

Case Study - When there is no Lasting Power of Attorney in place

John & Julie are in their mid 70's and have been married for 55 years. A devoted couple they have 2 children Sarah and Michael (aged 53 and 50) and 3 grandchildren. They are a close family, but never quite got around to having that delicate conversation about what happens if either lost mental capacity.

John, now well into retirement previously ran his own engineering company whilst Julie raised the children, and more recently helped out with the grandchildren. Julie has always heavily relied on John to manage their finances, and consistently opted to be absent when he met with their long-standing Financial Adviser. John had always taken an active, hands-on approach with their financial affairs, and as a result neither Julie or the children had any idea what the household finances looked like.

John, in pension drawdown had worked closely with their Financial Adviser to plan his income to suit their requirements and tax position. Julie has little to no pension income in her own right. Their Financial Adviser had always met with John twice yearly to ensure the plan remained in line with his attitude to risk, had a sustainable level of income, and suitable investment strategy which John liked to be involved in. They also discussed the possibility of annuity purchase, and the potential need for care in the future. They both have Wills with the children named as Executors, but John had always rejected the recommendation to arrange a Lasting Power of Attorney (LPA) on the basis that he felt it would never be needed. **John & Julies Assets:**

- Jointly owned property valued at £550,000
- Joint Accounts - £56,313
- John's sole accounts/investments/drawdown plan - £347,899
- Julie's sole accounts/investments - £36,632

Julie had not enjoyed great health for the last few years, and suffering from poor mobility was finding it harder to look after herself and had become more and more reliant upon their children to help her with various tasks such as shopping and household chores.

The Problem

John suffered a sudden and 'unexpected stroke' which unfortunately had some considerable complications and consequences for him and his family. Unable to speak and with considerable cognitive impairment John was deemed to have lost mental capacity. Facing a very poor long-term prognosis for John, Julie and the children were powerless to step in and look after John's financial and personal affairs, which came as a complete shock to them at an already traumatic time.

Julie notified their Financial Adviser who took the necessary steps in accordance with the company's vulnerable client policy. Furthermore, he advised them that in the absence of a registered LPA he sadly could not assist/discuss John's financial affairs with them as John had not legally appointed them as his attorneys when he was well. This meant that all of John's funds were held in limbo until the appropriate legal alternative to an LPA had been arranged with the Courts.

After taking advice Julie and the children were told that they must make an application to the Court of Protection (COP). In the absence of an LPA the COP award powers to someone, they deem appropriate in the form of a Deputy Order. The family were advised that this may be Julie, and or the children, or a stranger i.e. a Court representative/Local Authority/Solicitor from a panel, but ultimately this decision rested with the COP and not Julie or the children. In the meantime, Julie and the children were horrified by the stance taken by the NHS/local authority who were reluctant to consult with them, or even take any account of their thoughts/preferences toward the type of treatment they knew full well John would have wanted, adding to their distress.

The family followed advice and started the process of applying for a Deputy Order. Julie had no access to either John's finances or their joint accounts which was extremely stressful. They had always assumed that their joint bank accounts would always be accessible to them.

Banks commonly restrict access to funds until the relevant order is in place owing to the increasing threat of financial crime and abuse. Julie and the children became increasingly worried about financial hardship as she only had access to her own sole account until the Deputy order had been processed and granted by the Court of Protection. Michael and Sarah were unable to help Julie financially as they had very limited funds themselves. Furthermore Julie, and the children were advised that a deputy's powers are very limited compared to someone appointed under an LPA.

The Reality:

1. Cost of the Deputy order - £3,243
2. Estimated annual costs of the Deputy Order of around £1,500
3. No say over John's hospital/medical treatment
4. No say over the location of his treatment/rehabilitation
5. Unable to access any of John's finances
6. Not able to sell/access jointly held assets
7. No financial advice for John's affairs affecting income, investment risk/volatility (potential capital loss), on-going suitability of pension drawdown, potential changing need for secure/guaranteed income, management of other investments etc
8. Time off work for Michael & Sarah
9. Requirement for Michael & Sarah to provide all relevant and necessary personal, financial information of their own affairs to the COP as part of the Deputy Order application
10. Application time - drawn out and lengthy application process

After a long and stressful 7 months the COP finalised the Deputy Order application granting Julie, Michael and Sarah Deputyship over John's personal and financial affairs.

The Solution

Julie decides to arrange an LPA for herself to ensure that they do not have to go through the same expensive and stressful process should she lose capacity in the future. As a result of advice and a comprehensive consultation with an accredited professional Julie appoints Michael and Sarah as her attorneys, acting jointly and severally giving her complete peace of mind and the following benefits:

1. Guaranteed legal protection for Julie, Michael and Sarah now and in the future
2. Quick to arrange (3 months including registration) compared with a Deputy Order
3. Minimal initial cost of £614 including Office Public Guardian (OPG) registration fee of £164
4. No on-going costs
5. No initial or on-going involvement from the COP
6. Continuity of financial advice - disruption avoided if capacity is lost
7. Michael & Sarah can be party to meetings, discussions and decisions with their Financial Adviser as Julie has always lacked interest, experience and confidence to be involved
8. Consent for Michael & Sarah to accept/refuse life sustaining treatment for Julie
9. Say for Michael & Sarah over where Julie lives, daily activities, care, social events, what she eats, how she dresses, and her overall personal welfare should Julie lose mental capacity.

THE SPOTLIGHT - The OPG now receive over 3,000 LPA applications per week as demand, and public interest grows. Protect your clients, yourself and your on-going relationship with your clients now with the protection of a Lasting Power of Attorney. Please don't leave it to chance.