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Diagnosis Dementia -

A Case Study



When a person is diagnosed with **Dementia** it can be incredibly difficult for their family to adapt to changes, whether that be to their day to day routine, or the various medical and legal jargon, which is hard enough for most of us to understand at the best of times.

Where an initial **Dementia diagnosis** is made, the medical team will often recommend that now is the time to put your legal and personal affairs in good order.

The ways that we can assist are best illustrated in the *Case Study* below:

▪ **Burt & Sally**

Burt and Sally have been married for over 45 years and have two adult children.

Burt is in good health, but Sally has not been herself for some time and after having numerous medical tests, she has recently been diagnosed with Dementia.

Burt and Sally own their home jointly free of mortgage. They have a joint current account, some savings including an ISA account each and some Premium Bonds each plus their pensions, but the bulk of the wealth is wrapped up in their property.

Burt and Sally use their joint current account for all their household spending.

Burt and Sally come to see us to gain a better understanding of their options and to make sure that Sally has done everything she possibly can to make sure her finances are properly looked after and to put her legal affairs in good order.

Burt is concerned about what might happen if he receives a similar diagnosis in the future.

In an ideal world, Burt and Sally would have come to see us under less stressful circumstances. They had been meaning to make **Wills** and **Lasting Powers of Attorney** for some time but hadn't got around to it.

Burt wishes to be Sally's primary carer and would like her to continue to live with him at home.

Burt is worried that if something happened to him then Sally would need to go into long term care and everything that they have worked for will disappear in care fees and there will be no inheritance left for their children.

As Burt is in good health, he should be able to give instructions to prepare a Will and **Lasting Powers of Attorney**. When preparing his Will, he should balance his wish to provide an inheritance for their children with making sure that Sally is well-provided for throughout her lifetime and we can guide him through this process. He will need to select attorneys for his Lasting Power of Attorney who he can trust to look after his finances when neither Sally or himself are able to do so.

Burt could choose to put a Home Protection Will Trust (also known as a life interest trust) in his Will. **'Home Protection Will Trusts'** would essentially work to protect his half-share of the property from assessment for care fees, if he predeceases Sally.

Indeed, if Burt were to die first and his Will gave Sally **a life interest in his half-share of the property** under his Will, Sally would be able to live in the property for her lifetime and on her demise his half-share would pass to those people nominated by him.

During Sally's lifetime, the half-share she had a life interest in would be protected from assessment for care fees but the half-share she owned in her own name would be assessable. She would be entitled to any income produced if the property was rented out; but on her demise Burt's half share

would pass to the people of his choosing rather than under her Will.

Given Sally's recent diagnosis, we will not ordinarily be able to prepare a Will or Lasting Power of Attorney for her without a report from her GP, specialist at the Hospital who provided the diagnosis, or a company specialising in mental capacity reports. Anyone entering into legal documentation must satisfy the requisite 'test' for capacity for that particular document.

We will normally ask that the GP or other specialist act as witness to a Will or in the case of a Lasting Power of Attorney, as witness and Certificate Provider to professionally certify that Sally has the requisite mental capacity to enter into the documentation.

This test should be approached in the same way as any other important test and Burt should help Sally to feel relaxed and comfortable as possible, make sure that she is not under the influence of unnecessary medication and arrange the meeting at the time of day when Sally is most at ease. Some companies specialising in mental capacity reports will even visit Sally at home.

If Sally is able to make a Will, she could also include a Home Protection Will Trust. This would mirror Burt's Will and work to protect her half-share of the property from assessment for care fees if she died first.

Even if Sally has lost capacity it may be possible to ask the Court for permission to execute a '[Statutory Will](#)' on her behalf.

It will take longer for Sally's Will and Lasting Power of Attorney documents to be finalised than Burt's because she will need to arrange an appointment to complete the documents with her chosen professional who is likely to have a busy schedule. She will need to satisfy the requisite test for capacity at the time when she completes the particular document

as well as at the time of the assessment, so it will be important for her to be at ease in this meeting as well.

Our usual timescales for completing a Will and/or a Lasting Power of Attorney where a capacity report is not required is a couple of weeks (often less depending on how quickly someone comes back to us with their comments on the draft documentation).

Once the Lasting Power of Attorney documents have been completed they must be registered at the Office of the Public Guardian before they can be used. This process usually takes an additional 8 to 10 weeks.

If it is not possible to set up a Lasting Power of Attorney due to mental incapacity, then there is a different procedure to follow by which Burt could apply to the Court of Protection to be made a 'Property and Financial Affairs Deputy' for Sally. As a prospective Property and Financial Affairs Deputy he would apply to the Court of Protection for a '[Deputyship Order](#)' and as part of the application he would need to provide detailed financial and personal information to enable the Court to grant an order which will set out the extent of his powers. These powers are determined by considering Sally's needs and circumstances and can only include powers relating to her property and finances.

If, in the unlikely event that Sally is so unwell that she does not have the mental capacity to make health, social care and personal decisions, Burt could also apply to the Court of Protection to become her Personal Welfare Deputy.

The [Alzheimer's Society](#) or another dementia charity can give advice about strategies for managing Dementia. Different types of Dementia can have different symptoms which could include making unusual purchases or finding it difficult to process the details of financial transactions. Depending on the type

of Dementia Sally has, she could become very vulnerable.

We can refer Burt and Sally to organisations who can help, and can assist them in predicting their future needs based on their current situation - explaining how precautions they take now will help in the future.

As regards gifting the property to the children, to potentially avoid future long-term care costs, it is not uncommon for us to be approached with this type of enquiry. Gifting a property or indeed any other assets is a significant step and one which should not be entered into lightly. Our [‘Guide to Giving Away Your Home’](#) summarises the legal and other implications of doing so.

If someone gifts a property or indeed other cash assets to someone else as a preventative measure just in case they need long term care in the future, then this would most likely be

treated as a [‘Deliberate Deprivation of Assets’](#) by the Local Authority in the event that Sally needed to go into long term care at a later date and this means the gift will be treated as if it never happened and all costs associated with making the gift in the first place will be wasted.

It doesn’t matter if [the gift of the property is made to a Trust](#) or outright to a trusted family member.

If Burt and Sally remain concerned about their ability to fund long term care then it may be a sensible to talk to a specialist Financial Advisor whose focus is on long term care planning such as fully qualified members of the [‘Society of Later Life Advisors’](#) (SOLA).

We should point out that Sally, could, potentially in the future qualify for [‘NHS Continuing Healthcare’](#) funding if her health were to deteriorate significantly.

The above is simply a snapshot of the legal implications and considerations where someone has been diagnosed with Dementia and the sorts of things that we are approached to advise on. There is a lot to consider. We have a wealth of experience in helping our clients in getting their affairs in good order, whether it be to prepare a Will, set up a Power of Attorney, advise on Court of Protection matters (where someone lacks capacity to make decisions for themselves), create a trust or attend to the administration of an estate where someone has died.

For individual advice and assistance contact our [Wills, Probate and Trusts Team](#) on 024 7663 2121 to find out how we can help.

Why choose Band Hatton Button?

We deliver excellent legal services with a human touch and are proud to have a reputation for being approachable and going the extra mile for our clients. We provide high quality, pragmatic advice and offer a comprehensive range of legal services, delivered by experts and supported by our culture of respect and understanding.

Our expertise includes:

- Wills, estate and succession planning;
- Powers of Attorney and Court of Protection;
- Administration of estates and post death planning;
- Trust creation and administration;
- Will disputes;
- Matrimonial and family law; and
- Buying or selling a property.

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