

CHAPTER ONE

INTRODUCTION

What Is the Primary Threat to Your Loved One's *Finances*?

It is famously said that sometimes the best hiding place is the one that's in plain sight.

Sadly, it is estimated that millions of older adults experience financial abuse each year, and the financial losses associated with this abuse can be devastating.

According to the Office for National Statistics, approximately 1.5mn older adults in England experienced some form of financial abuse in 2020.

As was pointed out by a report for Parliament by the All-Party Parliamentary Group (APPG) on Insurance and Financial Services and the Financial Vulnerability Taskforce

“It is a common misconception that financial abuse – including theft and fraud – is inflicted by individuals or organisations at arms-length, by people largely unknown to the victim. However, anecdotal evidence has for some time suggested that a significant amount of financial abuse is inflicted by those much closer to home, namely family members.”¹

Professor Keith Brown, an Emeritus Professor at BU, who was a member of the Financial Vulnerability Taskforce and Chair of the Safeguarding Adult National Network, wrote the foreword to the report and observed:

¹ https://80162760-26bc-4062-be5a-3322b8afa67b.filesusr.com/ugd/2c5374_1340b05c9a874b11adc0a3b24ed0aa69.pdf

“I constantly keep hearing cries for help from people who believe a family member has stolen funds from another family member, however there is simply no recent research or even debate about this issue.”

As the report observed it is worth noting that back in 2008, a report for Help the Aged stated that not only was 70% of financial abuse of older people perpetrated by family members, but it also estimated between 60 to 80% of these crimes took place in the home.

While theft and fraud within families is not restricted to older people, demographic changes including living longer will undoubtedly increase its prevalence, with property and complex financial resources a challenge for many to manage over time.

Thus we need to better understand the scale and nature of financial abuse in families. Only then can we move forward together to ensure it is both prevented and responded to effectively.

The lack of national research into theft and fraud within families has far reaching consequences across society.

If one does not understand the scale or nature of the problem, we are not able to identify and share best practice in prevention and action when it is believed to transpire.

There is clear evidence that fraud is done by family members and the problem is understated within society.

A 2015 survey by KPMG indicated a rise in the number of cases in which the perpetrator of the fraud was a family member.

While many people are likely to be cared for with integrity by family members this is not always the case.

One of the difficulties is this lack of awareness provided an environment for Elderly Fraud to thrive and often means that we are unable to deal with it.

Lasting Powers of Attorney is an arena for elderly fraud to take place

To give an Illustration of how legislators can make the wrong calls with respect to Elderly Fraud consider some legislation.

The Powers of Attorney Act 2023 makes changes to how lasting powers of attorney (LPAs) are made.

The Act aims to make the LPA process easier to access, simpler and apparently more secure from fraud and abuse.

Given many people do not think about LPAs until later on in life, it is often the elderly who find themselves the victims of identity fraud which is a key focus of the Act.

The changes include:

- Only permitting the donor to apply to register an LPA, removing the ability for attorneys to do so under the current rules.
- Enabling the parties to an LPA (the donor, attorney(s) or certificate provider) to choose whether to sign the LPA digitally or on paper, or by a combination of the two.
- Widening the group of people who can raise objections, including people not named in the LPA.

All well and good.

The LPA changes address such problems found out by an investigation by the BBC Radio 4 consumer programme, You and Yours who spoke

to one victim whose empty home was targeted by fraudsters who obtained an LPA without any proper checks.

The fraudsters briefly visited the woman's home to change the locks and then tried to sell it using the LPA.

This has been a catalyst for the new law.

However the new Act once it is implemented will not actually address the real LPA fraud which is going on.

From my experience, nearly all the LPA fraud I see in my capacity as a lawyer is actually done by family members using a perfectly valid LPA document for which the elderly relative has often received legal advice.

None of the amendments within the new Power of Attorney Act will do anything to address this fraud because it will not increase the level of scrutiny of the LPAs in place.

With the rising numbers of LPAs(which the new legislation will lead to and increasing elderly population), this fraud will increase.

Most LPA fraud is not actually discovered until after the Donor of the LPA has died.

Then it is up to the Executor of the Deceased/Donor to investigate.

Most LPA fraud of this kind is not reported to the police and remains under the radar as far as the public is concerned.

