

DEMENTIA A LEGAL & FINANCIAL GUIDE

HELPING YOU WITH YOUR FINANCIAL MATTERS



DAA

Rotherham Dementia
Action Alliance

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CASE STUDY

“Your mum is a widow who lives alone. Lately, it’s increasingly noticeable that she is becoming confused. In fact, you’re not confident that she’s capable of continuing to look after her finances. She may need to go into a residential home. So what should you do? And what things should you be thinking about?”

This is just an example of the typical worries that the onset of dementia can cause both for the parent who is diagnosed with it, and for their loved ones. This leaflet aims to put your mind at rest by explaining the key legal and financial considerations and how to deal with them.





THE LEGAL SIDE DEMENTIA WHAT KEY THINGS DO YOU NEED TO CONSIDER?

When someone you care about is increasingly unable to make decisions about their finances or health you may need to consider a Lasting Power of Attorney (LPA). An LPA is a way of nominating a trusted friend or relative to look after their affairs.

MAKE LASTING POWERS OF ATTORNEY

There are two types of Lasting Powers of Attorney (LPA) that you can apply for:

PROPERTY AND FINANCIAL AFFAIRS LPA

This allows for the appointment of someone (an Attorney) to deal with financial affairs including paying bills and applying for benefits on behalf

of the person (the Donor) who is having difficulty managing those financial affairs for themselves. This can be used as soon as it's registered.

HEALTH AND WELFARE LPA

This allows for the appointment of someone (an Attorney) to deal with decisions about health and welfare. It can include decisions about medication and treatment, where they will live and who will visit them.

An attorney can only use this LPA when the Donor has lost the capacity to make these decisions for themselves.

WHAT TO DO NEXT – CAPACITY & CERTIFICATE PROVIDER

An LPA can only be made when the Donor has the mental capacity to understand the document, the powers they are giving to the Attorneys and the implications.

In order to put an LPA in place, someone known as a Certificate Provider must confirm that the Donor has the necessary capacity to make an LPA. The Certificate Provider is quite often the treating consultant at the Memory Clinic.

It is often the case that the Memory Clinic will suggest an LPA be put in place once a diagnosis has been given.

WHY REGISTER THE LASTING POWER OF ATTORNEY?

Please bear in mind that an LPA must be registered with the Court before it can be used by the Attorney. This means you'll need to factor in the time it takes to deal with registration, which is typically 10 – 12 weeks. However, the timescale will vary depending upon each Court's workload.

APPLYING TO THE COURT OF PROTECTION

If the Certificate Provider is unable to confirm that the Donor has the necessary capacity to put in place an LPA then steps need to be taken in order to appoint a Deputy.

An application will need to be made to the Court of Protection before any financial decisions can be taken. The Court of Protection is the Court that has the power to make decisions relating to people who have lost their mental capacity.

If a person lacks capacity to make an LPA, family members or friends can apply to be appointed as a Deputy on their behalf. Once appointed, the Deputy will be able to make financial decisions on behalf of the person who lacks capacity, subject to the overall control of the Court. For example, the Deputy would have the legal authority to sign papers relating to the sale of the property and to then look after the proceeds of sale.

If something needs to be completed quickly such as selling the house, special directions might be needed from the Court.

As with registering for an LPA, it takes time to appoint a Deputy. This is typically 4 – 6 months, although it can take longer.

MAKING A WILL

WHY IT'S IMPORTANT TO MAKE A WILL

The next thing to consider is to ensure a Will is in place. A Will ensures that when you die, your money and possessions go to the people you choose. If you do not have a Will, the law will dictate who will benefit from your estate.

This means it is important to make a Will whilst you still have testamentary capacity. If you have dementia, you may still have testamentary capacity to make or change a Will.

WHAT IF YOU DON'T HAVE TESTAMENTARY CAPACITY?

In this situation, only the Court of Protection can make a Statutory Will on your behalf.

Partners/relatives of the person with dementia may also wish to consider making or changing a Will.

If you wish to leave your estate to the person with dementia, you should consider setting up a Trust to ensure their income is protected. This will also help to prevent their eligibility for means tested benefits being affected by the inheritance they are due to receive.

WHAT ABOUT YOUR FAMILY HOME?

