

My spouse, my friend, my carer – be my attorney!

Most people in Scotland have a “best friend”. For many our best friend is our spouse – the person we trust to see to our needs – to nurse us when we fall ill and generally make sure we are looked after. That’s great and comforting for most of us. But what happens if someone falls so ill that they can’t communicate with their best friend and carer? What happens if someone falls so ill that they cannot do anything for themselves and they have lost “legal capacity”.

Many people seem to assume the best friend or spouse can carry on doing things for the ill person. But the truth is in Scotland legally they can do nothing – yes nothing. Even a spouse inherits no legal powers to do anything for an incapacitated partner. This does not seem to be widely understood. Where someone is so ill as to be legally incapacitated nobody has powers to do anything – unless these powers are granted by the local sheriff court following a court action – or unless some limited powers are granted by the Public Guardian – a public official responsible for a range of legal matters relative to adults with incapacity. So sadly many families are faced with going to court to have the court give even a spouse powers to deal with the affairs of his or her partner – assuming say the partner is incapacitated by for example a stroke.

Going to court is a bit of a daunting prospect for anyone – and even more difficult perhaps when the family is dealing with the illness in the first place.

But the good news is – with just a little foresight and forward planning – all this hassle for families can be avoided. That spouse\carer\ best friend can be legally appointed as the person’s attorney – provided the appointment is made before the illness causing the incapacity strikes. Once appointed as attorney the best friend will have all the legal powers granted in the document appointing him or her – which is called a Power of Attorney. Usually that will mean the attorney will have automatically and legally all the powers necessary to look after and make decisions for the ill person.

With so many of us living longer and experiencing debilitating illness it is just good sense to appoint an attorney. It is actually a very easy process maybe needing one or two visits to a solicitor. So make that friend\carer or spouse your attorney as well – it will save so much trouble should illness strike. And the very best news for older people is that most pensioners – even householders with up to £25,000 savings can still get legal aid to get their Power of Attorney put in place.