

WHAT HAPPENS IF YOU LOSE CAPACITY BUT DON'T HAVE A LASTING POWER OF ATTORNEY (LPA)



When it comes to later life planning there are many scenarios that you need to consider, and most of the time it can be quite overwhelming. We have had clients ask us questions pertaining to Lasting Power of Attorney and capacity.

In simple terms, there is no straight answer as it very much depends on your circumstances and whether you're going to need someone to make decisions for you. If you have a bank account, pension, property or investments then these still need to be managed. Obviously, if you are unable to make the necessary decisions then the question is - who is it going to?

If you have a Lasting Power of Attorney in place then the answer is simple: your Attorney can step in and deal with matters. Without a Lasting Power of Attorney in place, it gets a lot more complicated.

There is a legal process to deal with this scenario. This is called 'Deputyship' and it enables someone to apply to the Court of Protection to get the Court's permission to be appointed your 'Deputy'. It's worth remembering that, as you've lost capacity at this stage, you can no longer express a view on who you would want to appoint as your Deputy.

The Court therefore has to decide whether the person who is applying to be your Deputy is a suitable candidate for the role. As you would imagine, having the legal authority to deal with someone's finances is a serious business and so the Court, quite rightly, has to be extremely careful with whom they appoint.

Whilst this is all being done to protect you, it's also creating a burden on your loved ones who are trying to get appointed so that they can manage your affairs.

Never underestimate this burden – it’s significant. There have been many times where someone has wanted a Lasting Power of Attorney to be put in place solely because they’ve seen the trouble that has been caused by not having one. Clients commonly say things like “a friend of mine is having a nightmare so I just want to avoid it by getting an LPA”.

So what is this additional burden placed on people becoming Deputies? Here we look at this in more detail.

1. The Paperwork

Firstly there’s the application to be appointed as a Deputy. It’s extensive. The proposed Deputy applying to be appointed will need to complete:

- A 12 page application called a COP1.
- A 12 page ‘assessment of capacity’ form which needs to be completed partly by them and partly by a medical practitioner who has assessed your capacity.
- An 8 page ‘declaration’ for the proposed Deputy to complete giving full details of their own personal circumstances such as their financial circumstances and history. It also contains 17 specific undertakings that the proposed Deputy needs to confirm whether they can fulfil, as well as a personal statement setting out why they wish to become the appointed Deputy.
- A 12 page ‘information’ form setting out details of your circumstances. For example, in respect of a Financial Deputyship application, the proposed Deputy needs to declare your income and assets, pensions, social security benefits, the balances of your bank accounts, details of any investments, the value of any properties and mortgages, as well as details and value of your personal possessions. The proposed Deputy needs to also disclose any debts and expenditure.

2. The Costs

The costs of Deputyship can also be significantly higher than putting a Lasting Power of Attorney in place.

For a Deputyship, the application fee alone is £400. If the Court decides that your application requires a hearing then there is a further fee of £500 to be paid. There is also an assessment fee of £100 for a new Deputy, plus annual supervision fees of up to £320 each year. For Financial Deputies, you’ll also need to pay for a bond to a security bond provider in order to protect your finances.

3. The Ongoing Court Supervision

If the proposed Deputy manages to get appointed by the Court then they are subject to ongoing supervision by the Court. Your Deputy must keep accounting records and submit an annual report detailing what decisions they have taken on your behalf and why they were in your best interests. They also need to provide the Court with an update on your finances.

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We Can Help

When thinking about planning for the future, it's important to consider what's in your best interests but also the interests of your loved ones.

Making a Lasting Power of Attorney not only protects you so that decisions are made by someone you trust, but it also makes managing your affairs a lot easier to deal with for your family members.

If you already have a solicitor that specialises in LPAs, contact them to assist with setting this up. Should you not have a solicitor, we can recommend one to you.

Please contact a member of our dedicated team so we can help. Call us on **01753 888211** or email us **info@nhllp.com**