

Protecting the vulnerable: undue influence and safeguarding

06 AUGUST 2020

CATEGORY:
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People are living longer than ever and as life expectancy continues to rise, so unfortunately do the risks of financial abuse and undue influence of the elderly or vulnerable. Anyone can be a victim of financial abuse, but age, physical frailty and mental capacity issues may make us more vulnerable.

The reality is that often financial abuse or influencing someone to make a decision (for example, the making of a new Will or a gift) involves those closest. Recent cases reveal that the perpetrator is frequently a family member or someone in a position of trust, be it an attorney, deputy, carer or neighbour.

How do you spot if something isn't right?

There are a number of red flags you can look out for if you suspect a loved one is being financially abused. The clearest sign of financial abuse is a change in spending habits. It may be an increase in withdrawals from the bank, significant transfers to someone else, bills going unpaid or rent overdue, another person being added as an account holder or the sudden appearance of relatives and friends (who may move in to live with the elderly person) to 'help' with finances.

There could also be slightly more subtle indicators; an interest-free loan, deed of variation, creating a trust of the person's property, running up debts with their money, selling assets at an undervalue or the vulnerable person not having resources to fund usual personal things like paying for a TV licence or buying clothes. Another clear warning sign is steps being taken to make significant changes to a Will.

Isolation of the individual from friends and family is also a red flag.

Is there an attorney or deputy?

Having someone in place to support and be responsible for the financial security of a vulnerable person is a key safeguard.

For those with [elderly parents](#), family members or vulnerable loved ones, it is important to talk to them about putting a Lasting Power of Attorney ('LPA') in place so that, if they lose mental capacity, decisions can be made to manage and protect their finances.

If there is no attorney and your loved one has lost capacity to appoint one, then you can apply to the Court of Protection for a deputy to be appointed (a deputy can be a family member). The Court of Protection's guidance on how to apply can be found [here](#).

It is very important to be clear on what an attorney or deputy can and can't do in respect of your loved one's finances. For example, an attorney is only able to give gifts on 'customary occasions' (such as birthdays, weddings etc.) to people who are connected to them. The amount of the gift must be reasonable and take into account the size of that person's estate and history of giving. A deputy's gift-making powers are prescribed by the Court when they are appointed. Normally, it is the same limited range as that of an attorney. The Office of the Public Guardian has a [guide for deputies and attorneys on giving gifts](#).

If your loved one lacks capacity and has an attorney or deputy, any gift made by them outside of the 'customary occasion' range, subject to what the Deputyship order or LPA document says, must be authorised by the Court of Protection. That requires an application. Again, the Court of Protection has all [the relevant guidance](#).

Attorneys and deputies have accounting duties; an attorney must be ready to provide an account at any time and a deputy is required to complete an annual account. Both are submitted to the Office of Public Guardian, which can raise questions about them.

If you are concerned that your loved one's attorney/deputy is acting outside their powers, then you should alert the [Office of the Public Guardian](#) who is responsible for supervising attorneys/deputies. Ultimately, the attorney/deputy can be removed by order of the Court of Protection.

Who else should you alert if you are concerned about financial abuse?

It is important to keep lines of communication open. There is an important distinction between a loved one being vulnerable and lacking capacity. If your loved one has capacity to manage their finances, then a good first step may be to sit down with them to look at their finances and explain your concerns.

There are other ways to take action if something seems to have gone wrong. If you are concerned that your loved one has, for example, fallen foul of a phishing scam or have otherwise been influenced into giving money away, then they (or you, if they are not able to) should report it immediately to their bank/building society and, if fraud has been committed, to [Action Fraud](#).

If you fear your loved one is vulnerable to influence, then it may be sensible to contact their solicitor so that they are aware. Their solicitor will not be able to discuss matters with you, but ensuring the situation is on their radar should mean that they will take additional care.

Local authorities have statutory responsibility for safeguarding adults. If you are concerned that your loved one is being abused (whether financially or otherwise) then you can make a safeguarding enquiry to your local authority, which has a range of powers to take action.

Losing capacity and estate planning

If you think your loved one is losing (or has lost) capacity there are still ways to carry out estate planning and to protect your parents from the risk of abuse.

If the situation has changed and their Will needs to be updated (or they do not have a Will), then you can apply to the Court of Protection for a statutory will to be made. The Court can only make a statutory will if the person lacks capacity to make a Will. In order to know that, before you even reach the point where you apply to Court, you should ask for a capacity assessment to be carried out by a medical practitioner. It is important that the assessor has experience of evaluating 'testamentary capacity'. It may be that your loved one's GP has the requisite experience, or alternatively, there are a number of good independent assessors. It is advisable to take professional advice from an [Elder Law specialist](#) before embarking on a statutory will application.

The Court of Protection can also use its powers to authorise a gift to be made on behalf of a person who lacks capacity – and can retrospectively approve gifts already made which are outside the powers of an attorney or deputy.


It is not easy to voice concerns and suspicions of financial abuse to your elderly or vulnerable loved ones. However, various steps can be taken to ensure their finances are protected and managed in the future. Should the worst happen – or be feared – it is best to seek legal advice as soon as possible to consider the options.


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