

# As time goes by

A presentation to the Insurance Institute of Leeds by  
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# Learning objectives

- What is a vulnerable client, the issues of capacity and what do we mean by lack of capacity
- Powers of attorney – a working knowledge
- What help does the state provides
- The benefits of cash flow modelling
- Dealing with property
- End of life planning

# Case study – Jane (August 2015)

- Age 90 widowed in 1980 – all of her late husband's estate passed to her on his death
- She has arranged an enduring power of attorney appointing son and daughter
- Lives alone in a bungalow valued at £250k and owned outright by her
- Has type 2 diabetes, thyroid problems and in the early stages of vascular dementia, has fallen recently
- Income is a state pension of £162.54 a week, a private pension of £312.92 a month (after tax) and attendance allowance £82.30 a week
- Cash at bank of £129,000

# Case study - Expectations

- Jane wants to stay at home with additional help – how can she pay for this?
- Her son and daughter want her to consider moving into care they believe she needs 24 hour supervision
- Jane does not want to be “forced” to sell her house to meet care costs, she thinks the Government should pay her care costs but is uncertain of the rules and who is responsible
- Jane wants to have peace of mind that she will be cared for and she wants to leave money to her son and daughter

# What is a vulnerable client?

**“is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation”**

1997 Consultation Paper *Who decides?* (Lord Chancellor's Department)

# Mental Capacity – what does that mean?

**'Mental capacity' means** a person's ability to make their own choices and decisions

Under UK law, a person's capacity is judged according to the specific decision to be made, so a person may have sufficient capacity to make simple decisions but not more complicated ones

# Lack of Capacity?

A person lacks capacity to make a decision if they have an 'impairment of or disturbance in the function of their mind or brain' (either temporary or permanent), and as a result they cannot do **one or more** of the following:

- **Understand** the information relating to this particular decision (including its benefits and risks)
- **Retain** the information for long enough to make this decision
- **Weigh** up the information involved in making this decision
- **Communicate** their decision in any way

# Alerts to capacity concerns

- Difficulty with recall or memory loss
- Communication difficulties
- Problems with simple calculations
- Disorientation
- Known conditions – e.g. Jane has mentioned Vascular Dementia
- Needs to be accompanied or does not answer or is not given chance to answer questions
- Limited ability to repeat or recall and ask questions
- Inconsistent



# What are lasting powers of attorney?

- DirectGov definition:
- “A Lasting Power of Attorney is a legal document. It allows you to appoint someone that you trust as an ‘attorney’ to make decisions on your behalf.
- Attorneys can make decisions for you when you no longer wish to or when you lack the mental capacity to do so.”

# 2 Types

## **1. Financial LPA**

- Appoints Attorneys to manage your financial affairs
- Works in the same way as an Enduring Power of Attorney
- Can be used both before and after donor loses capacity providing it has been registered with Office of Public Guardian

# Health and end of life decisions

## 2. Health and Welfare LPA

- Appoints Attorneys to make personal welfare decisions including healthcare and medical treatment
- Give advance directions about the extent of medical intervention or treatment you receive if you lose the capacity to give instructions personally
- Can only be used **AFTER** the donor has lost capacity
- Can direct as to the continuation of life sustaining treatment
- Not a vehicle for Euthanasia, The Act state no steps taken on behalf of an incapacitated person should lead to their death

# Care Quality Commission guidance to GPs

## October 2015

“If an attorney requests disclosure of a patient's records, the GP must check that a **personal welfare LPA** is in force, the detail of its provisions and confirm that the patient lacks capacity before complying. It may not be necessary to release the entire record but just the relevant parts to the attorney.”

# The difference between and EPA and LPA

- Registration:

LPA's - registered before use; no need to re-register loss of capacity

EPA's - registered once the Donor has lost capacity

- Use:

LPA's – must be registered to use

EPA's – do not need to be registered to use

- Emergencies:

LPA's – cannot be used even in an emergency if not registered

EPA's – even when applying to register can be used if to preserve Donor's assets

- Types:

LPA's – financial and personal welfare

EPA's – financial only

Otherwise – essentially the same

**EPA's made prior to October 2007 continue to be valid**

# Their use in day to day investment

- Attorney can authorise:

Closure of accounts

Transfers of funds

Medical information re care fees plans

Medical information re NHS Continuing Care reviews

Signing paperwork to invest funds

Delegation of management of investments to IFA

Insurance policies

# Using a Power of Attorney to make gifts and tax plan

Gifts by Attorney from Donor's assets can only be made in limited circumstances:

- Reasonable sums
- Customary occasions – Birthdays, Christmas
- To Charity
- **Gifts for tax planning – needs Court authority**



- Gifts made in excess of authority:  
voidable not effective for IHT purposes
- Any attempts to extend power to make gifts in LPA will be challenged by OPG
- Application for Court approval:  
Expensive  
not certain to succeed  
time consuming  
requires evidence

# What you should check?

- Has it been registered with the Office of the Public Guardian?
- Who are the attorneys?
- Do they act jointly or joint and several?
- Are there any conditions or restrictions or guidance?
- Conditions or restrictions are binding guidance is not

