



For Life

NEWS AND ADVICE FROM BIRKETT LONG

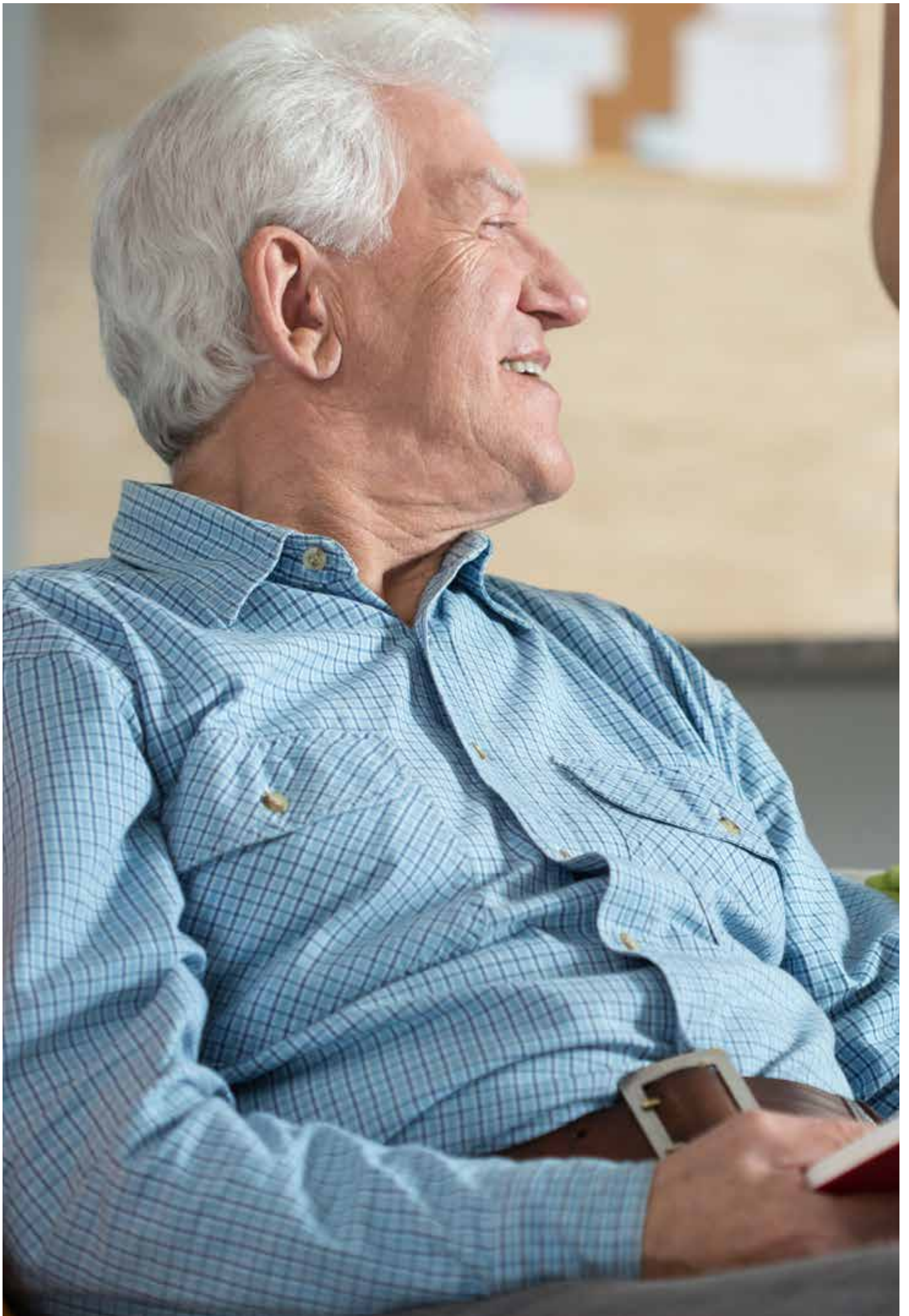
Planning for long term care

Planning care in later life for yourself or for a loved one can be difficult and emotionally charged. We're here to help simplify the process for you.

The future can seem a long way off, the reality, of course, is that it's not. This is why planning ahead and making the right decisions today will give you and your family peace of mind.

We understand the difficulties surrounding the process of arranging care for a family member. Birkett Long has a team of legal experts and independent financial advisers. These two teams work in tandem with you and your family to understand your needs and wishes, and come up with the best long term plan available.