If the fraud was reported to the police, the more likely response is that this is a civil matter.

An alternative course of action is to report this to the Office of Public Guardian (OPG).

The OPG has a legal duty to investigate complaints or concerns about the actions of deputies, registered attorneys and people acting under an order of the Court of Protection.

However, that legal duty ends when the deputyship/attorneyship ends which is when the Donor dies.

The only way the OPG can get involved after death is if you have a deputyship situation and they can get the deputy to produce a final report.

This does not apply to LPAs so it is really a case of a victim of financial abuse having to be very proactive after financial abuse has happened.

Thus contrary to media reporting(which focuses on scammers) and the view of society, the majority of elderly fraud is actually done by family members and/or those in position of trust.

Fraudsters Can Use Legal Documents

It is fair to say that much of elderly fraud is done by using illicit means such as iD theft, theft of bank cards.

In addition, types of financial abuse include :

- Taking money out of bank accounts
- Preventing a person from accessing their own money or assets
- Missing valuables from the home (e.g. jewellery, ornaments or art work)
- Deliberate isolation from friends and family
- Income missing or unaccounted for

- Suspicious payments to third parties

However, often what I term false friends/fraudsters use perfectly valid legal documents such as Lasting Powers of Attorneys and wills prepared by firms of solicitors to enact this fraud.

This step of “legalisation” makes both the fraud more difficult to detect but also more difficult to oppose once the facts come to light.

With respect to a will done by a firm of solicitors, it is actually fairly difficult to challenge that Will even if it has been masterminded by a false friend.

This can include a change of wills to favour certain individuals and misuse of a power of attorney or deputyship

From my experience, a number of people are fully aware of these vulnerabilities and have developed a well thought out and well implemented strategy which enables them to successfully obtain monies and assets from vulnerable people.

Until one has this thought in mind (and clearly our legislators and collective society have not), there will be a number of families who will be subject to elderly fraud and fighting an uphill battle to recover monies and obtain justice.

The purpose of this book is to shine light on this trend and provide you with the tools to both prevent you/your loved ones from experiencing this fate and also to give you the methods to fight back if it has already happened.

How is Elderly Fraud Done?

In order to have a full understanding of elderly fraud, it is necessary to fully recognise the (simple) strategy of committing the act(s).

Once you understand the primary way that most fraudsters/false friends commit elderly fraud you can develop your own strategies to minimise the risk of this happening.

In fact, there is actually a fairly simple strategy for committing elderly fraud as we do see it often with our work.

It consists of a Fraudster/False Friend doing the following:

- Exercising strong influence on a vulnerable person – manoeuvring the vulnerable person to give sole control (or effective control) of his or her assets to that bad person. This can be getting control of that person's financial affairs and if a Lasting Power of Attorney(LPA) is done, becoming a sole attorney.
- It can also involve becoming sole effective sole executor of the vulnerable person's Will. It is more difficult to challenge a will executed by a solicitor and despite safeguards this is relatively easy to do. Ironically the legal profession can be a very useful tool to enable a transfer of assets to manifest to a predator.
- Being both very self-serving and also, patient. Typically, other relatives (would be beneficiaries) under-estimate the lengths that the false friend will go to get what he or she wants. This puts the false friend at a fundamental advantage as they use any card possible to³ achieve their objectives.
- The false friend possesses good knowledge of the law. They know there are inherent weaknesses with the legal process which can be exploited. For example, it is difficult for other family members to challenge a Will prepared by solicitors. The individual knows that the Office of the Public Guardian(OPG, a possible safeguard) and indeed the police will be unlikely to intervene. As we will read later the OPG is not that effective in tackling elderly fraud as it is has a low successful enforcement rate.

Here are two examples of Elderly Fraud we have dealt with:

CASE STUDY 1

Jean lives in her house alone and is befriended by her nephew David and David moves into the property. David starts applying influence to Jean and Jean visits a firm of solicitors and changes her will making David executor and other family members beneficiaries. David stays in the property and takes hold of the Deceased's bank account and spends £100,000 of the bank account. He is eventually removed as Executor and leaves the country.

