work together to ensure that the decisions are carried out in the best interests of the Donor.

## B4. WHAT TYPES OF DECISIONS CAN DONEES MAKE?

The decisions your Donee(s) can make will depend on the powers you give him in your LPA. You may authorise your Donee to make decisions regarding:

- a. your personal welfare (including healthcare matters), or
- b. your property & affairs (including financial matters), or
- c. both your personal welfare and your property & affairs.

The power conferred by the LPA will be cancelled if the LPA appoints more than one Donee to act jointly and the power to one of those Donees is cancelled.

However, the power conferred by the LPA is not cancelled and remains valid if there is a Replacement Donee appointed under the LPA or there is one or more surviving Donees appointed to act jointly and severally on any matter.

### Personal welfare Donee

Some examples of the decisions a Donee with personal welfare power may be authorised to make include:

- where the Donor should live;
- who the Donor should live with;
- day-to-day care decisions (for example, what to wear and eat);
- what social activities to take part in;
- handling the Donor's personal correspondence; and
- who the Donor may have contact with.

The personal welfare Donee's appointment is cancelled if the:

- Donor or Donee dies;
- marriage between the Donor and Donee is dissolved (i.e. divorce) or annulled unless the LPA specifically provides that it will not;
- Donee formally refuses the appointment as Donee; or
- Donee lacks mental capacity.

## Property & affairs Donee

Some examples of the decisions a Donee with property & affairs power may be authorised to make include:

- dealing with the Donor's property – buying, selling, renting and mortgaging property;
- opening, closing and operating the Donor's bank accounts;
- receiving dividends, income, inheritance benefits or other financial entitlements on behalf of the Donor;
- handling the Donor's tax matters;
- paying the rent, mortgage repayments and household expenses of the Donor;
- investing the Donor's monies; and
- purchasing a vehicle or other equipment the Donor needs.

The property & affairs Donee's appointment is cancelled if the:

- Donor becomes a bankrupt or dies;
- Donee (an individual) becomes a bankrupt or dies;
- Donee is a licensed trust company and its licence has lapsed or been revoked;
- Donee (a licensed trust company) is liquidated, wound up, dissolved or under judicial management;
- marriage between the Donor and Donee is dissolved (i.e. divorced) or annulled unless the LPA specifically provides that it will not;
- Donee formally refuses the appointment; or
- Donee lacks mental capacity.

## B5. RESTRICTIONS

### General restriction

Your Donee must not make a decision on your behalf if he knows or has reasonable grounds to believe that you have capacity to make that decision.

### Specific restrictions

Your Donee may not:

- a. consent or refuse the carrying out or continuation of healthcare treatment for you (including the conduct of clinical trials) unless you expressly authorise him to do so in your LPA;
- b. consent or refuse life sustaining treatment or any other treatment that is necessary to prevent a serious deterioration in your condition;
- c. make any Central Provident Fund or insurance nomination or revoke such nomination for you;
- d. make a gift of any of your property unless you expressly authorise him to do so in your LPA; and
- e. act to restrain you unless:
  - the Donee believes or has reasonable grounds to believe that you lack capacity and the restraint is necessary in order to prevent harm to you, and
  - the restraining act is a proportionate response to the likelihood of you suffering harm and the seriousness of the harm.

Being your Donee does not automatically entitle him to execute your will.

## B6. EXCLUDED DECISIONS

There are certain decisions that your Donee is not allowed by law to make on your behalf.

These decisions are:

a.	consenting to marriage
b.	consenting to touching of a sexual nature
c.	consenting to divorce on the basis of three years' separation
d.	consenting to a making of an adoption order
e.	adopting or renouncing a religion
f.	receiving treatment for change of gender
g.	consenting or revoking consent to treatment for sexual sterilisation
h.	consenting or revoking consent to abortion
i.	registering or withdrawing an objection regarding the removal of an organ from any person upon death
j.	making or revoking an Advance Medical Directive
k.	making or revoking a gift of a body or any part of a body



# PART C

## PROFESSIONAL DEPUTIES AND DONEES (PDD) SCHEME

### C1. WHAT IS THE PROFESSIONAL DEPUTIES AND DONEES (PDD) SCHEME?

The PDD scheme supports individuals with modest to significant assets, and who may not have suitable family members or close friends to rely on to be their proxy decision makers. Individuals may appoint a Professional Deputy to be their Donee through an LPA, or as a Deputy through a court order.

