

Power of Attorney or Deputy?

A retired judge has suggested that people wishing to appoint others to look after their affairs in the event of their becoming incapable of doing so themselves would be better protected by a Deputy of the Court of Protection than by a relative or friend acting under a Lasting Power of Attorney ('LPA').

Denzil Lush, who before retirement was the senior judge in the Court of Protection, said that in most of the cases which came before his court involving abuse of the powers conferred by an LPA, the person exercising the power had been a close family member.

There are two types of LPA, one relating to health and welfare and the other to financial affairs. The first of these enables persons appointed as attorneys to make decisions on matters such as accommodation, diet and medical treatment, while the second enables the appointee to decide on matters such as buying or selling a house, operating bank accounts, dealing with tax matters and claiming benefits.

People wanting to help relatives or friends who become incapable but who do not have an LPA must apply to the Court of Protection to appoint a Deputy – often a solicitor – to act on their behalf. But the process is time-consuming and involves considerably more expense than an LPA.

An LPA can be set up without professional assistance by going to www.gov.uk and searching on Powers of Attorney, though the forms and guidance available from this site are quite complicated.

It is recommended that when completed, the LPA should be registered with the Office of the Public Guardian, which is the administrative arm of the Court of Protection. The registration fee is £82. When registered, banks and insurance companies and other financial institutions will treat the attorney as if they were the person who gave the power.

By contrast, the application fee for a deputyship is £400 and there is an annual fee of at least £320 in the first year but falls to £35 in subsequent years. In addition, new Deputies must pay an 'assessment' fee to the court, which needs to be satisfied about their suitability.

If, as is usually the case, the deputy is a professional, then no application fee will be payable to the Court but professional fees will be payable which could amount to several hundred pounds.

Denzil Lush estimated that one in eight attorneys abuse their position, and that in these cases a deputy would have provided superior protection of the interests of the donor of the LPA. For most people, however, it remains good advice to sign an LPA, perhaps when making a Will. The important thing is to take great care in choosing who to appoint.

Funding spouses' pensions

MPAA aside, reductions in both the annual pension contribution allowance and the lifetime allowance have curtailed the use of pensions as a savings medium. However, there may be an opportunity to pay contributions to the scheme of a spouse or civil partner or cohabitee.

The person benefiting from the third-party contribution will receive tax relief against their total earnings up to £40,000 p.a. and up to £3,600 if they have no earnings.

If the contribution is made on behalf of the scheme member it will be regarded as a gift for the purposes of inheritance tax (though exemptions are often available). But if cash is given to enable a spouse or civil partner to pay their own contribution, this will constitute an exempt transfer for IHT.

Divorce gets complicated

Perhaps surprisingly, divorce rates are falling. According to the Office for National Statistics, there were 101,055 divorces in the UK in 2015, representing a 9% reduction on the previous year.

However, the average age at which people are getting divorced is at an all-time high. The average age for men is now over 45 and the average age for women is just under 44.

Pensions are a vital part of the financial mix, and Courts will often either order

split between the parties or that it should be taken into account as part of an overall assessment of wealth, including the house, so that estates can be divided in the most equitable way.

The cash available from providers of occupational pension schemes to members who transfer to personal pensions is at an all-time high and could provide an important opportunity in a current divorce. But there are complex issues at stake in assessing the respective benefits, and expert advice is required. Many financial advisers specialising in divorce work have obtained a specialist qualification in pension transfers.

Childcare benefits

In order to assist parents of young children to stay in the jobs market, the government has established a scheme which enables the parents to buy childcare vouchers which benefit from tax relief in the form of 'salary sacrifice'. However, this scheme is not available to the self-employed and provides only up to 15 hours' childcare or education per week.

From September, the 15 hour limit is to be increased to 30 hours, but this will be subject to the parents meeting income criteria: both parents must earn at least £120 per week and less than £100,000 annually; and HMRC requires confirmation of eligibility every three months. It should also be noted that not all childcare providers have signed-up to the scheme.

Two additional schemes are now being introduced which offer other options. In May 2017 a tax-free Childcare Account became available, which is basically an on-line savings account to which the government contributes, and which is used to pay for approved childcare. For every £8 paid by the parent, the government pays an additional £2, up to a maximum of £2,000 p.a. per child.

The second scheme, which will follow in September, enables parents of three and four-year old children to apply for 30 hours p.w. of free childcare or education worth about £5,000 per year per child.

Both these schemes can be accessed at the same time and are available through HMRC's Childcare Choices site <https://www.gov.uk/search?q=childcare+choices> and a helpline is available on 0300 123 4097. However, reservations have been expressed about the complexity of the process for claiming benefits.