CASE STUDY 2

Dawn and Sheila are children of Alison. Sheila moves away from the area. Alison had done a joint will with the children's Deceased father which made Dawn and Sheila joint beneficiaries. Over time Dawn puts pressure on Sheila and gets her to do a number of wills which over a number years gradually increases the amount going to Dawn and also gives Dawn the sole right to be executor. Dawn takes hold of Sheila's bank account card and starts making ATM withdrawals and makes a series of payments to her and her husband.

Why are the Elderly Attractive Targets?

There are strong incentives to target elderly people.

The over 65s own £2.6 trillion worth of net housing wealth in addition to significant savings and investments, according to a report done by Savills.

If one is not doing that well economically the temptations to accumulate can be significant.

Older people are more likely to be vulnerable or have disabilities that make them dependent on others.

Some helpers may also have access to the homes and assets of these elderly people – including being able to remotely access their online banking and shopping apps.

Victims of such abuse are often reluctant to take action against their abusers because they feel ashamed of having been taken advantage of, or because they do not want the criminal to withdraw their care and support.

In addition, the criminal authorities will not necessarily get involved.

Individuals can mix the donors' assets with his, and so offsets his personal overdraft interest or props up an ailing business overdraft to assist short term cash flow.

Effective Implementation of Sanctions Against Fraud Weak

In an answer given in Parliament Mike Freer Finchley and Golders Green and the Secretary of State for Justice, responded to how many reported cases of fraud reported to the Office of the Public Guardian relating Power of Attorney were passed to the police or the CPS from the Office of the Public Guardian on the death of the alleged victim in the last five years.

The Office of the Public Guardian (OPG) has been recording data since April 2021 on concerns raised about Lasting Powers of Attorney (LPA) that mention fraud. Since April 2021, there have been 178 initial concerns that mention fraud. OPG carry out investigations following reports of fraud and act where they have the jurisdiction to do so.

From April 2019 to 31 October 2022, 15 fraudulently created LPAs were removed from the register following investigation. In 10 of these cases,

the Public Guardian removed the LPA from the register. The Public Guardian referred the remaining 5 cases to the Court of Protection, which led to LPAs being subsequently removed. Fraudulent LPAs currently represent less than 0.1% of all registered LPAs, which exceed 6 million.

The OPG records the number of reported cases of fraud, but not the number that are passed to the police or the CPS on the death of an alleged victim. The OPG's legal authority ends upon the death of a donor (the individual who has created the LPA). As a result, where there is alleged fraud following the death of a donor, OPG would advise the concern raiser to raise their concern directly with the police if they feel it is appropriate.²

The number of referrals to police is low meaning that in a key area where elderly fraud can thrive (namely LPA) the chances of going to jail is low.

Examples of Fraud

However there are examples of fraud but these are a few.

Here is an example and the help given by a charity, Hourglass

Maria* was experiencing psychological and financial abuse at the hands of her son. He turned up at her property, demanding money and on one occasion took out a knife and threatened to kill himself if she didn't hand over £300.

² <https://questions-statements.parliament.uk/written-questions/detail/2022-1207/105551#:~:text=The%20OPG's%20legal%20authority%20ends,they%20feel%20it%20is%20appropriate.>

Maria struggled to get over these experiences, and also felt lonely and isolated due to caring responsibilities. She rarely left home and felt like she was struggling to cope.

When Maria was referred to Hourglass, they matched her with a local volunteer who helped her re-connect with the local Portuguese community, as well as long-term befriending support. The volunteer also helped her claim welfare benefits, and gradually supported her in regaining self-confidence and independence. Without the support of her volunteer, Maria would have remained at home, with limited access to outside intervention and social opportunities to help with her recovery.

The service has been a turning point in her life and has enabled her to see past what happened and begin to enjoy her life once more.

Forging A Will

Mr Stewart Pearman was jailed for over five years for trying to steal more than £2 million left by a friend to an air ambulance charity before her death by cancer in 2016. He had been gifted £25,000 by his friend in her Will made in 2014 but shortly before her death forged a document that declared he was the sole executor and main beneficiary of her estate.

The two witnesses to the forged document initially gave evidence confirming that they witnessed the deceased signing the document but subsequently admitted that they signed the letter after the deceased had died.