### C2. WHO ARE THE PROFESSIONAL DEPUTIES (PD)?

PDs consist of professionals from selected professional groups (i.e. lawyers, doctors, accountants, allied health professionals, nurses and social workers). These professionals must meet the qualifying criteria and pass a certification course before they may register with OPG to be a Professional Deputy.

### C3. WHAT ARE THE SAFEGUARDS IN PLACE?

PDs act in the best interests of the person who has lost mental capacity. Measures in-place to ensure this include:

- PDs are registered with their respective regulatory professional bodies, where they would have to fulfil and maintain high standards of discipline and professionalism.
- PDs must also meet a stringent set of qualifying criteria to be registered with OPG.
- PDs are required to furnish an annual report to OPG, which lists down the actions taken by the PD acting on behalf of "P" when he/she has lost mental capacity.



## JACK'S STORY

Jack is a 60-year-old who recently realised that he has started to become more forgetful. He is worried he has early onset dementia, and would not be able to take care of himself in the future.

He does not have any next-of-kin or close friends he trusts, whom he can appoint to make decisions and act on his behalf, including managing his monies to pay for his future care. One morning, he overhears some of the seniors at Taichi class talking about how they have made their Lasting Power of Attorneys (LPAs) and learns about the new Professional Deputies and Donees (PDD) scheme.

He finds the PDD scheme very helpful for seniors like him and decides to appoint a registered professional under the scheme as his Donee in his LPA. Should he lose his mental capacity one day, he now knows there is a trustworthy professional who will step in to help him.

**Not everyone will lose their mental capacity, but no one knows if or when they could lose mental capacity. Pre-planning for this scenario is important, more so for persons with modest to significant assets but do not have next-of-kin or close friends who they can appoint to make decisions and act on their behalf. The PDD scheme was introduced to address this need.**

## C4. HOW CAN REGISTERED PROFESSIONAL DEPUTIES BE APPOINTED AS A DONEE?

### 01 OPG Website

Visit our OPG website and view the list and information about the Professional Deputies

WEBSITE

SELECTION

### 02 Selection

Choose from the list the Professional Deputy who suits your preference.

### 03 Contact & Agreement

Contact the Professional Deputy to gather more information, and come to an agreement on what you would like him/her to do as a Donee

CONTACT

### 04 Agreement on Fees

You (the Donor) and the Professional Deputy will mutually agree on the fees to be charged for the services

