

Why You Should Have A Lasting Power of Attorney

When someone loses mental capacity and is no longer able to manage his or her own affairs, this difficult situation can be made easier, on the individual and their family, if the individual has made a Lasting Power of Attorney (LPA).

If an LPA is not in place before the loss of capacity, then it will be necessary to make an application to the Court of Protection.

How would someone lose capacity?

It is possible to lose mental capacity in a number of ways and at any age!

One of the most common ways is when an elderly person suffers from a degenerative illness such as Alzheimer's or another form of dementia.

Other common causes that affect people of all ages are serious accidents, such as car crashes, brain injuries and strokes.

Who can be a Deputy?

In theory, anyone over the age of 18 but the Court will ensure that the person they appoint is suitable.

The proposed deputy will usually have a personal connection to the individual, such as family member or close friend, or the Deputy could be a professional.

As the individual has lost capacity, they do not have a choice who will be appointed to deal with their affairs. If a professional Deputy is appointed this person may be a complete stranger!

BUT, if you make a Lasting Power of Attorney before it's too late then this will enable you to appoint someone you want and trust.

What is a Deputy?

A Deputy is a person appointed by the Court of Protection to manage the personal welfare or that property and affairs of another person who lacks the mental capacity to manage them themselves.

What are the downsides to applying to be a Deputy with the Court of Protection?

- There is a lot of paperwork to complete
 - An application form – 2 copies required
 - An assessment of capacity form, usually completed by the individual's GP or a witness statement form if you are unable to get an assessment of capacity form completed.
 - A Deputy's declaration
 - An information form – for property and affairs
 - An information form – for personal welfare

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- The Process is very costly (Fees correct as of July 2019):-
 - Before being appointed
 - £365 application fee
 - £230 appeal fee, if an appeal is needed
 - £485 if the case needs a hearing
 - After being appointed
 - £320 annual general supervision fee, or £35 annual minimal supervision (if you are a property and affairs deputy managing less than £21,000)
 - £100 assessment fee for new deputy's
 - You must pay a 'security bond' when you are appointed as a property and affairs deputy. This is a type of insurance that protects the finances of the person you are a deputy for.
 - Plus, any legal fees from advice your Deputy may be seeking at the time of completing the application.
- The application can take 3-6 months to finalise and until a Deputy order is made, the individual's accounts are frozen. They could be further delays as medical evidence may be required. Some medical practitioners also charge for providing medical evidence.
- Once the court has appointed a Deputy, they will receive a Deputy order in which the exact power are set out. These powers depend on the individual's needs and cannot be exceeded. The powers may apply to any aspect of the individual's life, including their finances, personal welfare and medical treatment and social care interventions.
- As well as dealing with the individual's day-to-day affairs the Deputy will have other ongoing responsibilities, for example, filling in an annual account and report accounting to the Court for all the financial transactions in the previous year.

The whole process can be both distressing and intrusive for the individual's family.

How do I avoid this?

The answer is simple – by making a Lasting Power of Attorney!