In February 2023 he was sentenced to five years and three months at Worcester Crown Court.³

³ <https://www.cps.gov.uk/cps/news/man-who-created-false-document-steal-ps2-million-air-ambulance-charity-jailed>

The CPS brought charges against Pearman following an investigation by West Mercia Police.

In 2015, an elderly woman known to Pearman was diagnosed with terminal cancer and sadly passed away at her home on 7 August 2016.

The deceased wrote a will in 2014, making an air ambulance charity the main beneficiary of her estate. She left £25,000 to Pearman who she had appointed as one of the executors of her will.

Shortly after her death, Pearman produced a document which he titled 'Letter of Wishes' to solicitors dealing with her estate, declaring that he was now the sole executor of the will and the main beneficiary.

Pearman suddenly stood to inherit £2,186,079 - significantly more than the £25,000 which she had intended to leave to him in the 2014 will.

Solicitors appointed to process the will raised doubts about the legitimacy of the letter of wishes and an investigation was launched.

It was found that the defendant wrote the letter of wishes shortly before the deceased passed away, and medical evidence from the deceased's GP confirmed that she did not have mental capacity when the letter was purported to have been signed by her.

Pearman involved two further defendants Aleksander Yuriev Shikov, 35, and Luke William Derrett, 42, to support his criminal behaviour by requesting them to sign the letter of wishes as witnesses.

Shikov and Derrett provided sworn affidavits confirming that they signed the letter of wishes as witnesses after it was signed by the deceased.

However, they later confessed that they in fact signed the letter after the deceased had died.

Abuse of LPA

A man has been jailed for fleecing his elderly mother out her life savings of more than £250,000 while acting as her power of attorney.

The son of a woman with dementia who stole more than £250,000 from her to fund his luxurious lifestyle has been jailed.

Karl Zierold, from Stockport, was given power of attorney over his mother's financial affairs when her condition worsened and she was moved into a home.

Zierold, who was the eldest of four, was given full access to her bank account, draining it to fund holidays to Dubai and Mauritius, while also paying off his Mercedes V8 GT. His crimes were only brought to light when concerns were raised about an unpaid car bill.

When confronted the 56-year-old wrote letters to his family admitted he had stolen his mum's money. Jailing him for three years and four months at Manchester Crown Court Recorder Jason MacAdam said told him: "The phrase 'chip off the old block' is as far removed as can be possible when it comes to you."

They both pleaded guilty to wilfully making a false statement on oath and were sentenced on 1 February 2023 to four months imprisonment suspended for 12 months.

Solicitors in the Dock

Elderly Fraud can involve an abuse of Professional Trust

There was solicitor who stole cash from a vulnerable client while acting for her under a lasting power of attorney (LPA) has been struck off.

The Solicitors Disciplinary Tribunal (SDT) heard that 38-year-old Danielle De Carpentier made 39 cashpoint withdrawals over nearly four years and totalling £7,850 from the client's personal bank account.

She was convicted of fraud by abuse of position in December 2021 at Nottingham Crown Court and later sentenced to 18 months in prison.

The Crown Court judge described her behaviour as “a gross breach of trust and abuse of position”.

Her victim, ‘Client A’, was “a vulnerable lady, being unable herself to monitor her own finances, and thus there was nobody to operate as a check or balance upon your actions”.

Once questions began to be raised, the judge said, Ms De Carpentier “embarked upon an attempt out of panic... to try and divert attention away from yourself but, in doing so, you sought to divert attention on to others, either real or imagined. That raised suspicion amongst others, none of which is edifying”.

An agreed outcome with her regulatory body, the Solicitors Regulation Authority (SRA) and approved by the SDT, detailed that she began working for Clayton Mott in West Bridgford in June 2014 and, after qualifying as a solicitor in December 2017, she became a partner the following year. She left the firm in 2020.

The regulator said it received a report from Nottinghamshire Police in November 2019 that the solicitor had made the withdrawals of cash from various ATMs using Client A's debit card between August 2015 and June 2019.

A Call For Action

This book represents a call for action in making one aware of elderly fraud but also given one the tools to prevent elderly fraud happening in the first place and the tools to fight back.

One of the striking aspects of elderly fraud is the lengths to which family members are willing to plot and justify their obtaining of the elderly's assets.

This book by providing technical knowledge and practical solutions will provide you with the ability to prevail.