

Caring for the Carer

Legal & financial arrangements

As dementia progresses you will find that the person you are caring for will find it increasingly difficult to manage their financial and legal affairs. Although some arrangements can be made on an informal basis, there are a number of procedures and safeguards which can be taken so that the person's affairs are managed as they would wish.

Diagnosis

When a diagnosis of Alzheimer's Disease or a related dementia has been made, a number of important legal and financial issues should be considered as early as possible.

Joint Bank Accounts

Joint bank accounts are a particularly useful means of dealing with one's financial affairs when a person has mobility problems, or is unable to take responsibility for maintaining an account on their own.

Any person can open a bank account when that person has the necessary mental capacity (which may be the case when a person is diagnosed with early stage dementia). When an account is opened an account holder may authorise the bank to accept cheques if signed by another individual. If one account holder becomes mentally incapacitated, the legal authority to operate the account may be revoked and it may not be possible for the account to be used by the other joint account holder.

Agency Arrangements for Social Welfare Payments

The Department of Social, Community and Family Affairs has the power to make payments to a third party acting on behalf of the recipient. The person to whom a social welfare benefit is payable may nominate another person to receive that benefit on their behalf. The person nominated (agent) has no power to deal with other financial matters.

Making a Will

If not already done, the person with dementia should be encouraged to make a Will as early as possible, disposing of their estate. It will be necessary for a doctor to certify that the person with dementia is still mentally capable of making and understanding such a document. If they are married, their spouse should also make a Will.

A Will is a written document in which a person sets out legally binding wishes in relation to the distribution of an estate after death. Having a Will is important because it not only details the arrangements for the disposal of the estate, but it can also:

- Express burial wishes and any other details concerning funeral arrangements or the disposal of body
- Save next of kin or other beneficiaries substantial inheritance tax
- Appoint guardians for any children under the age of eighteen if one or both spouses die in an accident
- Leave specific assets to specific children or beneficiaries and specify that certain beneficiaries can only inherit property on attaining the age of 21 or older.

A Will can be drawn up by anyone, but it is best to go to a solicitor for the benefit of their expertise and therefore reduce the likelihood of it being challenged after death. Additionally, a Will can also be used to save next of kin or other beneficiaries substantial inheritance tax.

Enduring Power of Attorney (EPA)

An Enduring Power of Attorney (EPA) is a legal arrangement whereby one person (the donor) gives authority to another or others to act on their behalf in the event of donor becoming mentally incapable of managing their own affairs. As long as the donor is well, the EPA cannot be acted upon by the attorney.

A person can only grant an EPA if they are capable of understanding what it is and what it is intended to do. It is still possible for someone to grant an EPA after dementia has been diagnosed so long as it is clear that they are fully aware of what is involved. The GP or consultant will be required to provide a statement providing that, in their opinion, the donor had the mental capacity at the time of execution to understand the effect of creating an EPA. If this is in question, it may be necessary to have the document signed by the donor in the presence of both the solicitor and the doctor.

Appointing an attorney

The donor should consider the age and circumstances of any prospective attorney and whether they will have the time and energy for such a commitment. They should also think about whether one or more attorneys should be appointed and, if more than one, how will they act. If any attorney is not able to act for any reason, a substitute attorney can be appointed.

The attorney's powers

The donor should also consider what powers they wish to give to an attorney. They may decide to give an attorney general authority which allows an attorney to carry out any transactions on their behalf which they are able to delegate legally, or they may give a specific authority which enables the attorney to deal with specified aspects of their affairs. They may also make more than one EPA, appointing different attorneys with different responsibilities.

The kinds of activity which the attorney might carry out on the donor's behalf include signing cheques and withdrawing money from various accounts, buying or selling shares or houses, using the donor's assets to finance long-term care for the donor. There

may also be limited powers to benefit anyone for whom the donor might have been expected to make provision, or to make gifts on special occasions or donations to charities that the donor was likely to have made.

The donor can also give power to the attorney to make personal care decisions in their best interests such as:

- Where the donor should live
- With whom the donor should live
- Who the donor should see and not see
- What training or rehabilitation the donor should receive
- The donor's diet and dress
- Who may inspect the donor's personal papers
- What housing, social welfare or other benefits the donor needs.

Registering the EPA

An EPA cannot be acted on until registered. Section 9(I) of the 1996 Act states, 'If an attorney under an Enduring Power of Attorney has reason to believe that the donor is or is becoming mentally incapable, the attorney shall, as soon as practicable, make an application to the court for registration of the instrument creating the power.'

Before the attorney has a duty to register the EPA, it is necessary to prove with a medical certificate from a doctor that the donor is or is becoming incapable of managing their affairs.

A notice of the attorney's application to register the EPA must be served on the donor and also on the people who were notified of the execution of the EPA and are named in it. Any person serviced with this notice can object to the registration by sending the grounds for objection to the wards of court office within five weeks on receipt of the notice.

Once the attorney has applied for registration, they may act on the EPA, namely to take action under the power to maintain the donor and prevent loss to the donor's property or savings. They may also make any personal care decisions that are authorised and cannot be deferred until the registration has been completed.

