

Power of Attorney

Advocacy toolkit



Power of Attorney: what is it and why do you need it?

A blood cancer diagnosis can be overwhelming. However, it's important that you not only look after your health, but your finances too. In this toolkit, Simon Mansell from Temple Bar Independent Financial Advice explains the Power of Attorney and why it's important to those with a life-changing illness.

What is a power of attorney?

A Power of Attorney can deal with Health and Welfare or Property and Financial Affairs or both. Such a power allows one (or more) people to manage another person's affairs. They are typically used to help in case of mental incapacity or physical incapacity due to accident, illness or old age. However, they can be used at any time for example, if someone leaves the country and important matters may need attending to.

What happens if you don't have one?

If you become unable to manage your own affairs, the Court of Protection will have to be asked to appoint a Receiver to manage them for you. This is expensive and very time consuming. This process is similar to intestacy—the process that occurs if you die without a Will. In both cases

the costs of not having one can be draining, costly, and time-consuming for all involved. The court will deliberate and appoint someone to take care of your medical and financial decisions for you and you can find decisions being made by social workers and other medical professionals which may conflict with family views.

The legal expenses will be paid from your assets, and clearly the Receiver may have no knowledge or understanding of your family and personal circumstances. In some cases, a solicitor may be asked to act and this can rapidly drain resources. This will be even more of a problem if you are unmarried and expect the Receiver to look after your partner. If you appoint your own Attorney (or Attorneys), you can appoint people you know and trust.

But why would you need one?

Who would manage your financial affairs if you had a major illness, accident, mental breakdown or just got too old to cope? People tend to think their husband or wife will be able to deal with everything, but not only will they not have the legal authority to deal with many things on your behalf, they may die first or be too unwell to manage their own affairs, never mind yours too. Sadly, even a joint bank account can be frozen in these circumstances, so having an Attorney (each) is a wise precaution.

Banks and joint accounts

The British Banking Association has issued a Guide entitled **Guidance For People Wanting To Manage A Bank Account For Someone else**. The Guide deals specifically with the issues when an account holder loses capacity. Whether this joint account holder is one of the children, spouse, or partner, the bank will normally close the account, other than for emergencies, if the client who loses capacity does not have a Lasting Power of Attorney or Enduring Power of Attorney in place. If neither of these is in place, then the joint account will be deemed to be closed for any transactions other than emergencies, until a deputy has

been appointed. Page nine in the Guide clearly explains the Bank's position on this issue and which is the opposite of what every client I speak to believes to be the case. They all assume that the joint account holder who still has capacity will be able to use the account as normal, when this is not the case!

Unmarried?

If you have a partner you would like to be able to look after things for you (and vice versa), you each need an Attorney.

Who should I appoint as my attorney?

Firstly, it is possible to appoint more than one Attorney (vital in many cases): these Attorneys can act either JOINTLY or JOINTLY and SEVERALLY. Say you have your three adult children as attorneys; if they are appointed JOINTLY, all of them must agree to every decision and they must act together. If they are appointed JOINTLY and SEVERALLY, this means any of them can act by themselves. In most cases, Jointly and Severally is likely to be appropriate, but Jointly can be very useful if your Attorneys are inexperienced in financial matters or not ideal choices!

It should be borne in mind that, where Attorneys are appointed to

act jointly (as distinct from "joint and severally"), if one of the joint attorneys should die, or be unable to act, the Power of Attorney would be ineffective. This is not the case with a joint and several appointment as the power of the remaining attorney is still valid.

We generally recommend your partner plus an older child or other appropriate, reliable and trustworthy person. Your choice of Attorney will need to be reviewed from time to time as circumstances change.

Where can I find more information?

You can watch a helpful video explaining the Power of Attorney on Temple Bar's website. Simply head to: <http://www.templebar.co.uk/Sites/>

Important information

Following the Mental Capacity Act 2005, the law has changed and from October 2007 Enduring Powers of Attorney (EPA's) have been replaced by Lasting Powers of Attorney (LPA). These new powers can deal with both Health and Welfare and Financial matters. Although former EPA's remain valid, their new replacements are significantly more complicated with new powers and a number of new safeguards built in. It will be necessary to register the LPA at the Court (for which a fee is payable) before the LPA can be used for your financial affairs, even if you are mentally capable. We suggest this registration is completed at outset as The Court of Protection employ a vetting process. If an error is spotted it is best to remedy this at outset rather than later when it is too late to correct. As a result, the new procedure is more complicated and more expensive! However, not having such powers in place is a false economy as the costs and stress are likely to be much greater.

Further questions

If you have any further questions about Power of Attorney, then you can contact our Campaigns and Advocacy team. They are available Monday to Friday from 9:00am – 5:30pm. If you would like to speak to them, you can:

Call our office line on 01905 755977

Send them an email at advocacy@leukaemiacare.org.uk

You can also call the help line, free of charge on 08088 010 444. The team will pass your enquiry onto the Campaigns and Advocacy team.

Please note that our Campaigns and Advocacy team are unable to provide:

Detailed medical advice or recommendations

Legal advice

Advocacy for a course of action which is contrary to the aims and objectives of Leukaemia Care.

This toolkit has been kindly provided by Simon Mansell BA (Hons) Law, (DipFA), MLIBF (Managing Director of Temple Bar Independent Financial Advice Ltd and Temple Bar Estate Preservation Ltd.) Further details can be found at: <http://www.templebar.co.uk>