

Carers Information Sheet 7

Mental Capacity, Finances & other decisions

THE PROBLEM...

Mrs A cares for her husband, who has dementia. She can't access any of his savings because they are in his name, and she can't sign on his behalf.

Mr B cares for his mother, who is frail after a fall, and is struggling to live alone in her house. He wants to sell it, so they can buy smaller accommodation closer to him, so he can better look after her - but can't because she is unable to sign the forms.

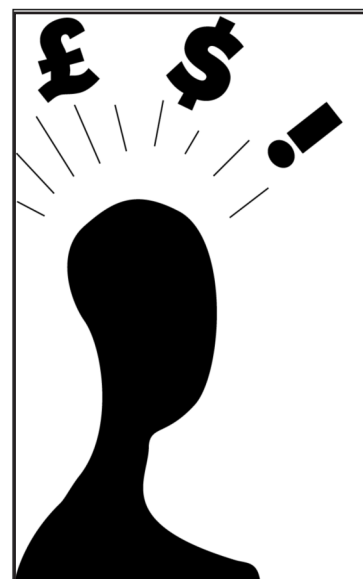
Mrs C can't sell any of her husband's stocks and shares which she desperately needs to live on as she is unable to sign on his behalf. Her husband had an accident and is now severely brain damaged and is unable to make these decisions for himself.

These are examples of the financial problems which can be faced by families if their loved ones lose mental capacity. It is worth taking time to think about the possibility of these problems arising in the future, and to take action now.

Here is a brief summary of what options are available for someone who may need to look after someone else's financial affairs. **It is better to seek advice early!**

PERMANENT AGENT

If it is apparent that the person you care for is no longer able to handle their weekly benefits, then it may be helpful if someone else administers their income in their best interests, to ensure that all benefits are claimed and that all essentials are paid for. This can be arranged with the Department for Work & Pensions (DWP) by nominating of an 'appointee'. If you are appointed to act for the



person in relation to one benefit, that appointment can cover all Social Security Benefits. Contact the office dealing with the claim and they will make the arrangement. **The Benefit Enquiry Helpline number is 0800 88 22 00.**

Separate appointments have to be made for Housing Benefits and Council Tax Benefits.

LASTING POWER OF ATTORNEY (LPA)

A Lasting Power of Attorney is a legal document that allows someone (the 'Donor') to choose other people who they would want to make decisions on their behalf (the 'Attorney') if they ever lose the capacity to make their own decisions.

The LPA is completed in advance and kept until it is needed. If the donor loses capacity to make their own decisions, the LPA is registered with the Office of the Public Guardian (OPG) and the appointed attorney will start to make decisions on their behalf.

There are two types of LPA

- Property and financial affairs (allowing an attorney to make decisions about paying bills, dealing with the bank, collecting benefits, etc.)
- Health and Welfare (allowing decisions to be made about treatment, care, medication, where you live, etc.)

However, a LPA only covers assets in England and Wales and may not be usable in any other country (including Scotland and Northern Ireland). If you have property abroad or move abroad, please get legal advice.

When applying, you can choose whether or not to enlist the assistance of an adviser or solicitor. A person can only grant a LPA if they understand what it is, and what it is intended to do. It is still possible for someone to grant a LPA after, for example, dementia has been diagnosed, as long as it is clear that they understand enough about what they are agreeing to.

The Donor and Attorney/s will sign the form, together with a doctor or another professional who will sign to confirm that a test has been carried out and the Donor has mental capacity at the time of granting the LPA.

As soon as the 'Attorney' believes that the 'Donor' has become or is becoming mentally incapacitated they must notify the 'Donor' and any other people nominated by the Donor on the LPA form of their intention to register the LPA. An application to register must immediately be made to the Public Guardianship Office. There is a fee although exemptions or remissions are for those on certain benefits or on a low income.

A particular diagnosis or condition (e.g. dementia) is not sufficient on its own to award a LPA: the assessment is based on the assessment of mental

capacity. The LPA will have to be registered before the Attorney(s) can use its authority to make decisions.

COURT OF PROTECTION

If someone with capital or savings who has not made a Power of Attorney loses mental capacity, it may be necessary to apply to the Court of Protection to ensure that whoever acts on their behalf does so with full legal authority. The Court of Protection will first need to consider medical opinion about their mental capacity, as well as details about their family and financial assets /liabilities.

The Court of Protection exists to oversee the property, financial affairs, health, & welfare of people who are not able to make important decisions themselves (even if support is available to them). The Court will appoint a 'Deputy' to be responsible for handling the client's affairs. The Deputy is accountable to the Court of Protection for the way decisions are taken and money is spent.

A close relative usually takes this on, and they need to provide an account annually of how the person's monies have been dealt with. When deciding about health treatment, or welfare (e.g., where the client should live), they will avoid legal liability if they can show that they have acted in the client's "best interests".

A fee is payable on the issue of an application, and an annual administration fee is also charged, depending on how much money is involved.

For more information and advice relating to your individual circumstances, phone Carers Lewisham, or consult a solicitor or any professional who knows your cared for person.

To enquire about becoming a Deputy, contact the Office of the Public Guardian on 0300 456 0300
www.publicguardian.gov.uk



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