FEES

### 05 Legal Documents

Apply for an LPA with the Professional Deputy acting as Donee

APPLY FOR LPA

# PART D

## WHAT SHOULD I DO IF I DECIDE TO MAKE A LASTING POWER OF ATTORNEY (LPA)

### D1. HOW DO I MAKE MY LASTING POWER OF ATTORNEY?

<p><b>Step 1</b></p>	<p><b>Donees</b>  <u>Choose your Donee(s) wisely</u>          - 21 years old and above          - Someone you trust to make decisions on your behalf and in your best interests</p> <p><u>Choose what decision powers to grant your Donee(s)</u>          - Personal welfare,          - Property &amp; affairs, or          - Both</p> <p><u>If you have more than one Donee, decide how they are to act:</u>          - Jointly: The Donees have to act together and agree on all the decisions.          - Jointly and severally: The Donees can make the decisions together or separately.</p> <p>Visit OPG Online (OPGO) at <a href="https://opg-eservice.msf.gov.sg">https://opg-eservice.msf.gov.sg</a>, log in with your Singpass and fill up the online LPA Form 1. The draft LPA will be routed to your Donees and Replacement Donee (if any) for them to accept their appointments.</p>
<p><b>Step 2</b></p>	<p><b>Certificate issuing</b>  <u>See an LPA certificate issuer (CI)</u></p> <ul style="list-style-type: none"> <li>- The CI acts as a safeguard to ensure that the Donor understands the purpose of the instrument and the scope of the authority conferred under it, no fraud or undue pressure is being used to induce the Donor to create a LPA, and there is nothing else which would prevent a LPA from being created.</li> <li>- After sending your LPA to your Donee(s) for them to accept the appointment(s), you may search for a Certificate Issuer on OPGO.</li> <li>- Visit CI in-person to have your LPA certified after all your Donee(s) and Replacement Donee have accepted their appointments.</li> <li>- Donor and CI digitally sign on the LPA using their National Digital Identity.</li> <li>- There are also not-for-profit organisations who offer certificate issuing services at affordable rates which can be found on OPG website at <a href="https://msf.gov.sg/opg">https://msf.gov.sg/opg</a>.</li> </ul>

**Step 3****Submit your LPA**

CI submits LPA to OPG for registration via OPGO.

OPG will review your LPA application and process it for registration, status will be updated via SMS/email notifications and on your OPGO dashboard.

We will register the LPA at the end of the mandatory 3-week waiting period if there are no valid objections received by the Specified Date stated in the notice of acceptance.

You and your Donee(s) may view your registered LPA in OPGO at [opg-eservice.msf.gov.sg](http://opg-eservice.msf.gov.sg).

Your Donee(s) may use your registered LPA in OPGO to make transactions on your behalf in the event you lose mental capacity.

Before doing so, Donee(s) must declare that the Donor has been certified by a medical practitioner to lack mental capacity to make his/her own decisions, and that he/she shall be subject to the penalties provided by the Act for the making of false statements in statutory declarations.

Please note that:

- you must be at least 21 years old and have mental capacity to make a valid LPA, and
- you must not be a bankrupt if you are appointing a Donee to decide on property & affairs.

It is a criminal offence for a person who applies to register an LPA to knowingly make a false statement on a material matter. A person convicted of this offence can be fined up to \$10,000 or jailed for up to two years.

## D2. HOW LONG WILL THE PROCESS TAKE?

It takes about 8 working days, excluding the mandatory 3-week waiting period, for the LPA to be registered.

We will register the LPA at the end of the mandatory 3-week waiting period if there are no valid objections received by the Specified Date stated in the notice of acceptance.

## D3. THINGS TO DO AFTER THE LPA IS REGISTERED

Your LPA is an important document your Donee(s) will need to use if you lose mental capacity and they have to make decisions for you. After your LPA has been registered, you and your Donee(s) may access the registered LPA via OPGO.

You should inform the people and institutions that your Donee(s) will have to deal with if you lose capacity, that you have made an LPA. These include:

- your doctor and other healthcare providers, and
- your bank, the Central Provident Fund Board and other institutions with whom you have accounts (such as Central Depository Pte Ltd, insurance companies, stockbrokers).

Different third-party agencies have different requirements. You may wish to check with them on the requirements that your Donee has to comply with to use your registered LPA in the event that you lose mental capacity.

## D4. CAN SOMEONE DECLINE TO BE MY DONEE?

A Donee can reject his appointment in your LPA on OPGO and you will be notified through SMS. You will need to redraft your LPA and appoint new Donee(s).

## D5. CAN I CHANGE MY MIND AFTER MY LPA IS REGISTERED?

- a. You may revoke (terminate) your LPA anytime when you have the mental capacity to do so.
- b. You must notify the Donee(s) of the revocation to prevent your Donee(s) from using the LPA in the event you lose mental capacity.
- c. You must notify the Public Guardian of the revocation of the LPA. A prevailing revocation fee applies. Please refer to OPG website for details on how to revoke an LPA.