Advantages of an EPA

The advantages of an EPA are that the donor is able to choose the person who will deal with their personal affairs and/or make personal care decisions affecting them. It is relatively cheap and easy to set up and can be done with little formality. It is easy to operate and involves no annual fees. The attorney is obliged to keep and, if necessary, produce adequate records and accounts. The attorney is expected to use their discretion but there is a procedure whereby another interested person eg next of kin or carer may challenge the conduct of the attorney.

Wards of Court

If the dementia has progressed to the point where person is unable to make an EPA, application may have to be made to have the person with dementia made a Ward of Court. A Ward of Court is a person who is declared to be of unsound mind and incapable of managing his/her person or property and no EPA has been executed previously.

The principle purpose of wardship is to protect the property of the ward and manage it for the ward's benefit and the ward's dependants (if there are any). When a person is taken into wardship, it means that the President of the High Court is satisfied on the basis of medical evidence available that the person should be deemed to be of unsound mind and is incapable of managing their affairs.

In the majority of cases, a solicitor is instructed by a social worker or often by a member of the proposed ward's family that a wardship application may be necessary. The first step is to obtain two medical reports from two medical practitioners, usually on oath, reporting on the health of the proposed ward. The reports should specify the particular medical condition the person has and whether this is likely to be long-term. The report should also state that the person is incapable of managing their affairs. The court will also appoint a its own doctor to prepare a third medical report and if all the medical reports agree then a wardship order will normally be made.

How does it work?

The judge will normally appoint a committee of the person and of the estate of the ward (the committee may consist of just one person). The committee is normally one or more close relations or friends. However, the ward's solicitor or even the general solicitor for minors and wards of court can act as committee where necessary. The committee has no inherent power of authority and can only act as specifically authorised by the court.

The committee of the person is similar to a guardian and has a duty to look after the physical welfare of the ward and the committee of the estate is similar to a trustee and can make representations to the Wards of Court office regarding the ward's property and investments. The property of the ward is not transferred into the committee's name but is invested by the Wards of Court office on behalf of the ward. In practice, the duties and functions of the committee of the person and the estate overlap and merge. Consequently, it is common practice for the same person (or persons) to be appointed both committee of the person and the estate. The committee will normally be authorised to transfer all monies in any bank account or building society account etc to the Wards of Court office for reinvestment under its control. Stocks and shares may be sold or alternatively, control is given to the Wards of Court office. If a property is involved, the committee will be responsible for selling it or letting it and must account for the net proceeds of sale or the rental income to the Wards of Court office. If there is a sale of a property, the property cannot be sold less than the reserve price placed on the property by the Wards of Court's valuer.

The committee is also entitled, when authorised, to receive monies and make payments eg collect pensions, receive dividends, pay outgoings such as maintenance fees for nursing home care, or purchase items for the ward's benefit.

The committee must lodge all monies received on behalf of the ward into a bank account designated as a committee account. The committee must file annual accounts for all sums received and disbursed. Annual income tax returns must also be submitted to the inspector of taxes.

What happens to a ward's property when they die?

On the death of a ward, after the discharge of their debts and when a grant of probate or administration has issued, their estate is distributed amongst the people entitled, either in accordance with the terms of the ward's Will or among the ward's closest next of kin if there is no Will. It is necessary for a formal application to be made to conclude the wardship proceedings. Pending this, the funds are made available by the court to pay expenses, such as funeral expenses, nursing home expenses and probate tax.

Trusts

Trusts are another way of handling the financial affairs of another person, whether or not that person is incapable of dealing with their own affairs. A Trust exists where a person (the trustee) holds the property of another (the settlor) for the benefit of named people (the beneficiaries). The beneficiaries may be the settlor or other people.

Trustees hold and manage the trust property and normally have powers to purchase assets and services for the use or benefit of the beneficiaries rather than handing over the money. There is no supervision of the conduct of the trustees as long as they carry out the terms of the trust.

Covenants

In certain circumstances, an individual may claim relief against an assessment of income tax if that person is making payments by way of a covenant to another person.

A Deed of Covenant is a legal document under which one person agrees to pay a certain sum of money each year to another person. The advantage is that the person paying the money can effectively not pay tax on it. The money is transferred to someone who does not have a taxable income or pays a lower rate of tax than the person giving the money. In order to qualify for relief, there must be a legal obligation to covenant a sum of money for a period which is in excess of six years.

The circumstances in which an older person can receive sums which are deductible from the covenantor's income are:

- if that individual is permanently incapacitated (mentally or physically)
- if that individual is over 65 years of age
- through payments which are part of a maintenance agreement between separated spouses.

Tax Relief on Nursing Home Fees for Dependent Relatives

In the situation where a family member is contributing to the maintenance of their loved one in a nursing home, it may be possible to claim tax relief on the payments and any other additional medical expenses the person may have. Tax relief for nursing home expenses is claimed under the general scheme for tax relief on certain medical expenses. Most nursing homes are approved for tax relief.

You should contact your local tax office to discuss the specific situation and request the appropriate forms for making a claim.

It is important to plan one's legal or financial affairs carefully and therefore it is advisable to seek appropriate professional advice when addressing such matters.

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