If you need care, or look after someone who does, this information will help you navigate through the care system.



Planning for long term care - Tom's story

Tom is 81 and a widower. A few years ago Tom was diagnosed with dementia, and although initially he managed at home with carers to help, the time came where his care needs were too much.

So with the help of his family, and advice from Birkett Long, Tom sold his property and moved into a care home.

Tom had entered into lasting powers of attorney for property and finances and health and welfare, appointing family members he trusted to act as his attorneys. These documents are explained in more detail on pages 6 and 7.

We helped with the sale of Tom's bungalow and provided his attorneys with financial advice that ensured they were claiming for the benefits to which Tom was entitled. We also worked out how best to fund his care. At that time, Tom's assets were above the local authority limit and therefore his fees had to be self-funded. Information on funding care can be found on pages 4 and 5.

When he first moved to the care home, Tom needed help with personal care, such as washing and dressing; he also suffered short term memory loss and was confused about where he was

or who people were. He had type two diabetes but was happy to take medication and as a result his diabetes was easily managed. Tom's attorneys were able to liaise with core staff on Tom's behalf. After being in the care home for about 18 months, Tom's health started to deteriorate and he had quite a few falls. He started to refuse his diabetes medication and required a nurse to ensure this was taken at the right time and in the right quantity for Tom's illness to be managed. Sadly, Tom also began to get anxious and upset, and became aggressive towards the carers and other residents at the care home.

Noticing Tom's deterioration and his increased level of needs, we advised his carers to arrange for an NHS Continuing Healthcare assessment to be carried out. Tom's family was present and gave input about the level of Tom's care. Following the assessment, Tom's needs were found to be sufficient to meet the NHS Continuing Healthcare funding criteria and his family was told that he was eligible for funding.

This case study illustrates how Tom's needs went from being mainly 'social' when he first moved into the care home, to 'health needs'. It was this factor that qualified Tom for full care fee payment from the NHS. Our legal team worked with our independent financial advisers to make sure Tom's family had the advice they needed on all aspects of funding his care and looking after his affairs throughout this difficult time. As Tom had appointed family as his attorneys they were able to help him with decision making throughout the process and make decisions on his behalf when he became unable to. Continue reading for more in depth information.



Ben Parmenter
01206 217611
ben.parmenter@birkettlong.co.uk



Navigating the care system

As life expectancy increases, so does the impact on ourselves and our loved ones, friends and family.

Navigating your way through the care system can be difficult at the best of times, but when you or your loved one needs care quickly it is imperative that you know where to turn and what to do, without delay. Birkett Long's specialised teams provide practical advice to guide you or your family through the maze

of procedures, rules and finances. We help you focus on what is most important whilst ensuring that provisions are in place, needs are met and your wishes are followed.

The Care Act has changed the way the social care system works; from April 2015 the person needing care has the right to a free needs assessment from the local authority. The local authority must advise on how to pay for your own care and help you find support, such as help with housework. You may not have to sell your home during your lifetime to fund your care.



Funding care

Receiving care at home

For personal care at home, you may have to pay the full cost if you have assets higher than the capital limit (ignoring the value of your home), currently £23,250 in England. Those with assets under £23,250 may receive a contribution from the local authority, but they can still be asked to pay a substantial amount.

Care in a residential or nursing home

If you move into a care home, full care fees will be payable if your capital and savings (including the value of your home, unless it is lived in by a qualifying relative) are greater than £23,250. Assets between £14,250 and £23,250 are also assessed, as is income, so it is important to get advice to ensure only eligible assets are taken into account.

Direct payments and personal health budgets

Direct payments are not intended to be used to employ family living with you, but you can employ a relative who does not live with you.

Receiving benefits

A benefit check will establish whether you or your relative is getting their full benefit entitlement, as this will assist in funding care.



NHS funding

In certain circumstances, you or your relative may be eligible for NHS Continuing Healthcare Funding which, unlike funding from the local authority, is not means tested and is assessed purely on your health needs. This will mean the cost of the care is free regardless of your assets or income.

To be eligible for NHS funding, your needs must be considered as primarily health care needs, rather than social needs, for example, a disability or a complex medical problem such as diabetes as mentioned in Tom's story. The assessment procedure and requirements for eligibility are complex and lengthy, and eligibility is judged on a case by case basis. At Birkett Long we have a team that specialises in NHS Continuing Healthcare Funding advice, which has helped people reclaim care fees they have previously paid, as well as ensuring current fees are not paid when they should not be.