## D6. WHAT ARE THE FEES PAYABLE TO MAKE AN LPA?

The fees for making an LPA include:

- a. A professional fee payable to the certificate issuer for certifying the LPA. The fees charged vary with the certificate issuer.
- b. An application fee payable to OPG to register your LPA. Please refer to the fee table at [msf.gov.sg/opg](http://msf.gov.sg/opg).
- c. If appointing a Professional Deputy as your Donee, you will need to pay a fee for his services based on mutual agreement.

# PART E

## WHAT ARE THE FIVE STATUTORY PRINCIPLES UNDER THE MENTAL CAPACITY ACT AND HOW I APPLY THEM?

The statutory principles help the individual take part in the decision making process as far as possible, and protects him when he lacks capacity to do so.

When making decisions or acting on behalf of a person who lacks mental capacity, these principles should be read alongside the provisions in the Mental Capacity Act to ensure that the appropriate action or decision is taken in each case.

### 5 STATUTORY PRINCIPLES UNDER THE MENTAL CAPACITY ACT

Principle 1: Presumption of capacity

Principle 2: Giving all practicable help

Principle 3: Unwise decision

Principle 4: Best interests

Principle 5: Less restrictive



## Principle 1: Presumption of capacity

It must be assumed that a person has capacity to make a decision for himself unless there is proof that he lacks capacity to make the decision at the time it needs to be made.

The assessment of a lack of capacity cannot be based simply on the person's appearance, age, condition or behaviour. So, people should be allowed to make their own decisions where they can.

### SHANTI'S STORY

Shanti Sandhu is a 66-year-old divorcee who lives alone in a walk-up apartment. Her children were killed in a road traffic accident six months ago.

Shanti used to be active in the community, taking part in local activities and volunteering at Resident Committee activities. Since the accident, she does not speak to anyone.

The apartment block committee is organising a health talk and free health screening activity. The committee is considering excluding Shanti as they feel she does not have capacity to contribute to organising the activities.

**The organising committee should not assume that Shanti lacks mental capacity just because she lives alone and does not talk to anyone. A person is presumed to have capacity unless it is proven otherwise. The organising committee should consider inviting Shanti. Whether she chooses to be involved or not is her choice.**

## Principle 2: Giving all practicable help

Caregivers, family members, Donees, Deputies and professionals who care for or treat a person who may have difficulty making a particular decision should take all practicable steps to help the person make his own decision.

They should not exert pressure or impose their views on the person they are supporting when helping him make a decision. The type of support the person should receive depends on the type of decision he has to make and the circumstances.

The individual should not make a decision on behalf of a person simply because that person has difficulty communicating. Instead, the individual should provide support, for example, by providing information in more accessible formats such as large fonts and drawings, and using different forms of communication such as sign language, Braille, etc.

### TIM'S STORY

Several police officers find Tim, a middle-aged man, living underneath a bridge on the Pan Island Expressway. He is very dirty and has a big cut on his leg which looks infected. They take him to the hospital.

The hospital staff ask for Tim's personal details and relatives they could contact. To help him communicate, these enquiries are made in several languages. Tim remains silent and does not want to cooperate with the doctor who wants to examine his injury.

The doctor tells Tim that if the injury is not treated, he may lose his leg and makes a sawing motion over his leg in an attempt to explain the situation to him. He appears to pay more attention after that and starts pointing at his mouth and ears while shaking his head.

A nurse realises that Tim may be a deaf mute, so she gives him a paper and pen, and calls in a person who knows sign language. He calms down and starts communicating to the hospital staff in writing.

**Tim may not have been able to communicate verbally, but that does not mean he cannot make a decision about his treatment. The medical team has done the right thing by rendering all practical help to support Tim in making and communicating his decision.**

**In emergency situations, for example, serious injury from an accident, it may not be practicable to take as many steps to support a person to make his own decisions. All that can be done may be to keep the person informed of what is going on and why procedures are being done.**

### Principle 3: Unwise decision

A person is free to make his own decisions even if those decisions are unwise in the view of others. This recognises the right of a person to make his own choices. Just because a decision is unwise does not mean that the person has lost mental capacity.