You can make provision for your property in your Will. Leaving your share of your property in your Will to your children for example, can ensure that they inherit what you have worked hard for.

As you get older you may require advice on a number of property transactions in addition to the above. You may also need to consider moving home to find accommodation that's more suitable for you.



THE FINANCIAL SIDE OF DEMENTIA

Following a diagnosis of dementia one of the most daunting things to consider can be ensuring that the financial side of things is taken care of.

This can range from planning a monthly budget, to understanding how to fund care fees, applying for state benefits and ensuring that assets are properly managed and protected. With the right support and advice this can all be taken care of.

PUTTING A FINANCIAL PLAN TOGETHER

The financial consequences of dementia may begin to be felt well before you need to consider funding the cost of care. If your parent or loved one has always managed their own finances

(or that of the family) they will probably need help very quickly.

By seeking advice about financial support, you can create a plan to make sure that things continue as normal during what may well be a difficult time. A professional adviser will help you to work with the person affected by dementia, starting from the immediate need to manage their income through to the potential need for care or assistance. They will guide you through the options and remove many of the uncertainties and concerns about the future.



FUNDING THE COST OF LONG TERM CARE

One of the biggest concerns for those with dementia, and their families, is how to fund the cost of both immediate and longer-term care. Although state benefits such as Attendance Allowance are available, it can be difficult to find out about the wider range of support that local authorities and the NHS can offer. This is especially true when trying to understand the impact of means testing and the likely implications of self-funding.

The average cost of residential care in the UK is currently estimated at £550 per week. If nursing care is also required, this can rise to £758 per week. The average cost of care in your home is £15 per hour (source: Laing & Buisson Care of Older People, UK market report 2013/14).

It is therefore not surprising that one in four people who fund their own care run out of money (source: Partnership 2013), leading to potential compromises regarding their future care. Most commonly, this is because they do not consider all the options or take proper advice.

With financial planning it may be possible to fund care for as long as required, whilst safeguarding as much capital as possible. For this reason, consulting with a specialist financial adviser is essential from both a health and financial perspective.

PAYING FOR CARE – OPTIONS

For those required to pay for their own care, there are a number of different ways this may be done, depending upon your circumstances:

1. Own income
2. Family contribution
3. Savings accounts
4. Investments
5. Care Fees Plan

1. Own income: You may receive sufficient income to pay for care in full, or as a “top up”. This income could be from a number of possible sources:

- Pensions
- Investment income
- Rental property
- Attendance Allowance
- Nursing Care contribution (if applicable)
- Funding from other family members

Details of state benefits can be found at www.gov.uk/browse/benefits

Even if your income appears to be enough to cover the cost of care in full, take advice. It is likely that improvements can be made.

2. Family contribution: Your family may be able to cover some or all of the cost, or difference in cost, as a “top-up”. If neither of these are an option, you will need to raise money either by accessing savings or investments, releasing money from your home via an equity release plan, or selling the home.

3. Savings accounts: This includes money held in deposit accounts, Cash, Individual Savings Accounts (ISAs) and National Savings. Very low risk, but with current rates of interest being so low you will need to ensure your capital is not eroded too quickly.

4. Investments: There are many possibilities here, from investment bonds and unit trusts to shares. However, the most profitable are usually the highest risk therefore a balance may need to be struck. There is no guarantee that values will not fall and put your capital at risk.

Again, this is where advice from a professional can be invaluable by helping to ensure your savings and

investments provide you with a predictable and consistent income for funding care costs.

5. Care Fees Plans (also known as Immediate Needs Annuities): These are specialist insurance plans designed to convert capital into income to help meet care fees. In return for a one-off lump sum you receive a guaranteed tax free income for life.

YOUR PROPERTY

The proceeds of a house sale can be used to support any of these options if other assets on their own are insufficient.

ARRANGING ONGOING SUPPORT AND MONITORING

It's also a good idea for partners or family members to meet regularly with a Financial Adviser to monitor and understand any changes in circumstances as they develop and to adapt their financial arrangements to take account of them. This can provide genuine peace of mind for everyone when it really matters.

Looking after your finances can have a dramatic effect on your ability to pay for the type of care or care home that you require. Seeking professional advice from a regulated financial adviser will help you achieve this.

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