If you live in a care home registered to provide nursing care and receive care from a registered nurse, it may be that even if you are not entitled to free care, you are eligible for funded nursing care. This is a contribution of around £158.16 per week, which is paid to the care home to cover their registered nursing costs, and in turn may reduce fees payable by you.

Assessing need

Step 1 - the assessment

The needs assessment is provided by your local authority. They may recommend that the person requiring care needs services such as:

- Practical support at home (with medicine, shopping, laundry, etc)
- Care at home: help with personal care
- Disability equipment or home adaptations (stair lifts, mobility aids)
- Sheltered or extra-sheltered housing information and advice on community support
- Care in a residential or nursing home - temporarily or permanently

The assessment is usually carried out in your relative's home and you, or another relative or friend, can be present. If your relative meets the criteria the local authority has a duty to provide or arrange services. Carers also have a legal right to a care assessment from the local authority. You can get support services if you qualify for them.

Step 2 - organising care

If the local authority agrees that care is needed, they must provide a written care plan detailing the type of care. If you or your relative wants to organise their own care, you can do this by getting a personal budget or 'direct payment' from the local authority.

Liz Jones
01206 217364
liz.jones@birkettlong.co.uk



Lasting powers of attorney

What can I do if I am not able to manage my affairs?

You may be worried about what happens to your assets during your lifetime if you are unable to deal with them because of ill health, or perhaps you quite simply do not want to. Lasting powers of attorney (LPAs) will allow you appoint people of your choosing to take care of your affairs during your lifetime should you not want, or not be able, to do so yourself. There are two types of LPA, one to cover property and financial affairs and the other to cover health and welfare decisions.

Property and financial affairs lasting power of attorney

The property and financial affairs LPA will allow attorneys to liaise with your bank, manage accounts and investments and, also, buy and sell property on your behalf. Once the document is registered your attorneys can act on your behalf if you do not have capacity or under your authority if you do have capacity.

Health and welfare lasting power of attorney

The health and welfare LPA will allow attorneys to make decisions about what medical treatment you receive, where

you may live, and you can also give them the power to accept or refuse life sustaining treatment on your behalf. Your attorneys can only make these decisions if you cannot do so yourself.

The importance of this type of LPA is becoming increasingly apparent and was highlighted in a case that came to light a couple of years ago. In this case, a lady (who I will refer to as Mrs Smith) had unfortunately lost capacity. She had a nasty fall and went into hospital and was discharged into what her three children thought was respite care. The local authority assessed Mrs Smith and determined that she should remain in the care home but her children wanted her to be allowed home with 24 hour care. Mrs Smith did not have a LPA for health and welfare and as there was a disagreement about where she should live, the matter went to court so a judge could make a final decision. The judge decided Mrs Smith should return home to be cared for.

The senior judge of the court thought it was interesting that Mrs Smith had prepared a property and financial affairs LPA in favour of her children but not a health and welfare document.

He commented that he did not feel this was deliberate on her part but stated that if she had a LPA for health and welfare the matter would not have ended up in court. This would have saved the family a considerable amount of time and money. As a result of this case we recommend all of our clients have a lasting power of attorney for health and welfare.

Your attorneys

Your attorneys are under a duty to act in your best interest at all times and it is important you should choose people that you trust to take on this role. If you do not have close relatives or friends you could appoint a solicitor as your attorney.



Caroline Woodham

01245 453825

caroline.woodham@birkettlong.co.uk

[@elderlylawbl](#)

Your property

Moving into care can sometimes mean selling your home. We can help you through every stage of the selling process.

Once you have found a buyer, our team will provide advice and guidance to you, or your appointed representatives, regarding completion of the necessary forms and the contract of sale. We will work with your buyer's solicitors to ensure your sale is as smooth as possible.

Our friendly team takes the time to explain, in plain English, what can often seem a complicated process. You will have a named conveyancer from day one,

who will be responsible for your sale and available to answer your queries. If you wish, we can arrange to visit you at home.

We work closely with our wills, trusts and probate team as well as our colleagues who offer independent financial advice, in order that we can provide a comprehensive and coordinated service that minimises stress for you and is matched with your needs.



