Supporting You Through a Brain Injury

We understand that a brain injury can be a life-changing event both for those with the injury and for their loved ones.

When someone has experienced a brain injury, we often find that various assumptions are made when it comes to considering making a Will or a Lasting Power of Attorney (LPA), especially around what can and can't be done from a legal point of view.

We can advise you on how to best plan for your future to ensure you and your loved ones have peace of mind.

How we can support you

Our Lifetime and Estate Planning team are experts in dealing with clients who have experienced a brain injury. We know that seeking advice may seem daunting, but whatever your circumstances, we'll guide you through the process with patience and empathy.

Is it possible to make a Will when you've had a brain injury?

Whether you're able to make a Will depends on the injury and the impact it has had. In order to make a Will, you must have testamentary capacity. This is a very complicated area of law and is judged on a case-by-case basis.

In very simple terms, if a person understands the nature of making a Will and its effects, understands the extent of their estate and can appreciate any claims of those who might expect to benefit from their estate, they're deemed to have the capacity to make a Will.

Having a brain injury doesn't automatically mean that a person doesn't have testamentary capacity and this will be judged depending on the individual's capabilities. It's not always easy to determine if someone has testamentary capacity and in these instances, it's essential to ask a medical practitioner for their professional view.

What is a Will?

A Will is a legal document that directs who your estate will pass to once you've passed away. In brief, making a Will is the only way you get to choose:

- The people you trust to administer your estate (your Executors)
- Who you would want to look after your children after you have passed away (your children's guardians)
- Any specific wishes, whether that be to do with your funeral or your personal possessions
- Who you want to inherit (your beneficiaries)
- How to best provide for your beneficiaries (e.g. the use of a trust).

What happens if I don't make a Will?

If you pass away without making a Will, the rules of intestacy will govern who is entitled to benefit from your estate and who will administer it. The issue is that these people might not be the ones that you would've chosen.

Also, by not making a Will, the opportunity for tax planning and the use of certain types of trusts will be lost.

Estate Planning and Trusts

As a result of your brain injury, you might have received a large compensation order. In these cases, it's beneficial to seek specialist advice regarding estate planning to mitigate any tax that might be due on your estate when you've passed away.

Similarly, you may require advice as to the best way to leave a legacy to a beneficiary. If a beneficiary is vulnerable (this could be due to a range of things including, age, disability, dependency issues, the risk of divorce or bankruptcy, or another reason), it may be best to leave a beneficiary's legacy to them by way of a trust, as this will best protect the beneficiary and their funds.

We can discuss the different types of trust available to you if you think this might be applicable in your circumstances.

Statutory Wills

If a client doesn't have the capacity to make a Will, we can consider making a Statutory Will instead. This can be made on someone's behalf under the Mental Capacity Act 2005. A Statutory Will must be made in accordance with the client's best interests and is made at the discretion of the Court of Protection.

Our Lifetime and Estate Planning team work closely with our Court of Protection team when making these types of Wills. If you require further advice about Statutory Wills, we'd be glad to put you in contact with one of our experts.

Lasting Powers of Attorney

Another important document to have in place when planning for the future is an LPA. This is a legal document that gives an individual ("a donor") the opportunity to choose a person or people they trust ("attorneys") to make decisions on the donor's behalf if they lose mental capacity. There are two types of LPA; one for Property and Financial Affairs and one for Health and Welfare. Anyone over the age of 18 who has mental capacity can make an LPA.

What does 'mental capacity' mean in this context?

Mental capacity means somebody can understand and make decisions for themselves. In this context, capacity means the donor must understand the process of making an LPA, why they are making it and the likely outcome.

Fluctuating capacity

Often clients who have had a brain injury experience fluctuating capacity. This is when someone's ability to make decisions changes over time. If a client has fluctuating capacity, we'll do our best to work around them.

For example, if you know that your loved one makes better decisions in the morning or after they've had their lunch, then we'll try to cater to these times, when they're at their best.

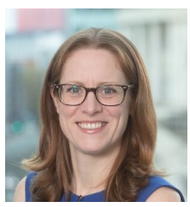
Time is of the essence

It's crucial to not "leave it too late" as once someone has lost mental capacity, the option to make LPAs will no longer be available. If we're unable to take instructions from a client where capacity is a concern, we can refer them to a capacity assessor for a more detailed assessment, but unfortunately, this can also confirm a lack of mental capacity.

If a client has lost mental capacity, the only option available at this stage would be a Deputyship application. If you think a loved one might benefit this then our experts in our Court of Protection team will be happy to help you.

Get in touch to find out more

If you've experienced a brain injury, it's best to seek advice as soon as possible when it comes to making either a Will or an LPA. Our Lifetime and Estate Planning team can answer any questions that you might have, for more information, please contact one of our experts below.



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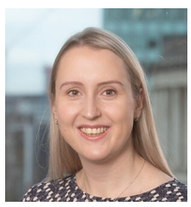

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