

Legal Q & A

As mentioned in the recent MiniQuart mailing, we are very delighted that Mr David Lewis, Solicitor, offered to accept some Legal questions from our members in particular with regard to Wills and Trusts. We hope these Q and A's are helpful to many of our members or carers who may also be pondering such questions. Many thanks to the members who sent in their questions for Mr Lewis.

Q1. I am the parent of a son with severe ME. I do not have Power of Attorney. At present his benefits come into my account and I deal with all his financial affairs. What can I put in place for when I am no longer able to manage his financial affairs?

A1. It is not so much a case of what you can put in place, but more what your son should put in place. He should grant a Lasting Power of Attorney Property and Finance appointing you as his attorney and including a replacement attorney to cover the position if you are no longer able to manage his financial affairs.

Q2. My niece has severe ME and I am elderly. She has capacity to make her own decisions regarding the medical treatments she receives. At present she makes the decision and I help her tell the relevant professional. I have heard a little about Power of Attorney. Could this be put in place to enable her to continue to make her own decisions re treatment when I am no longer able to assist?

A2. Whilst your niece can make a Lasting Power of Attorney Welfare appointing you as her attorney, with a replacement attorney also appointed, such a Power (unlike an L.P.A. Property and Finance) could only be used if your niece no longer has mental capacity. You mention that it is your niece who makes the decision and you then help her in telling the relevant professional. Perhaps there is another relative or a friend, who can start assisting you in telling the relevant professional after your niece has made the decision. Such person would then be in place, when you are no longer able to assist. If not, when you are no longer able to assist, your niece could still continue to make her own decisions re treatment, so long as she has capacity. She would then herself need to tell the relevant professional her decision, though perhaps this could be through her doctor.

Q3. My daughter (mid 40's) is bedridden. I have made a will by which she is to inherit all my assets – house and savings. I want her to remain in the house if possible because she is too ill to move out. I am concerned the savings would be used by Social Services to fund her

care, leaving her with very little money. If she does have to go into a Care Home in my absence the house would be sold to fund the care. Is there a way to stop this happening?

A3. I would suggest that you make a new Will containing discretionary trust provisions and appointing independent trustees. A solicitor could be one of these trustees. Your daughter would be the principal beneficiary, but there would need to be other potential beneficiaries, such as charities. Provision could be included for your wish that she could remain in the house, if possible. I would also suggest that you sign a " letter of wishes" addressed to your trustees. A solicitor could prepare, in accordance with your instructions, both the Will and the "letter of wishes".

Q4. I have read about trust funds on line, but I don't know if anyone can be put down as beneficiaries bar the person for whom the trust fund is being set up. I would appreciate some advice on whether this can be worked around.

A 4. Other potential beneficiaries can be included and indeed should be included, as referred to in A3. above.

A final word from Mr Lewis about Making a Will

If you are wishing to make a Will and/or a Lasting Power of Attorney I would recommend that you see a solicitor, who specialises in such matters, including in particular trusts. Not all solicitors have the expertise needed for making Wills containing discretionary trust provisions. Most solicitors will make home visits, if a client is not able to attend the solicitor's office, and some will not charge extra for such a home visit.

Our grateful thanks to David Lewis for answering these questions for us.