Kurt Goddard

01206 217391

kurt.goddard@birkettlong.co.uk



What happens if you don't have a power of attorney?

If you no longer have the capacity to make decisions for yourself and you do not have a power of attorney, then someone will have to apply to the Court of Protection to become your deputy.

There are two types of application that can be made to the Court of Protection - for a deputy to be appointed to manage your property and financial affairs and/or for a deputy to be appointed to make decisions about your health and welfare. Obtaining orders from the court for property and affairs is lengthy and expensive, often resulting in frustration for family and friends, as well as delays of up to nine months before care fees and other bills can be paid.

Orders appointing a health and welfare deputy are rare as the local authority and NHS already have a statutory duty to ensure that your care and medical needs are met. Without a health and welfare power of attorney, decisions are often taken away from family and friends.

Our specialist Court of Protection team offers expert support and advice if you need to apply to the court on behalf of a loved one. We will also provide guidance if you have been appointed as deputy.



Amanda Smallcombe

01206 217395

amanda.smallcombe@birkettlong.co.uk

@willdisputesbl

What happens if you don't make a will?

The law does not require you to make a will but if you die without having made one, your estate, which includes all your property, money and other personal possessions, will be distributed in accordance with the law and your wishes will not be taken into account. This can mean that long-term partners and friends who support you are often left out.

If you want to ensure that your assets pass to the people you want, then you need to make a will, even if you feel you do not have much to leave.

What are the benefits of making a will?

A will not only ensures your assets go to the people you choose, but it also enables you to decide who deals with your estate and carries out your wishes after your death, for example funeral wishes and arrangements, and who will look after your pets. This will help your loved ones to know that they are acting as you would have wished.

It is important to remember that you are the only one who can make or change your will. Attorneys cannot do this for you without making a special application to the Court of Protection. This process can be lengthy and costly and so it is important that you make a will and keep it up to date! My colleague Amanda is head of our specialist Court of Protection team and can advise you if an application to the court needs to be made.

By making a will through a solicitor you can rest assured that your will is valid and your assets will pass to those you want to receive them.



Claire Read

01245 453835

claire.read@birkettlong.co.uk



Independent financial advice - planning for long term care

At Birkett Long, financial advice goes hand in hand with legal advice to give you a joined up service.

One of our team will meet with you and your family to obtain the full picture regarding your existing financial arrangements and your future, or immediate, financial needs. We recommend products that meet any immediate requirements, before moving on to look at arrangements that provide a regular income to help with any ongoing shortfall between income and expenditure. Many people are responsible for their own care fees and seeking independent financial advice is vital - whether funding is required immediately or you are planning in advance for later life.

We always advise on the most tax efficient arrangements, taking account of any government benefits you may be receiving.

Members of our team hold the Certificate in Long Term Care Insurance and have over 25 years of experience in giving independent financial advice. Using Birkett Long gives you the advantage and benefit of keeping all your legal and financial arrangements under one roof, and knowing you are receiving expert, specialist advice.

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

1 AMPHORA PLACE
SHEEPEN ROAD
COLCHESTER CO3 3WQ
T 01206 217300

FAVIELL HOUSE
1 COVAL WELLS
CHELMSFORD CM1 1WZ
T 01245 453800

E NEWS@BIRKETTLONG.CO.UK
WWW WWW.BIRKETTLONG.CO.UK
WWW WWW.BIRKETTLONGIFA.CO.UK
TWITTER: @BIRKETTLONG
@PAULCHILVERIFA

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As in Tom's story, and as Kurt explained, in some cases the individual's property may have to be sold to allow them to move into care. We work with our legal colleagues while the property is being sold and can advise on how best to invest the funds from the house sale.

Nicola Ward
01206 217308
nicola.ward@birkettlong.co.uk

Important

It has been brought to our attention that Birkett Long has an impersonator - Joseph Ramdath. Joseph has been contacting various people via email explaining that he is a sole legal attorney of a family member (usually 'Ken D Your surname) who has recently passed away. He is asking for you to get in touch regarding the deceased's abandoned investment.

If you receive an email from a Joseph Ramdath it is not legitimate. You can safely ignore and delete any emails that come from either Joseph Ramdath or an email address including birkettlongllpsolicitors, boydfrank98, josephramdath.esq or similar.

We are currently talking to the relevant organisations about his impersonation of Birkett Long, but if you are concerned about an email you have received, please do contact us on 01206 217605.