

Give careful consideration to a power of attorney

Consumer affairs A judge has recently criticised the system for being open to abuse. **Laura Whateley** explains how not to fall victim

The lasting power of attorney (LPA) system leaves the elderly open to abuse by unscrupulous children, friends and neighbours, a senior judge claimed this week, saying he would never draw one up for himself.

Denzil Lush, a senior judge of the Court of Protection until he retired last year, warned that the assets of elderly people were at risk of being sold or frittered away, most often by their children. Solicitors are warning, however, that not having such a document could cause serious problems for far greater numbers of those struggling with conditions such as dementia.

Times Money has learnt of dozens of cases of well-meaning people unable to help ailing parents with their finances because organisations such as banks, building societies and insurers will not speak to the spouse or relative of a customer without an LPA in place.

One was unable to cancel his wife's phone contract, on which she had run up £1,000 of bills despite never using the phone, because he did not have "permission" to look after her finances.

If an LPA is not registered before you lose mental capacity, relatives will have to apply to the Court of Protection to be appointed as a deputy — the system advocated by Mr Lush. A deputy has to

provide a list of assets, annual accounts and a security bond, which is used to protect against financial abuse. The main benefit, says Chris Keenan, a director at Solicitors for the Elderly, is that deputies are closely supervised and subject to annual reporting requirements from the Office of the Public Guardian.

Two or more people can be appointed deputies. Some people are paid to act as deputies, such as accountants and solicitors appointed from a list of approved law firms or charities.

Deputyship, says Susan Sherry, a legal director in Hill Dickinson's private client team, can lead to delays of up to 12 months.

"Proceedings at the court of protection are notoriously slow and costly, and this delay and loss of control can have a detrimental effect on the individual's affairs," she warns. "Whereas an LPA can be used immediately after it is registered with the Office of the Public Guardian, which can provide reassurance and continuity for the donor and their family."

You must have "mental capacity" to create a LPA. The flaw in the system is that anyone can certify that you have mental capacity, as long as that person has known you for more than two years. There is no requirement that



Solicitors warn that not having a power of attorney can cause serious problems

they need to be a "person of standing" such as a doctor or solicitor.

This, says Ms Sherry, may leave room for abuse. "Consider taking advice from a solicitor accredited by the Society of Trust & Estate Practitioners. Providing

Growing problem

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The number of dementia sufferers there will be in the UK by 2025

notice to third parties of who you have appointed as your attorney also ensures important family members or friends are vigilant at a time when you may lack mental capacity."

One of the best ways to minimise any future problems is to appoint two attor-

neys who are independent of each other, says Roman Kubiak, a partner and head of contested wills, trusts and estates at Hugh James, the law firm.

"While, sadly, there are those who do prey on and take advantage of the vulnerable, the message should be to ensure that proper thought has been given to the LPA, rather than avoiding one altogether which can compound the problem," he says.

You can appoint two attorneys and stipulate that they must act on a joint basis or, he suggests, place restrictions that would prohibit large withdrawals of funds or the selling of assets without the prior authority of the court of protection. "Thankfully, where abuses of power do occur by attorneys, applications can be made to the court of protection fairly swiftly."

You could also appoint a professional attorney to act solely, or with family members. Or you can draw up an LPA

yourself on the website of the Office of the Public Guardian. This is the least expensive way to do it, at a cost of £82 to register, which takes about eight to ten weeks, provided there are no mistakes in the application. An attorney can take control of your finances as soon as the application goes through, or you can choose to postpone this.

Such an easy online application has been criticised, however, for leaving people open to fraud or coercion. A report last year from organisations, including Action on Elder Abuse and Solicitors for the Elderly, warned that without legal advice, details on how money would be handled were vague, there was not enough warning about the potential for misuse of a LPA, applications were more likely to contain mistakes, and it was easy for people to be persuaded into making choices they did not feel comfortable with.

Mr Keenan says: "A specialist solicitor will ensure that an LPA application is completed correctly and fully, and that there is minimal scope for misunderstanding later down the

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line. They also act as a safeguard against fraud and coercion — it is a solicitor's duty to ensure that you fully understand the risks of fraud and undue influence, and that you have carefully considered your choice of attorney. "Legal specialists can also advise on guidance and instructions to include in your LPA to ensure that, as far as possible, your preferences are respected. This is particularly useful if you have specific wishes regarding the management of your property and bank accounts, or choices around your care plans and end of life wishes."

If you would like legal advice, but are reluctant to pay solicitors fees, the organisation Unforgettable, which specialises in dementia products, offers a halfway house where you can have a phone consultation with a lawyer who will fill out the forms for you for £180.

To find out more visit the power of attorney section of ageuk.org.uk.