



Managing your future

Every adult has the right to manage his or her own money and affairs. However, a person's ability to do this may reduce as they get older. Whether this is caused by illness, disability, or an accident, there are a number of practical steps you can take to prepare for this.

If this describes your own situation or that of someone close to you, you should consider getting legal advice. A solicitor can help by encouraging you to get your affairs in order and make your wishes for the future known. This may involve anything from writing a will to choosing someone to take power of attorney over your financial affairs, if this is necessary.

This can lighten the burden on your husband, wife, relatives or carers who might otherwise find it difficult to make complicated decisions on your behalf.

In circumstances where there is not enough time to take these precautionary steps, or if a person is already unable to handle their own financial affairs (incapacitated), it is usually the relatives of the person who need advice. Under these circumstances there are a number of options available. One of these options is to contact the Court of Protection which can make arrangements for managing the person's financial affairs. A solicitor will tell you the best course of action in your case.

Finding a solicitor

If you don't already have a solicitor, call the Law Society on 0870 606 6575 or visit our website at www.solicitors-online.com to search for details of solicitors in your area.

What the solicitor will need to know

When you contact a solicitor, he or she will need to know:

- whether or not you, or the client, have made a will;
- who you, or the client, would choose to handle your affairs, if this is necessary;
- what assets or income you, or the client, have;
- any special wishes about how you, or the client, want your property or assets to be handled; and
- whether you or the client are undergoing medical care (and permission to speak to the doctor in charge if so).

Once your solicitor has had a chance to cover these issues, they can explain your various options to you. These are broadly as follows.

Power of attorney

This is a legal way of giving someone else the power to manage your financial affairs when it is difficult for you to manage them yourself, perhaps because of a physical disability. Usually it is a close relative or friend, or a solicitor you appoint in this role (as 'attorney'). Nobody can 'take' power of attorney. You must 'donate' it willingly. The donor chooses who to appoint as attorney, and can cancel the arrangement at any time.

Power of attorney only applies if you are fully aware of the implications of the arrangement. This then ends if you become mentally unable to manage your affairs.

Enduring power of attorney

This arrangement goes a step further than an ordinary power of attorney. It allows you to choose someone to manage your affairs if you become permanently or temporarily unable to do so in the future - whether from illness, disability, or an accident.

For the enduring power to be legitimate, you must be fully aware of the implications of the arrangement at the time of making it. So, it is too late to consider making an enduring power of attorney if the person concerned is already mentally incapacitated. If you want to take control of a person's affairs in these circumstances, you will have to apply to a special court to do so. [See the next section on the Court of Protection.]

When the donor loses the capacity to manage their affairs, the 'attorney' should then register the enduring power of attorney so that the Court of Protection and its administrative office - the Public Guardianship Office - can oversee the attorney's actions.

Enduring power of attorney can cover complicated matters such as managing shares and selling a home, as well as the day-to-day management of a person's financial affairs.

Consulting a solicitor is the best way to make sure that an enduring power of attorney is properly set up and in the best interests of the donor.

The Court of Protection

If someone becomes mentally incapacitated without first granting an enduring power of attorney, the matter can be taken to the Court of Protection. The court may then choose someone to manage the person's finances for them. Known as a 'receiver', this person must keep accounts and report to the Public Guardianship Office. Often this person is a close relative, but the court can appoint other people such as solicitors or accountants.

The court charges a fee to cover the costs of supervising the receiver's work. This may include a part of the incapacitated person's financial assets. The court does not generally need to be involved if the person has a low income, or only moderate savings. In these cases, the court may authorise someone to handle the person's money on their behalf (usually a relative, friend, solicitor or accountant of the incapacitated person), without the need for any further supervision from the court.

Benefits Agency appointeeship

If a person is incapacitated and entitled to a retirement pension or other state benefits, the Benefits Agency can choose an 'appointee' to receive those benefits on that person's behalf. This appointee can be a relative, friend or someone from the caring professions, who will be asked to produce some proof of the claimant's incapacity, such as a doctor's note. There is no fee involved in this service.



Costs

Charges vary between solicitors and depend on your circumstances and how much advice or help is needed. Before deciding on a particular solicitor's firm, you should always check how accessible their offices are, and how much experience the firm has in this particular area of law. You will also want to get a clear idea of their charges. But cost is not the only consideration. It is equally important to find a solicitor who is approachable and whose advice you understand.

More information

This is one of a series of leaflets covering the most common types of legal services provided by solicitors. Other leaflets in the series are listed below. You can get them either from your solicitor, or by phoning the Law Society on 0870 606 6575.

Your guide to making a will
Your guide to buying a home
Your guide to getting a divorce
Your guide to setting up a business
Your guide to making a personal injury claim
Your guide to problems at work
Your guide to setting up home with your partner
Your guide to renting out your property
Your guide to renting a home
Your guide to using a solicitor
The Client's Charter: your solicitor's customer care guides

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