However, there is a difference between a person making an unwise decision (which the person who decides may make) and his making a decision when he lacks the ability to understand, remember or use the information necessary to make the decision.

If a person makes several decisions which are unusual bearing in mind his usual behaviour, or makes decisions which make it easy for him to be exploited or harmed, then further investigation into that person's capacity should be conducted.

#### AH HUAT'S STORY

Ah Huat is 73 years old. He is a widower and lives alone. Last week, a window installer named Paul visited Ah Huat at his home. Paul convinces Ah Huat to change the window in his bathroom because it is rusty. The next day, Paul returns and advises Ah Huat to change the windows in his bedroom. Paul charges Ah Huat \$500.

Ah Huat's son, Ah Seng, is concerned about his father. Ah Huat is normally careful with his finances because he is retired.

Paul returns for a third time and Ah Huat agrees to change the remaining windows in his flat for \$1500. Ah Seng, who examined the windows earlier, noticed that they were still in good condition and did not need to be changed. He believes that Paul has taken advantage of his father and wonders whether Ah Huat is capable of making similar purchasing decisions.

Ah Huat explains that he prefers to get the windows replaced all at once because he gets a better bargain. He believes that all the windows will need to be replaced in one or two years' time.

**Ah Seng cannot just assume that because his father, Ah Huat, is 73 years old and has decided to change all the windows in his flat, he lacks mental capacity. If Ah Huat's usual pattern of behaviour continues to change and causes concern, then Ah Seng should consider getting his mental capacity assessed by a doctor.**

#### Principle 4: Best interests

Every act or decision made on behalf of a person who lacks capacity must be made in his best interests. Whether a decision is made in the person's best interests will depend on the circumstances of the case.



#### RON'S STORY

Kevin Khoo and his wife, Sally Lee, have three children. Their eldest, Ron, who is 23 years old, has an intellectual disability and has been working at a sheltered workshop operated by a charity.

The charity also has a programme which offers temporary residence to persons like Ron to acquire basic life skills for more independent living. With some support, they are also taught how to take public transport. These life skills help them to be better suited for open employment.

A place in the residential programme becomes available and the social workers at the charity recommend that Ron take up the offer.

Kevin and Sally know that Ron would like to become more independent. However, they are worried that if Ron takes up the offer, they will not be able to look out for him and he will spend less time with them.

**If Ron has the mental capacity to make the decision on the residential programme, then Kevin and Sally should not decide for him. If Ron lacks the capacity to make this decision, Kevin and Sally must remember that they should be acting in Ron's best interests and not their own.**

### Principle 5: Less restrictive

When acting or making a decision on behalf of a person who lacks capacity, the action or decision taken should be one which is less restrictive on that person's rights and freedom to act.

The less restrictive option is usually also the option that is in the best interests of the person.

Sometimes, that includes not taking any action or decision at all. All actions taken or decisions made, or decisions not to take any action, must be taken in the person's best interests.

#### AH MEI'S STORY

Ah Mei lives with her 80-year-old mother, Madam Kwong Siew Moi, who has dementia.

When Ah Mei goes to work, she locks her mother in her room to prevent her from injuring herself or wandering off. She leaves food and water in the room. Madam Kwong wears adult diapers.

When Ah Mei returns home in the evening, she bathes and feeds her mother. Even though Ah Mei is acting out of concern for the safety of her mother, and is a filial daughter, this form of care is not the less restrictive option.

She must make some other more suitable care arrangement such as placing Madam Kwong in a dementia day care centre.

