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PROFESSIONAL DEPUTIES

Losing Capacity Does Not Mean Losing It All

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ANDY RIDDLE

My name is Andy Riddle, and I'm the Managing Director of Professional Deputies – a firm that manage the property and financial affairs of adults who are deemed mentally incapable of doing this themselves, and have no family or friends that could or want to assist them with this vital day-to-day task. These adults are some of the most vulnerable members of society, and safeguarding their assets is at the heart of what we do. We do this in one of three ways:

1. **Appointeeship via the Department of Work & Pensions**
2. **Deputyship via the Court of Protection**
3. **Lasting Powers of Attorney via the Office of the Public Guardian**

As Managing Director of a niche Court of Protection practice, Andy Riddle manages the financial affairs of mentally incapable individuals.

You may be concerned that your ability to make decisions may diminish in the future due to ill health (both physical and mental); making such arrangements ensures - if and when you lose mental capacity -, that your best interests are taken into account even if you can't make such decisions for yourself.

Andy believes that hiring a specialist in this respective field is the best way to go about ensuring your assets are looked after; he states: "Most of the problems we encounter come from firms who may have tried to undertake a piece of work, and as a result of not having the requisite experience end up making a 'mess of things'." He discusses more about his role and how he guarantees the best outcome for his clients.

As Thought Leader in your field, can you think of ways in which the Government or authorities could address issues elders may face when needing assistance with managing properties and finances and health and welfare?

Simply put – consider putting in place a Lasting Power of Attorney (LPA) for both Property & Financial Affairs, and Health & Welfare. It really is all about planning for the future!

There are two different types of LPA's:

1. **Health & Welfare** - A Health & Welfare LPA allows you to choose one or more people to make decisions for things such as medical treatment. A Health & Welfare LPA can only be used if you lack the ability to make decisions for yourself.

2. **Property & Financial Affairs** - A Property & Financial Affairs LPA lets you choose one or more people to make property and financial affairs decisions for you. This could include decisions about paying bills or selling your home. You can appoint someone as an attorney to look after your property and financial affairs at any time.

According to an Old Mutual Wealth report from November 2016, only 3% of the UK population had such instruments in place. Thus, there seems to be a huge amount of work to be done by the Government in looking to promote such instruments.

Can you share ways in which you address the client's best interests when acting as a lasting power of attorney? What challenges may arise and how do you overcome such challenge?

Acting in the client's (or donor in this example) best interests is one of the five key principles set out in Section 1 of the

Mental Capacity Act 2005, of which we are required to comply/adhere to.

When acting as a Property & Financial Affairs attorney, some of the ways we ensure we are doing the best for our client may include:

- Ensuring all state benefits that they are eligible for are claimed;
- Checking excess funds earning the best rate of interest;
- Investing large amounts of capital with suitable investment firms; and,
- Exploring the best way of funding any residential care costs moving forward. This may be via an Immediate Care Needs Annuity.

When acting as Health & Welfare attorney we have the donor complete what we call a 'Letter of Wishes'. This is a document covering ten points about various aspects when it comes to their health and welfare.

Challenges that may arise could include:

- Dealing with family members who may not always have their loved one's best interests at heart;
- If certain clauses are not inserted into the instrument, I cannot act on any such requests that I do not have authority to act on; and,
- The point in time when the donor is starting to lose capacity. If I have any doubt I will always request that a formal capacity of assessment is undertaken.

How do you ensure your client's family or close relative's interest does not conflict with the best solution at hand? What would you advise is the best approach to take in such a situation?

By always acting in our client's best interests, and not that of the client's

family or close relative! We have usually been appointed as either an Appointee, Attorney or Deputy because of a number of possible reasons where there are family present who could take on such roles, but for whatever reason it has been decided that a professional would be the more suitable option. Such family members are aware of this, and sometimes they may require a "gentle reminder" of why we were instructed in the first instance.

How have you seen the perception of mental capacity and attitudes towards addressing vulnerable adults change over your years of practice, and how has this affected your role?

The Alzheimer's Society predicts that by 2025 over a million people within the UK will be affected, in one way or another, by dementia; likewise, mental health is certainly a hot topic and when Theresa May became Prime Minister of this country she pledged a number of new policies around mental health. Mental capacity and dealing with vulnerable adults is going to be one of the seismic shifts that this country will have to deal with in the not too distant future. I believe the general public has become a lot more aware of such issues facing vulnerable adults, and this may be due to more awareness generally throughout society. Unfortunately for our clients (and subsequently myself and my firm) the service we receive from banks, financial firms, utility providers (etc.), when dealing on behalf of our vulnerable clients still leaves a lot to be desired. This is despite British Banking Association guidelines been introduced over the years as to how banks should deal/interact with vulnerable customers or their financially appointed representative.

