

Why should I make a Lasting Power of Attorney for Health & Welfare?



Who really knows what I would want to happen next?

! The Doctor doesn't know, the Local Authority doesn't and neither does the Court of Protection

My family know...

In Detail

Your money or your life?

Capacity to manage your affairs can be lost for many reasons, such as a sudden accident or medical condition. With over 850,000 people in the UK currently living with dementia (and rising) ensuring your loved ones have the ability to make decisions for you is essential.

Many people understand the advantages of making an Lasting Power of Attorney (LPA) for Property and Financial Affairs, often viewing this type of LPA as being the most important to have in place and putting off an LPA for Health & Welfare until a later date.

But is that really the right thing to do?

Ask yourself this – What would concern you most if you were unable to make decisions for yourself?

Would it be - Where you lived? What you ate? What care and medical treatment you were given?

Or would it be – Is my money being spent wisely?

I know what my answer would be!

Below is a true account of what happened recently to just one of our clients where no Health and Welfare LPA was in place.

Mum was admitted to hospital and following a lengthy stay Social Services along with the Local Authorities compiled a health report along with an assessment for care. Naturally, her children wanted to be involved in this process and requested that they be consulted with the view to wanting to ensure that the care package would be what Mum would have wanted. Not only were they not invited to any of these meetings to decide Mum's fate, the authorities also refused to reveal the contents of the health report to her own children. All decisions were made without any of her immediate family being present!

In Detail

This is not an isolated case, Countrywide have been made aware of several instances where clients have been in the same terrible position and which could so easily have been avoided. How happy would you be to allow Social Services to make all the decisions about where you should live or other professionals deciding what medical treatment you received and your family having no say in the matter?

Can any decisions made be challenged?

If there was a serious dispute about any decision made by these professionals / authorities, which your family and friends know you would not have wanted to happen, then your family would have to apply to the Court of Protection for a Deputyship order, which is an expensive and lengthy process. The Court is also unlikely to appoint a Deputy to take charge of decisions about your health and welfare generally, and so it is possible that more than one application must be made to the court as circumstances arise.

What many people also do not know is that Health and Welfare Deputyship Orders are granted much more sparingly and many are rejected by the Court. The Court will only appoint a Health and Welfare Deputy as a last resort, and it is much more expensive and time consuming compared with having a Health and Welfare LPA established.

So, in the absence of a Health and Welfare LPA or a Deputyship order, the Mental Capacity Act gives a general authority to allow decision makers to take action in providing care for individuals who lack capacity, as long as those decisions are in the best interests of the incapacitated individual, and all reasonable steps have been made to ensure the person in question cannot make the decision himself. The difficulty with this is that **'decision makers'** often have competing objectives, for example, to balance out what is in the **best interests of the patient verses the costs considerations** of providing that care.

If you have a Health and Welfare LPA and have communicated your wishes to your attorneys it can maximise your chances of having your wishes followed in the future.

Having an LPA Health & Welfare in place provides the reassurance of knowing that, if the worst should happen, you have chosen someone you trust and knows your wishes, to make these decisions for you. Its importance should not be overlooked.

When should you make yours?

The short answer is – now!! If you haven't made a Lasting Power of Attorney, then do it now – while you still have mental capacity. Mental capacity can be lost at any time, and not just by a mental illness such as dementia. Simple things – a bump to the head or even a car accident take people by surprise. Not having one is a more time consuming and expensive process. Ensure your wishes are carried out by those you love by appointing them as your Attorney today.

