

# FEWER THAN ONE IN TEN APPOINT SOMEONE TO MANAGE THEIR LIVES IF THEY LOSE MENTAL CAPACITY

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“As People are living longer it is more important than ever to plan for late life”

If death is a topic we like to avoid – six out of ten people have not made a will – the thought of becoming incapable of running our own lives is even more taboo.

Fewer than one in ten adults in England and Wales have taken steps to appoint someone they trust to step in and look after their affairs if they become incapacitated.

Yet the prospect of living out old age in ill health and mental confusion is one which more of us will have to face up to as a possibility because we are all living longer.

The number of people reaching their 85th birthday is expected to double by 2045, according to predictions by the Office of National Statistics, and the Alzheimer’s Society predicts that by 2051 there will be more than two million people with Alzheimer’s in the UK.

Our population is not only growing, the proportion of older people is rising. According to the ONS, in 1975 one in seven people were over 65, today it is fewer than one in five and by 2045 it will be one in four, with all the attendant problems old age brings.

“It is a looming problem, the ever-growing numbers of elderly people who live on into their eighties and nineties in declining health who end up losing their capacity to make decisions for themselves,” said Helen Strong, Head of Private Client at solicitors Brindley, Twist, Tafft & Jame[<https://bttj.com>]of Coventry.

“None of us like to think that will be our fate, but realistically it may be. You don’t know whether you are going to lose capacity or not, hopefully not, but planning in advance is essential if you want to retain a degree of control over how your life will be lived.

“Taking out a Lasting Power of Attorney to appoint a trusted friend or relative to look after your financial affairs, or to make decisions about your day-to-day care and medical attention, can give everyone peace of mind.”

“These do, however, have to be drawn up while you still have mental capacity then witnessed, dated and lodged with the Office of the Public Guardian, so forward planning is essential.”

While the number of people taking out LPAs is rising swiftly, the latest figures from the Office of the Public Guardian show that they are still in a small minority. In 2016 there were 1.4 million financial LPAs registered and 600,000 Health and Welfare LPAs. Some people will have registered both.

“When someone comes in to talk to us about making their will, we will talk to them about the benefits of putting in place Lasting Powers of Attorney,” said Helen. “It is a bit different from death estate planning because, obviously, death is inevitable.

“Putting in a Lasting Power of Attorney is planning for eventualities that may or may not happen. Quite often people think it is something that is for elderly people and, of course, it is because we are all being kept alive longer and as people get older they think about these things more.

“However, incapacity can happen to any one of us, at any time, through illness or accident.”

Lasting Powers of Attorney were brought in by the Mental Capacity Act 2005 which came into force in October 2007 and since then registrations have risen every year. A person can appoint more than one attorney and can specify that attorneys have to agree on decisions or can act independently. There are two types of LPA – one that enables trusted individuals (“Attorneys”) to manage finances and one that enables attorneys to make decisions about health, personal and medical decisions. (a Health and Welfare LPA).

An attorney must always make decisions in the best interests of the patient. A Health and Welfare LPA can be very wide-ranging, covering aspects of day-to-day life such as where a patient lives, what they eat, how they dress, who can visit them, as well as decisions about their medical treatment.

It can even include matters of life and death. Anyone taking out a Health & Welfare LPA can decide to give their attorneys the power to consent or refuse “life-sustaining” medical treatment.

Health & Welfare LPAs can only be used by the attorneys once a person has lost the mental capacity to make a particular decision, whereas Financial LPAs can be set up so that they can be used, whilst the person still has capacity and require an attorney to carry out their wishes.

“A Lasting Power of Attorney is a powerful document and I always say to people that they must be sure that they trust the person or people they are appointing,” explained Helen. “We can help advise people on who they might want to appoint as an attorney. Quite often they may want one person to manage their financial affairs and another their health and welfare. We can also advise on the type of conditions that people can consider placing on their attorneys to safeguard their interests.

“Attorneys have to do their best to help you come to a decision if possible and a person may have capacity to make one decision but not another. For example, someone may be able to choose what to wear but not understand the consequences of a medical procedure.

“It is really sad when people leave it too late and they are unable to make an LPA because they have already lost capacity. The alternative is the Court of Protection and an application to appoint a deputy, which is more time-consuming and expensive. It can cause a lot of delay and make it very stressful for all concerned.”

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