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MANAGING LEGAL AFFAIRS FOR SOMEONE WITH DEMENTIA - INFORMATION FOR CLIENTS

Walsh West Private Client Legal 2021

How can I manage the affairs of someone with dementia?

A dementia diagnosis doesn't necessarily mean you're unable to make important decisions at that point in time.

But as symptoms of dementia get worse over time, you may no longer be able to make decisions about things like your finances, health or welfare. This is sometimes referred to as lacking mental capacity.

You may want to make plans now for a person you trust to make decisions on your behalf. This means your wishes for your future care can be respected. It'll also help give your family peace of mind.

Mental capacity and the Mental Capacity Act

Mental capacity means being able to understand, remember and use information so you can make decisions about your life.

You may find you're perfectly able to make decisions over what to buy from the supermarket or what to wear, but have trouble with understanding more complex financial issues.

Another person can't decide you lack mental capacity because they think you have made a bad or strange decision.

Only a healthcare or another qualified professional can decide if mental capacity is lacking.

What is the Mental Capacity Act?

The Mental Capacity Act (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment.

Your doctor, social worker or other medical professional can help assess mental capacity.



If someone lacks capacity to make a decision, which needs to be made for them, the MCA states the decision must be in their best interests.

The MCA has a checklist to help decide what's in a person's best interests.

In order to grant power of attorney to someone to act on your behalf, make an advance decision and make a will, you must have mental capacity to do so. This is why it's important to put plans in place as soon as possible.

Lasting power of attorney

A lasting power of attorney (LPA) is a legal document that allows you to choose a person (or people) you trust to act on your behalf if you're no longer able to make your own decisions. This person is referred to as your attorney and must be over 18 years old.

You may think that if you're married or in a civil partnership, your spouse would automatically be able to deal with your bank accounts and pensions or make decisions about your care if you're no longer able to.

But this isn't true. Without an LPA, your spouse wouldn't be able to act on your behalf.

An LPA can only be used after it's been registered at the Office of the Public Guardian (OPG). There are 2 types of LPA covering:

1. property and financial affairs
2. health and welfare

You can choose to do both LPAs at the same time, or just one. You can choose the same person (or people) to be your attorney for both. Or you can have different attorneys.

Property and financial affairs LPA

A property and financial affairs LPA gives your attorney the power to make decisions about money and property for you, such as:

- ✓ managing a bank or building society account
- ✓ paying bills
- ✓ collecting benefits or a pension
- ✓ selling your home

Once the LPA is registered with the Office of the Public Guardian, it can be used with your permission, even if you're still able to deal with these things yourself.

Or it can be held in readiness for when you're no longer able to make decisions for yourself.



Health and welfare LPA

A health and welfare LPA gives your attorney the power to make decisions on your behalf about your health and welfare, such as:

- ✓ your daily routine (washing, dressing, eating)
- ✓ medical care
- ✓ moving into a care home
- ✓ life-sustaining treatment (if you have made an advance decision, this will be overruled)

Once the LPA is registered with the Office of the Public Guardian, it can only be used when you're no longer able to make your own decisions.

Enduring power of attorney (EPA)

Enduring power of attorney (EPA) was the system in place before LPAs replaced this in October 2007.

If you have an EPA, which deals only with financial and property affairs, it remains valid and can be registered and used.

How to set up and register a lasting power of attorney (LPA)

You can apply online for both types of LPA or download the forms, along with detailed guidance on how to complete them.

You can get someone else to use the online service or fill in the forms for you, such as a family member, friend or lawyers – Walsh West can do this for you.

The LPA forms need to be signed by someone, apart from your chosen attorney, to state that you have the mental capacity to make an LPA. The forms also need to be witnessed.

You then need to register each LPA with the Office of the Public Guardian. Either you or your attorney can do this.

Registering the LPAs takes several weeks. You'll have to pay a fee for each one, which may be reduced if you're on a low income or receiving certain benefits.

Get help with LPAs

If you need advice with LPAs, you can:

- contact the Office of the Public Guardian on 0300 456 0300



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- talk to us on 0203 488 7503

Or you can call:

- Alzheimer's Society's National Dementia Helpline on 0300 222 1122
- Age UK's Advice Line on 0800 055 6112
- Independent Age on 0800 319 6789

These charities aren't able to give legal advice but can suggest reliable sources of information.

What happens if you don't make an LPA?

If you don't make an LPA and later become unable to make decisions yourself, nobody will legally be able to make decisions for you.

This can make things difficult for your family as they won't be able to pay bills or make decisions about your care.

When this happens, someone may need to apply to the Court of Protection to become a deputy. This gives similar powers to that of an attorney. But it's a time-consuming and expensive process.

Advance statements and advance decisions

These are part of advance care planning after a dementia diagnosis. They let your family and healthcare professionals know your wishes for your future health and social care if you become unable to make decisions (lack mental capacity).

Advance statement

An advance statement is a written statement that sets down your preferences, wishes, beliefs and values regarding your future care.

You can write the statement yourself, with support if needed from relatives, carers or health and social care professionals.

It can include:

- ✓ how you want any religious or spiritual beliefs to be reflected in your care
- ✓ where you'd like to be cared for – for example, at home or in a care home
- ✓ how you like to do things – for example, if you prefer a shower instead of a bath
- ✓ music, TV or DVD preferences

An advance statement isn't legally binding, but your attorney (if you have one) and healthcare team will take it into account.



Advance decision

An advance decision (sometimes known as an advance decision to refuse treatment, or ADRT) is a written statement you can make now to refuse a specific type of treatment in the future. It's a good idea to discuss the treatments you're deciding to refuse with your doctor or healthcare team so you fully understand the consequences.

You may want to refuse a treatment in some circumstances, but not others. You may also want to refuse a treatment that could potentially keep you alive, known as life-sustaining treatment. Life-sustaining treatments include:

- cardiopulmonary resuscitation (CPR) – may be used if your heart stops
- ventilation – this may be used if you can't breathe by yourself
- antibiotics – these help your body fight infection

You can't ask for anything that's against the law, such as euthanasia or help to take your own life.

If you decide to refuse life-sustaining treatments in the future, your advance decision needs to be:

1. written down
2. signed by you
3. signed by a witness

Make sure your doctor has a copy of the advance decision to include in your medical notes.

Make a will

It's a good idea to make a will if you haven't done so already.

This ensures that when you die, your money, property and possessions go to the people you choose. If you die without making a will, the state decides who'll get what.

A person with dementia can still make or change a will, provided you can show that you understand its effect.

Unless your will is very simple, it's advisable to consult a solicitor who specialises in writing wills.

The cost of a solicitor will vary – ask what the fee will be and what this includes before going ahead.

Some charities offer a free will writing service in the hope that you'll consider leaving them some money. But this is optional.



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Your will must be signed and formally witnessed. It should also be kept in a safe place where others can find it, either at home or with a solicitor.



For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at welcome@walshwestcca.com or via our website www.walshwestcca.com and we will help you.