



WHAT IF YOU DO NOT HAVE A HEALTH AND WELFARE LPA – DOES IT MATTER?

EXAMPLES

BETTY FIGG – APRIL 2009

In April 2009, Mrs Figg, a great grandmother was snatched by social workers against the wishes of her daughter who had been her carer. Social workers arrived with police and a battering ram to remove the 86 year old woman suffering from dementia from her daughter's house. Mrs Figg was taken from the house in her wheelchair with a towel thrown over her head to be returned to a Care Home. The story was in all the national papers at the time.

Social Services did not agree with Mrs Figg's daughter that it was in her mother's best interests to be cared for by her daughter in a specially converted room in her daughter's home.

This could have been avoided if Mrs Figg had appointed her daughter as her Attorney under a Health and Welfare LPA. The Authorities were only able to act because Mrs Figg had dementia and therefore couldn't speak for herself and although her daughter was her next of kin she had no legal authority without an LPA appointing her.

This shows the power of Social Services.

WOMAN FACES SURGERY BY FORCE

This was a headline in the paper recently. It explained how a Court of Protection judge (Sir Nicholas Wall) granted a hospital trust a declaration allowing it to use force if necessary to treat a 55 year old cancer patient with a phobia of hospitals and needles to perform a hysterectomy considered necessary to save her life.

The woman was represented by the Official Solicitor to look after her interests because she had a "significant impairment in intellectual functioning". This meant she did not have the capacity within the meaning of the Mental Capacity Act 2005 "to make decisions concerning her future medical treatment". If she had been able to appoint a family member or close friend as her Attorney under a Health and Welfare LPA when she had mental capacity, then her Attorney could have made the decision for her

This shows the power of the Courts

DEPRIVATION OF LIBERTY

Hospitals and Care Homes may apply for **standard authorisation** (without applying to Court) to deprive someone of their liberty so that the person is detained in the hospital or care home against their will. It is not unusual for an elderly patient to be detained in hospital because it is not thought appropriate or safe for them to return home. They are sometimes then transferred to a Care Home. The power to deprive a person of their liberty is a new procedure and there are safeguards that protect vulnerable adults in these circumstances.

Although there are safeguards in place, it is easy to see that without an Attorney, preferably someone who personally knows the person and can speak up for them, the person could find it very difficult to show that they can live independently and resist these procedures that could deprive them of their right to return to their own home.

This shows the power of bureaucracy.

THE POWER OF A HEALTH AND WELFARE ATTORNEY

A Health and Welfare Attorney can speak up for you and act on your behalf if you are unable to do so yourself, eg if you are in a coma, unconscious or suffering from a mental health issue which prevents you from understanding your condition.

The Attorney's role is to ensure that you receive the medical care that is right for you. Your Attorney is legally entitled to be your voice and the authorities are legally bound to listen. You may give your Attorney the right to make life sustaining treatment decisions for you. Your Attorney is the person *you* have chosen who will take control and have the power to protect you.

This is the power of a Health and Welfare Attorney

ANY QUESTIONS?

If you have any questions or would like to know more about Lasting Powers of Attorney, please contact us and ask for our **Private Client Department**. We will be very pleased to help. There is no charge for answering your questions.

Stone Rowe Brewer LLP
Stone House
12-13 Church Street
Twickenham
Middlesex TW1 3NJ
United Kingdom

Telephone: +44 (0)20 8891 6141

Fax: +44 (0)20 8744 1143

Email: info@srb.co.uk

www.srb.co.uk

DX200006 Twickenham

Stone Rowe Brewer LLP is a limited liability partnership authorised and regulated by the Solicitors Regulation Authority. A full list of members is available for inspection at the above registered office. Registered in England with Partnership No: OC 349339

This document does not intend to provide legal advice and is for general information only. Stone Rowe Brewer LLP and its staff accept no responsibility for loss which may occur from reliance on information contained in this document.