

Price | Slater | Gawne

SOLICITORS

An Introduction and Update on Financial
Safeguarding

Financial Abuse Training Programme

- ✓ Outline of the Statutory Framework
- ✓ Identifying Different types of Financial Abuse
- ✓ Mental Capacity
- ✓ Case Examples
- ✓ Explanation of Available Remedies
- ✓ Exploring some of the Difficulties and Challenges
- ✓ Tips to Help Deal with Financial Abuse Cases



Tom Young

Court of Protection Solicitor

- ✓ Worked in Private Practice and for a Local Authority.
- ✓ Recommended Lawyer in the Legal 500.
- ✓ Acted in the *Court of Appeal Case of Tinsley v Manchester City Council*
- ✓ Deputy applications for Local Authorities and Financial Safeguarding Cases.
- ✓ PSG – Fresh Approach to Law
- ✓ Tom.Young@psg-law.co.uk
- ✓ 07507 875558



Legal Framework

- ✓ Department of Health's ***No Secrets Guidance 2009***
- ✓ Care Act 2014 s42(1) creates a statutory duty to make enquiries.

42(1) This section applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there) -

(a) has needs for care and support (whether or not the authority is meeting any of those needs),

(b) is experiencing, or is at risk of, abuse or neglect, and

(c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

(2) The local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case (whether under this Part or otherwise) and, if so, what and by whom.

Financial Abuse

Definition under the Care Act 2014:

“Abuse” includes financial abuse; and for that purpose “financial abuse” includes -

- (a) having money or other property stolen,
- (b) being defrauded,
- (c) being put under pressure in relation to money or other property, and
- (d) having money or other property misused.

Different Types of Financial Abuse

- ✓ Outright theft or fraud sometimes with the vulnerable person’s knowledge
- ✓ Where they lack capacity – acting beyond/without authority or outside what is in the person’s best interests
- ✓ Undue influence
- ✓ Moving assets or property
- ✓ Leaving a person without access to funds
- ✓ Gifts or loans
- ✓ Changing a Will



Mental Capacity and Vulnerable Adults

- ✓ Need to remember the fundamental principle that it is time and issue specific.
- ✓ Advice is that this is the first thing to consider if there is a financial safeguarding alert.
- ✓ Record keeping is important.
- ✓ If the person retains capacity then that does not mean that there can't still be reason for further safeguarding action.

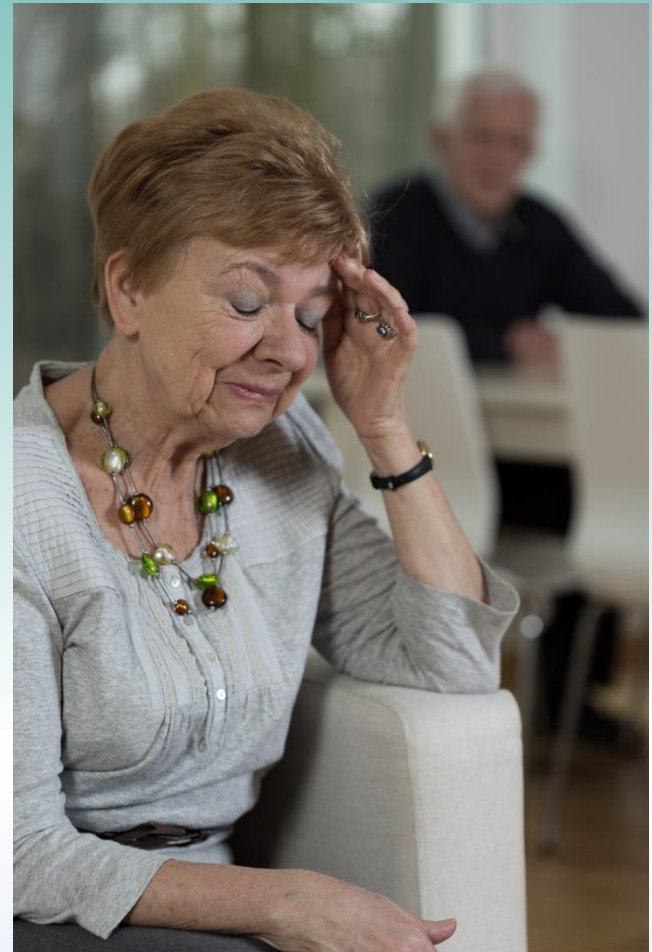
Case Example 1



- ✓ LPA used but not verified by those who should have checked that it was valid.
- ✓ Daughter claimed to be appointed as her Mother's attorney and used this to obtain deeds to Mother's property.
- ✓ In fact she had not been appointed as LPA and as a result of the Solicitor's failings she was able to move in to the property and deprive her Mother of this asset. Unfortunately for P this was her primary asset.
- ✓ There were no funds for personal allowance or care fees.