**If there is more than one option available, then all options must be weighed and the decision taken must be determined by both the best interests and less restrictive option principles.**



# PART F

## CHECKLIST TO REGISTER A LASTING POWER OF ATTORNEY (LPA)

No	Actions	Completed?
1	Log in to OPGO using Singpass and click 'Apply For An LPA'.	<input type="checkbox"/>
2	Fill in Donee(s)' and Replacement Donee's (if any) information and powers granted.	<input type="checkbox"/>
3	Donee(s) and Replacement Donee (if any) to log in to OPGO using Singpass to accept the appointment(s).	<input type="checkbox"/>
4	Visit a Certificate Issuer (CI) to certify LPA Form after all the Donee(s) and Replacement Donee (if any) have accepted the appointment(s).	<input type="checkbox"/>
5	Donor and CI digitally sign on LPA. CI submits LPA for registration to OPG via OPGO immediately.	<input type="checkbox"/>
6	Make payment of registration fee by e-payment on OPGO if required.	<input type="checkbox"/>

# GLOSSARY

## *Acts in connection with care or treatment*

These are tasks carried out by caregivers (paid or unpaid), healthcare staff and family members that involve personal care, healthcare or medical treatment for a person who lacks the capacity to consent to these acts.

## *Best interests*

Decision makers have a duty to consider many factors that focus on what is best for the person lacking capacity before making a decision on his behalf. Refer to chapter 6 of the Code of Practice for more information.

## *Code of Practice*

The Code supports the Mental Capacity Act (the Act) and provides further explanation on how the Act should be applied in practice.

## *Decision maker*

The decision maker is the individual or person who makes decisions on behalf of persons who lack capacity. They include caregivers, nurses, doctors, Donees of a Lasting Power of Attorney (LPA) and court appointed Deputies.

## *Deputy*

A Deputy is appointed by the court to make certain decisions on behalf of a person who lacks mental capacity when the person has not made an LPA and has no Donee to decide on his behalf in respect of those decisions. A Deputy can be an individual or a licensed trust company under the Trust Companies Act (Cap. 336), as prescribed by the Mental Capacity Regulations.

## *Donor*

The person, at least 21 years of age, who makes an LPA, appointing Donee(s) to take care of his personal welfare and/or property & affairs matters in the event he loses mental capacity one day.

## Donee

Donees, at least 21 years of age, are appointed by Donors to make decisions and act on their behalf on personal welfare and/or property & affairs matters in the event the Donors lack mental capacity to manage their own affairs.

## Jointly

The Donees have to act together and agree on all the decisions.

## Jointly and severally

The Donees can make the decisions together or separately.

## Lasting Power of Attorney (LPA)

A legal document that allows a Donor to voluntarily appoint one or more Donees to make decisions and act on his behalf should he lose the capacity to make his own decisions.

## Mental capacity

Mental capacity is the ability of a person to make a specific decision at a particular time.

## Mental Capacity Act

Provides safeguards to protect persons lacking capacity. The Act gives the Public Guardian supervisory and investigative powers and makes ill-treatment of persons who lack capacity by their caregivers and decision makers a criminal offence. The Act also prohibits certain decisions from being made on behalf of the person who lacks capacity.

## Office of the Public Guardian (OPG)

The OPG has a wide range of responsibilities within the framework of the Mental Capacity Act. These include keeping a register of LPAs, supervising Deputies and investigating allegations of ill-treatment.

## Office of the Public Guardian Online system (OPGO)

OPGO is a simple, secure and convenient online platform for transactions with OPG. Transactions available on OPGO include applying for an LPA and submitting a Deputy report. Access OPGO here: <https://opg-eservice.msfgov.sg>.



## Professional Deputies and Donees (PDD) Scheme

The PDD scheme supports individuals with modest to significant assets, and who may not have family members or close friends to rely on to be their proxy decision makers. This is by appointing a Professional Deputy to be their Donee through an LPA, or as a Deputy through a Court order.

### Statutory principles

There are five statutory principles under the Mental Capacity Act that everyone must follow when dealing with persons who lack or may lack mental capacity.

### Unwise decision

This refers to one of the statutory principles. A person who has mental capacity has the right to make a decision that is unwise in the view of others. Just because a decision is unwise does not mean that the person has lost mental capacity.





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