

Mitra's Monday Aide-Mémoire

Welcome to my Monday Aide-Mémoire ...

Detecting Financial Abuse

I recently watched the film "I Care A Lot" and even though this film is based in a different jurisdiction (USA), it was chilling to see how financial abuse can take place openly without being detected.

It is a sad fact that very often, a vulnerable person ("P") is abused by someone they previously trusted and appointed to be their attorney. There has been a distinct rise in the number of complaints made to the Office of the Public Guardian regarding financial abuse of P by their attorney or deputy. These complaints are generally raised by P's family members, their carers, doctors or other medical professionals involved in P's care, financial institutions etc. Statistics show that the Office of the Public Guardian carries out in excess of 2000 investigations every year into the actions of an attorney or a deputy.

Financial abuse can take several shapes and forms, for instance, forcing someone into debt, mismanaging their finances for personal gain, borrowing money and not giving it back, or simply stealing one's money or property.

There are several recourses to someone who discovers they have been financially abused. But what happens to those who are vulnerable and may not even be aware that abuse is taking place because they have lost the capacity to manage their property and affairs?

Spotting financial abuse

Be vigilant and watch out for the following telltale signs:

- There are large and/or frequent withdrawals from P's account through the ATM
- Adding someone else's name to P's bank account (without specifying that they are acting as P's attorney or deputy)
- Applying for credit in P's name
- Non-payment of P's regular outgoings or utility bills leading to lack of heating, clothing or food
- Non-payment P's care home fees
- Unexpected changes in P's Will
- Controlling or restricting P's personal contact with others by turning visitors away
- Controlling or restricting P's communications with others, such as denying P of their mobile phone and/or not allowing them to answer a call



What to do?

If you have concerns, either in your capacity as a family member, or a friend or a professional involved in P's care, consider taking the following steps:

1. If there is an attorney or deputy appointed to manage P's finances, raise your concerns with them as there may be a simple explanation. However, it should be noted that attorneys/deputies have a duty of confidentiality to P and have no obligation to respond to you or any other concerned individual.
2. If the attorney/deputy appears secretive and refuses to clarify simple matters without breaching confidentiality, raise your concerns with the Office of the Public Guardian. As a reminder, the Office of the Public Guardian has the power to investigate into an attorney/deputy's actions. Registered attorneys and deputies are required to disclose financial information to the Office of the Public Guardian to alleviate any concerns.
3. If the Office of the Public Guardian forms the view that there is not a real concern and you are dissatisfied with their findings, consider raising a safeguarding issue with the Social Services/Local Authority – they may be in a position to carry out their own investigation.
4. Depending on the nature and value of the suspected financial abuse, refer the matter to the Police under section 4 of the Fraud Act 2006.
5. In cases where you have strong evidence that an attorney/deputy has breached their duty and are using P's money for their personal gain, seek legal advice and consider making an application to the Court of Protection to seek (1) the replacement of the attorney/deputy; and (2) the Court's authorisation to commence legal proceedings against the former attorney/deputy to restore P's estate.

If you have any questions or wish to discuss the above, feel free to contact me on 0121 746 3352.

Mitra Mann, Head of Contentious Probate

