



## The consequences of not having Lasting Powers of Attorney

**A Lasting Power of Attorney (LPA) is a legal document in which you appoint people you trust to manage your affairs, should you become incapable of doing so yourself.**

It is essential to have in place both a 'Property and Financial Affairs' LPA, and a 'Health and Welfare' LPA, to ensure that your loved ones have the right to make financial and welfare decisions for you.

This heartbreaking story illustrates the difficulties your family could face, at the worst possible time, if you do not have Lasting Powers of Attorney...

### Heather Bateman's Story (courtesy of SAGA)

Heather Bateman had to run the family finances after an accident left her husband in a coma; and thanks to the Court of Protection, three years of pain and misery followed.

This is her story:

I shake as a large white envelope slips through the letterbox. My trembling fingers pull at the flap. I'm a grown woman with a family. I have done nothing wrong, yet these letters make me feel like a criminal or a helpless child. The letters are from the Court of Protection.

Never heard of it? Lucky you! I hadn't heard of it either until the moment when my whole life fell apart.

### Michael's accident

In September 2003 my husband Michael walked across a quiet country road towards me and was hit by a car. He fell to the ground and never stood up or spoke a word again. In hospital he collapsed into a coma. The three-year nightmare began.

As well as experiencing the horror of seeing the energetic man I had loved for more than 30 years rendered immobile and lifeless, I had to deal with the everyday aspects of having a large family of two children, four stepchildren and six step-grandchildren. I also had to deal with the Court of Protection...

Michael and I were two independent working people. We had been married for 28 years. We had written our Wills, both our names were on the Deeds of the house we shared in London and the Norfolk cottage we had renovated over the years. We had separate bank accounts – and most of the bills were paid from Michael's account. Now, to continue living in the way we had always done, I needed to access the money in his account.

Michael was moved to the Intensive Care Unit at Addenbrooke's Hospital in Cambridge. "You need to get the right forms" the man at Citizen's Advice at the hospital told me. "Where do I get them?" I asked. "From a solicitor" he replied.

I was in shock; I had witnessed the accident, had seen the car knock Michael to the ground, and had held his hand and talked to him on the horrendous journey to the hospital. For as long as possible, I put off getting the forms.

The solicitor's office I chose was Dickensian. The clerk (almost as





ancient as the décor) handed me some forms and said, “Fill these in and get your husband to sign here.”

I burst into tears – the first I had shed since the accident – and once I started crying I couldn't stop. The clerk looked at me uncomprehendingly. “He can't sign,” I sobbed. “He's in a coma”.

### **My introduction to the Court of Protection**

“Then you need the Court of Protection,” he said. I heard those words for the first time, words that represent an institution everyone should know about... The Court of Protection brought almost as much anger, grief and frustration into my life as the accident itself.

Over the years that followed Michael's accident, I had to learn to accept a new reality, to settle into a different way of life. This I did gradually, in my own way, feeling my energy and life-force change, and having to stay strong to keep the family together.

But parallel to this I had to come to terms with the Court of Protection – an alien, intrusive, time-consuming and costly institution, which was completely out of tune with what we were going through. For almost three years it ruled my waking moments,

and my many sleepless nights.

People advise you to take out ‘this insurance’ and ‘that insurance’, but hardly anybody tells you to take out ‘Lasting Powers of Attorney’. These documents enable a person to appoint another to manage their ‘health and welfare’ and ‘property and financial affairs’ should they become unable to act for themselves. And, in a case like ours, they are the only way to avoid the Court of Protection.

### **What is the Court of Protection?**

The Government's ‘Court of Protection’ is the body set up to manage the affairs of people who can't manage them themselves – and because they haven't appointed anyone to do it for them by drafting Lasting Powers of Attorney, their affairs are automatically placed under the jurisdiction of the Court. As of July 2024, there were 60,516 clients registered with the Court of Protection. All so mentally incapacitated they are considered unable to act on their own behalf and make their own decisions. The Court appoints a ‘Deputy’ to act on the client's behalf in the everyday running of his or her affairs. The Deputy is answerable to the Court.

I had to apply to become Michael's ‘Deputy’ – that is, I had to apply to the Court to act on his behalf in carrying out the everyday financial matters of the life we had always lived. To become his Deputy, I had to fill in over 50 pages of complicated forms detailing every aspect of our lives. I also had to give notice to my children and stepchildren of my application.

A Deputy can be a close family member or – where the Court considers there to be no suitable relative – a total stranger such as a solicitors' firm. But in its treatment of Deputies, the Court does not distinguish between a close family member or a total stranger.

Who is the Court protecting – and from whom? As the weeks and months went by, it became clear that the Court of Protection's primary role was to protect my husband from me. I was doing all I could to look after Michael and to keep our family's lives in some kind of order. The Court was doing everything possible to place itself like a wedge between Michael and me, in order to protect itself from any accusations of wrongdoing should he ever ‘wake up’.

To perform this unwanted task, the unwieldy organisation stepped into my life and took away my adult independence. The tone of their letters, and the restrictions on how much and in what way our money could be spent, undermined my freedom and self-respect. And if I did not do everything I was told to do, I could lose the right to be the Deputy – meaning an unknown person could step in and take over our accounts and the running of our lives.

**“The Court of Protection brought almost as much anger, grief and frustration into my life as the accident itself.”**

HEATHER BATEMAN

## Fees and frustration

Here are just a few examples of how the Court acted under the guise of 'protecting' my husband:

On the day the letter arrived confirming I had been appointed as Michael's Official 'Deputy', another letter arrived demanding instant payment of £460; this was just the first of many fees to be paid to the Court.

They included:

- a Deputy assessment fee (£100)
- a commencement fee (£240)
- an appointment fee (£315)
- an annual general supervision fee (£320)
- administration fees (ranging from £190 to £240)
- an account set up fee (£100)
- various transaction fees (ranging from £60 to £540), and
- a winding-up fee (£290)

To deal with the forms and additional accounts, I needed the help of an Accountant, whose fees also had to be paid. Over the course of two and a half years, more than £3,000 was spent on these fees.

As Michael's Deputy, I now had access to our accounts. But I was dismayed by the restrictions on my spending... I could write as many cheques as necessary up to £500, but if I needed to access more than that at any one time, I had to get permission from the Court – even to pay our daughter's university fees and accommodation.

Similarly, when I needed building work done on our properties, I had to submit two estimates and justify my choice of builder; I then had to wait several weeks for the Court to give permission and release the funds.

The nerve-racking experience was exacerbated by the fact that each time I phoned the Court I spoke to a different clerk. I had to explain my

distressing situation anew, and then wait at least two weeks for a reply.

I visited Michael daily. The Court also sent a representative to visit him. I found it humiliating. I was dealing with doctors, nurses and carers on a daily basis yet could not help feeling I was the one being checked up on.

The Court of Protection no doubt has a part to play in the life of someone with no close family or friends, who is at the mercy of strangers, but in our case it was an interfering, terrifying, and totally unneeded and unwanted body, using legal forms and archaic language to protect itself – and at huge cost to us.

After almost three years, Michael died. When I eventually received probate, I cried with grief.

A few months later, when I finally closed the Deputy's account, and my independence and self-respect returned, I cried with joy. At last I was free. Yet all this could have been avoided – if only I'd known how.

## Next steps

Protect your loved ones from the pain suffered by Heather Bateman.

Contact Rachael at **Heir Tight Wills & Estate Planning** without delay to get your Lasting Powers of Attorney drafted and registered.