Case Example 2

- ✓ Mr B and Mrs B both had a diagnosis of dementia. Mrs B was admitted to Hospital following a fall and upon discharge Mrs C became involved with providing care and support to them both in their home.
- ✓ Shortly after this there was a safeguarding alert regarding the level of support that had been provided and the charges for this.
- ✓ The alert included concerns regarding both Mr B and Mrs B's capacity to manage their finances.
- ✓ LA investigated and made application to COP for appointment of Deputy to investigate.



Case Example 3

- ✓ Mr E suffered a stroke and moved to residential care setting. He had previously resided in own property and had not made an LPA or EPA.
- ✓ Following the Stroke, he was assessed as lacking capacity to manage his property and affairs.
- ✓ There were concerns regarding the security of his property and with nobody appointed to manage this on his behalf, an application was made to appoint a professional deputy.
- ✓ Interim measures were taken to secure the property and it's contents.
- ✓ As part of this it was found that more than £15,000 in cash was stored in the property. This was secured and managed by the Deputy when appointed.
- ✓ If it had not have been then consider the recent Ombudsman decision and on that basis likely that LA would have been criticised.



Case Example 4

- ✓ Contacted by Care Provider that was closing and they had been appointed as Corporate Appointee for 3 of the residents.
- ✓ The Care Provider wanted advice about managing the residents funds after they moved and when we investigated discovered that they had funds ranging from £50,000 to over £70,000.
- ✓ Appointee responsible for managing benefits but there are not the safeguards of deputyship or LPA's. The authority is limited to benefits. (Also seen case with funds received under a will).
- ✓ In terms of financial safeguarding this poses numerous risks.
- ✓ Denzil Lush the former senior Judge of the COP has warned against risks with LPA's.

Protection of property where a person lacks capacity

S47(2) places legal duty on LA to take reasonable steps to prevent or mitigate loss/damage to property in cases where they have provided accommodation under the CA or when the person concerned is admitted to hospital.

- ✓ It is clear from the case examples that where there is any reason to doubt capacity then they should be assessing this at an early stage.
- ✓ If they lack capacity and there is someone appointed then need to verify this.
- ✓ If nobody is appointed then there needs to be a stop on further financial activity and steps taken in order to protect the person's assets.
- ✓ Also think about interim measures that we are able to take and the involvement of P.
- ✓ Not just about protecting them from abuse.



Remedies

- ✓ Revoking an LPA or removing a Deputy
- ✓ Appointment of a Professional Deputy
- ✓ Report to the OPG and/or Police
- ✓ Civil Recovery
- ✓ Claim on the Bond
- ✓ Recovery of items or property
- ✓ Liability of professionals involved



Challenges with Financial Safeguarding

- ✓ Ideological cross currents of paternalism and autonomy
- ✓ Costs and Delay
- ✓ Potential negative impact upon the person concerned that stems from investigations and actions to protect them
- ✓ Recoverability of property and assets
- ✓ Considering capacity retrospectively
- ✓ Difficulties obtaining evidence

Tips for Financial Safeguarding Enquiries and Investigations

- ✓ Ensure that all relevant parties are involved and invited to any meetings
- ✓ Avoid delays including between meetings
- ✓ Investigation strategy
- ✓ Record keeping
- ✓ Compliance with internal policies and procedures
- ✓ Acting quickly
- ✓ Assess capacity early and continue to assess
- ✓ Don't make assumptions
- ✓ Obtain evidence and verify documents where possible
- ✓ Check balances of funds that are being managed by Care Providers
- ✓ Outstanding care fees or personal allowance
- ✓ Appearance of the person including any comments that they make



Price | Slater | Gawne
SOLICITORS

Any Questions?