# What help does the state provide?

- Local authority (Adult Social Services) has a duty to assess need and provide care – Care Act 2014
- Cap on the amount paid depending on care/medical need and the local authority budget
- Eligible assets above £23,250 no requirement for local authority to pay
- Assets between £14,250 and £23,250 tariff income applies £1 per week for every £250 of capital
- Assets below £14,250 no tariff income deductions

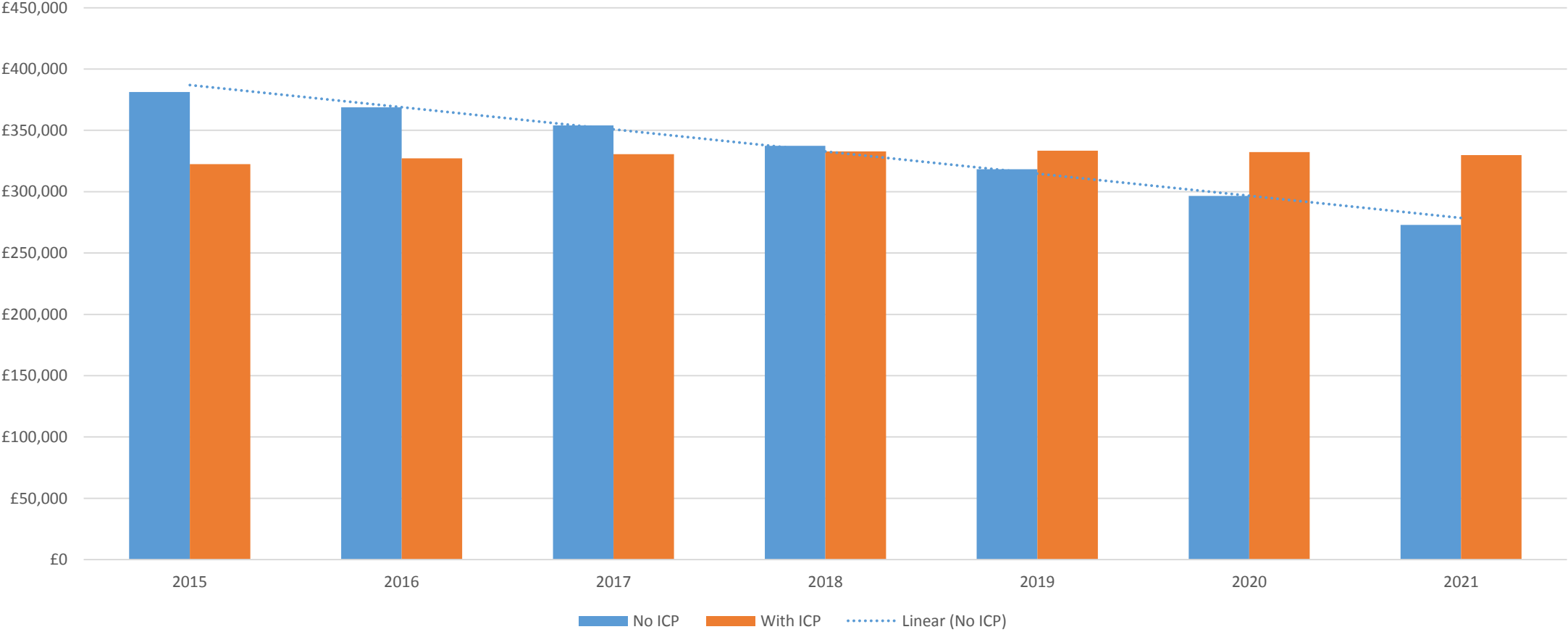
# NHS Continuing Care

- If you have complex and major medical problems requiring constant nursing intervention may qualify for NHS payment of care costs
- NHS continuing healthcare is a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs that have arisen because of disability, accident or illness.
- Failing that may qualify for nursing care contribution £112 per week paid direct to the care provider

# Attendance Allowance

- A need tested not means tested benefit
  - Must be 65 and over and in need of personal care because of physical and mental disability
  - Severe enough to need help with care or supervision
  - £55.10 pw if need frequent help or supervision during day
  - £82.30 pw if need day and night help or supervision
  - Will still receive AA if a “self funder” in care
- 
- Jane will get winter fuel allowance £300 or £150 if in care home

# A cash flow for Jane



# Dealing with property

- Equity release to cover costs of care
- Property protection trusts
- Excluded from LA calculation if spouse, relative 60 and over of dependent child occupies
- Deferred payment may be used to avoid or delay sale – not available if there is a property trust or equity release scheme
- Rent out the property
- Whole of life insurance under used as a substitute for property which may be sold to pay for care?

# End of life planning

- Need money to secure comfort and care:
  - Cope with bereavement
  - Care needs
  - Lifestyle needs
- What do I need to think about?
  - Health
  - Social contacts
  - Mobility, help and support
  - Loss of partner
    - Pensions
    - Estate and inheritance
    - Social, emotional, practical



- Supporting children and grandchildren
- Funeral planning
- What do I need to do?
  - Move house
  - Equity release
  - Long term care
- What do I need to know?
  - Long term care insurance
  - Insurance/investment/savings options
  - Housing options
  - Mobility support
  - Care support

- Who needs to help me?
  - Family
  - Government
  - Financial & Insurance services
  - Specialists
  - Health and social services
  - Not for profit advice organisations

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QUESTIONS?