

## **Legal considerations when diagnosed with Dementia**

### **Questions from Attendees & Answers from Andrew Robertson**

- Q1 Do I require a letter from GP to determine whether I have capacity to make a Will?
- A1 No. Capacity is a legal decision not a medical decision. At McClure we retain an audio recording of each meeting which can be referred to if there is a challenge. If we are unsure and, for example, the client is in a care home, we would speak to the care home manager to ascertain their view. In extreme cases, we would get a doctor's report.
- Q2 Does taking out a Family Protection Trust protect at-home care costs?
- A2 No, there are different Government rules applying to at-home care. Assets are not taken into consideration when care is undertaken at home. The Family Protection Trust is designed to protect the house and other assets.
- Q3 OPG have challenged validity of both of my LPAs from 2015. They are pushing for Court of Protection Deputyship, can I appeal this?
- A3 I don't know but I would recommend that you get someone experienced to look into this then they should be able to advise whether an appeal would be beneficial for you. There is no point in fighting a battle which you are likely to lose.
- Q4 How can someone with mid-stage dementia make changes to their Will?
- A4 Changes to a Will comes down to capacity. If the client has capacity to make changes to a Will then we do so, but if not, then we would suggest a Deputyship in England and Wales, and a Guardianship in Scotland.
- Q5 What is Probate?
- A5 Probate is the procedure to go through the Probate Office to ensure they are satisfied and then they will give you a Grant of Probate if there is a Will in place. Grant of Probate is required by banks and building societies in order for pay-outs to be made.
- Q6 I have a completed a Will and POA before my dementia diagnosis. Am I responsible for selling my property and dealing with IHT?
- A6 POA is valid for people alive. Your Will is for when the person is dead. Accordingly, during your lifetime you can arrange the sale. However, if you lose capacity, then your attorney will do so.
- Q7 Apart from Power of Attorney and Deputyship, is there another way of managing someone's finances?
- A7 No, but you can be set up as an account holder, for example in the case of a Post Office account. Guardianship is when you are appointed to look after children. Power of Attorney is required when someone cannot manage their own affairs.

- Q8 Do solicitors complete capacity assessments?
- A8 We often use the mistake technique. We make a deliberate mistake and see whether the client picks up it or not.
- Q9 As a care home manager, how do we deal with a resident's estate as their capacity diminishes?
- A9 A capacity test is required, it is our job to judge capacity.
- Q10 Do you offer a free Will service and is cost of LPA's is £99?
- A10 We do offer a free Will service and only ask that if possible, a donation is made to a charity of your choice. Please contact us if you are interested as we are here to help. Our charge for LPA's is £99 per LPA.
- Q11 My parents own their home and my 39 year old brother lives with them. Can the property be disregarded as an asset as he lives there?
- A11 If one parent goes into care the house will be disregarded as an asset as long as the other parent lives in the house. If they move out for any reason then the house will only be disregarded if the son is over 60. If this happens when the son is under 60 then you have to rely on the discretion of the local authority.
- Q12 If we sell father's home to pay for care, will that then be removed from additional inheritance tax allowance?
- A12 If father leaves house to his children then it will qualify for the residential nil rate band allowance. If the property is sold before he dies then HMRC will treat the sale proceeds as qualifying for the additional IHT allowance.
- Q13 Can you contravene wishes in a Will?
- A13 Yes, the person who would benefit in the Will can have it redirected by signing a Deed of Variation / Gift of Hindsight within the two year period of the death.
- Q14 Can someone with power of attorney for someone with dementia get their Will changed where it currently leaves everything to spouse who also has dementia?
- A14 No, generally this would not be the case, it can only be changed after death.