

THE TIMES

Law

Pitfalls when allocating control of a vulnerable relative's affairs

The Court of Protection is there if individuals feel family or friends can't be trusted to act in their best interests

Jacqueline Almond

A recent case in which two sisters were removed from having any control over their 97-year-old mother's financial affairs because of their acrimonious relationship highlights the far-from-unusual problems arising when individuals with power of attorney do not get on.

The sisters had been appointed by their mother as attorneys but only communicated by email, which was often rancorous in tone. In addition, one of the sisters had altered a legal document to mislead others to believe that she was able to act by herself when making decisions regarding her mother's affairs.

Judge Denzil Lush ruled that such "obvious hostility" made them unsuitable to carry out the role of looking after their mother's financial affairs.

A lasting power of attorney enables an individual to choose who they wish to manage their finances for them if they become mentally unable to manage their affairs. They are relatively easy to put in place and although most people use a solicitor to help them, this is not necessary. However, it is essential that you fully understand what you are doing and that you are able to weigh up whether or not your chosen attorneys will be able to work together for you.

If you become unable to make decisions, your attorneys will have authority to act for you. If they do not see eye to eye, then they may spend more time challenging the actions of each other, rather than acting in your best interests.

There is very little supervision of attorneys unless their actions are referred to the Office of the Public Guardian (OPG) to investigate their behaviour. If the Public Guardian believes that an attorney has used money inappropriately (for example by making unauthorised gifts), or due to extreme animosity between the attorneys, he can ask the court to decide if the individual should be removed.

If an individual becomes unable to make decisions and has not put a Lasting Power of Attorney in place, the Court of Protection will appoint a deputy to act for them. A deputy would also be appointed in the situation outlined above. The process for appointing a deputy can be a great deal more time-consuming and expensive.

The court will set out what the deputy can do. Sometimes, this can be more restrictive than the powers given to an attorney. The deputy will be supervised by the OPG and will have to complete an annual report accounting for how the money has been used and the decisions that have been made. In addition, the court will require the deputy to take out an insurance policy to cover the risk of him losing the money under his control. He will also have to pay an annual fee to the OPG to cover the cost of supervising the deputy.

The Court of Protection is generally considered to be something to be avoided, which it can be if a suitable Lasting Power of Attorney is in place. However, the court provides an additional level of protection and may be the only option if individuals do not feel that family or friends can be trusted to act in their best interests.

Jacqueline Almond is a partner and head of wills, trusts and probate team at IBB solicitors