

## How Churches Could Act as Attorneys

by Marion Shoard

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Pauline, who is 76, phoned in to the radio programme *Premier Tonight* in which I was fielding calls about older people's issues earlier this year. Very keen to donate power of attorney so that, if she lost her marbles, there would be someone she could trust to take decisions on her behalf, Pauline faced a major hurdle: whom could she ask to take on this role? Her only relatives and friends lived far away or were unwell. Yet her problem is all too common – and serious.

In 2018, after fifteen years as a Care Quality Commission inspector, Karen Ritson set up a consultancy advising care home managers on how to achieve a higher CQC rating. She told me in an interview this year, “There are people in care homes who have no mental capacity, they have nobody who visits, they have no children, or they may have children who are estranged from them. It frightens me sometimes when I think that person is completely at the mercy of the people who are looking after them. They might be looked after very well, but the vulnerability of that person just feels to me immense. It's a desperate situation really, for a lot of people.”

Here's a suggestion: a group of churches – perhaps those in the same diocese or circuit – could set up a team of people who would be prepared to act as attorneys for members of their congregations who could not find anyone to act in this way. People like Pauline could grant them Property and Affairs Lasting Power of Attorney (covering financial and property matters) or Personal Welfare LPA (covering healthcare, welfare and social care matters) or both.

### Oversight

If someone loses the mental capacity to handle their financial affairs as a result of a brain impairment such as dementia, temporary delirium or a stroke which has affected their brain, anyone to whom they had previously granted Property and Affairs LPA would assume control of their finances, once they had registered their power with the Office of the Public Guardian. However, access to someone else's finances lends itself to abuse, from extravagant expenses claims to an attorney spending the donor's money on themselves. Indeed, the Care Quality Commission received nearly 13,000 allegations of financial abuse by attorneys between 2013 and 2017.

It could be a condition of the church system that no individual attorney should be able to benefit financially from the resources of the person they were representing, and members of the team could subject all the transactions they made to the team leader, including their expenses claims. Before involvement in the team, each would undergo Disclosure and Barring scheme screening, to check they had not been involved in nefarious activity in the past, such as fraud or elder abuse. In recognition of the work involved and any additional costs that might be incurred, donors could be invited to make a bequest to the church circuit or diocese involved.

### Upskilling

The Office of the Public Guardian instructs attorneys to behave according to principles laid down in law: they should take decisions in the donor's best interests (not their own) and should support the donor to make as many decisions about their lives as they are still able, for example. But there is no guarantee that attorneys read this guidance, let alone act upon it. A church team, on the other hand, would be expected to develop expertise and experience not only in acting as a responsible attorney, but of the whole attorney system and of the fields in which they would be called to involve themselves.

### Personal Welfare Attorney-ships

The realm of a personal welfare attorney is healthcare, social care and welfare matters, complementing that of a property and affairs attorney. Welfare attorneys can take proxy decisions for the donor and also have the legal right to be consulted when health or social care officials are acting in relation to the donor. Having a PWA can make a huge difference to someone's quality of life over many years, from ensuring they receive good care in their own home to ensuring they don't end up in a care home which allows pets if they dislike cats and dogs or ensuring they are not subjected to endless medical treatment which they would refuse, were they able.

The role of a welfare attorney can be invaluable when someone who lacks the mental capacity to take major decisions is facing discharge from hospital and health and/or social care officials are pressing them to move to a care home. Church attorney teams would be likely to be well acquainted with the key considerations to bear in mind when deciding whether someone should relocate to a care home and in selecting any home (consulting recent Care Quality Commission inspection reports, for instance). At a time when care homes do not have to reveal the number of Covid cases on their premises, the choice of a home can turn out to be a matter of life or death. An attorney would also be fully involved in drawing up the donor's care plan if in a care home and making sure it was adhered to – checking on everything from the frequency of his or her being showered to whether their food preferences were being respected.

### Preparation

No-one should take on the role of attorney without understanding the factors, not least ethical ones which shape the donor's decision-making. It takes a long time to get to know someone well enough to stand in for them, so a prospective attorney should spend a long time getting to know the prospective donor and discussing the sort of areas which might prove important, should the donor later lose the mental capacity to take decisions in those fields. Time spent before any agreement to donate power of attorney is reached would also enable a church team to decide whether they wished to proceed. Thus a team might decide to refuse to take on someone whose finances were complex or whom they considered could well afford to hire a solicitor or whose perhaps remote family members were not on board with their acting as attorney. Or they might decide that a lesser form of representation would suit the situation better, such as the person officially naming a member of the church team as someone simply to be consulted on health and social care matters (under section 4 (7) of the Mental Capacity Act 2005).

### Your thoughts

If you have any thoughts about this proposal, write a letter to the editor of *plus* and/or me, at marion@marionshoard.co.uk. My book *How to Handle Later Life* (reviewed in *plus* in Vol.33 No. 3, Autumn 2017) contains a substantial section on legal representation and explains differences in the system described above in Scotland and Northern Ireland.

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