



# FINANCIAL AND MATERIAL ABUSE



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## **Introduction**

The purpose of the document is to provide guidance to identify ways in which financial and material abuse can occur and ways in which financial abuse can be prevented. All organisations will have different roles and responsibilities in relation to helping people manage their finances, but everyone should be actively working to help people improve their skills to manage their money and prevent financial exploitation and crime.

The term ‘financial or material abuse’ applies to a wide variety of acts and failures to act both criminal and non-criminal. It can include theft, fraud, exploitation, coercion in relation to an adult’s financial affairs or arrangements, including in connection with wills, property, inheritance as well as financial transactions, or the misuse or misappropriation of property, possessions or benefits;

Section 42 part 3 of The Care Act 2014 identifies financial and material abuse as;

“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.

## **Potential indicators of financial or material abuse**

Indicators of financial abuse include the following;

- Change in living conditions
- Lack of heating, clothing or food
- Unexplained withdrawals from an account
- Unexplained loss/misplacement of financial documents
- Sudden or unexpected changes in a will or other financial documents
- Missing personal possessions
- Unexplained lack of money or inability to maintain lifestyle
- Unexplained withdrawal of funds from accounts
- Power of attorney or lasting power of attorney (LPA) being obtained after the person has ceased to have mental capacity
- The person allocated to manage financial affairs is evasive or uncooperative
- The family or others show unusual interest in the assets of the person
- Signs of financial hardship in cases where the adult at risk’s financial affairs are being managed by a court appointed deputy, attorney or LPA
- Recent changes in deeds or title to property
- Rent arrears and eviction notices
- A lack of clear financial accounts held by a care home or service
- Failure to provide receipts for shopping or other financial transactions carried out on behalf of the person

This is not an exhaustive list and evidence of any one indicator from the above list should not be taken on its own as proof that abuse is occurring. It should however alert practitioners to potential concerns and in doing so complete appropriate assessments and enquiries into the adult at risk's situation.

### **Types of financial abuse**

The following are examples of different types of financial abuse;

- Theft of money or possessions
- Fraud
- Preventing a person from accessing their own money or assets
- Employees taking a loan from a person using the service
- Undue pressure, duress, threat or undue influence put on the person in connection with loans, wills, property, inheritance or financial transactions
- Arranging less care than is needed to save money to maximise inheritance
- Denying assistance to manage/monitor financial affairs
- Denying assistance to access benefits
- Misuse of personal allowance in a care home
- Someone moving into a person's home and living rent free without agreed financial arrangements
- False representation, using another person's bank account, cards or documents.
- Exploitation of a person's money or assets, e.g. unauthorized use of a car
- Misuse of a power of attorney, deputy, appointee ship or other legal authority

### **Mental Capacity**

The Mental Capacity Act 2005 is a law that protects and supports people who do not have the ability to make decisions for themselves. This could be due to a learning disability, mental health problem or a health condition such as dementia. The act applies to people aged 16 and over in England and Wales. It also provides guidance to support people who need to make decisions on behalf of someone else.

The Mental Capacity Act covers important decisions relating to an individual's property, financial affairs and health and social care. It also applies to everyday decisions, such as personal care, what to wear and what to eat. It can help support people lacking capacity, their carers and professionals to make decisions, both now and in the future.

SSASPB has produced guidance in relation to assessing mental capacity and can be found at

<https://www.ssaspb.org.uk/Guidance/SSASPB-Policy-Process-and-Guidance.aspx>

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People should be assessed on whether or not they have the ability to make a particular decision at a particular time. The mental capacity of a person may fluctuate and there may be times of the day when the person is able to think more clearly, perhaps first thing in the morning or after having medication.

The Mental Capacity Act allows for a number of people to assess capacity and make decisions on behalf of an individual. The assessment should be made by the person who believes a decision is required. For everyday matters this may be a family member or carer; for formal decisions an appropriately trained professional may be required.

### Examples:

Cash transactions - If there are concerns about the decisions made by a person an assessment can be completed by a family member or carer. The person should be given all reasonable help to support them to make the decision themselves.

Tenancies - In order for a tenancy contract to be lawful a person needs to understand the basic responsibilities of a tenant in order to make a decision and agree to a tenancy. The housing provider may undertake this assessment but is likely to ask for an opinion from carers or appropriate professional.

Legal - For legal matters such as a will, a solicitor needs to make a judgement about whether a person is capable of understanding the meaning of the will. If in doubt they would get an opinion from a doctor or other appropriate professional. Solicitors will also often be involved in drafting a Lasting Power of Attorney and so would need to decide whether or not a person understands the consequences of making this decision and that no undue influence was being placed on the individual. In small numbers of cases, where there is a dispute regarding mental capacity which cannot be resolved, the Court of Protection can make a decision following an application by one of the parties involved.

Adults have a legal right to make decisions, except where there is clear evidence that they lack the capacity to do so. The Mental Capacity Act 2005 seeks to protect citizens from the removal of personal agency on the grounds of, for example, a diagnosis of dementia or other medical condition.

However, the Code of Practice (2007, 2.11) states that if an adult “repeatedly makes unwise decisions which puts them at significant risk of harm or exploitation, or makes an unwise decision that is obviously irrational or out of character” further investigation regarding their capacity may be necessary (NHS England 2015, p.11). This is particularly relevant in cases where scam victimisation has become chronic or where scammers have groomed their victims by establishing relationships and creating dependency. The experience of this form of coercion and control may compromise the individual’s capacity.

Professionals and organisations working with issues around mental capacity have been criticised for being risk averse, and for using the MCA for safeguarding purposes rather than empowering people as it was intended to do (House of Lords Post Legislative Scrutiny Report 2014). This means every professional working with people whose decision-making capacity is compromised must balance the duty of care to protect, whilst also respecting the individual's right to make choices. Practice dilemmas occur where there is conflict between the duty of care and duty to promote autonomy, for example in situations where individuals make unwise decisions.

However, the duty of care is met when:

- All reasonable steps have been taken
- Reliable assessment methods have been used
- Information has been collated and thoroughly evaluated
- Policies and procedures have been followed
- Practitioners and managers adopt an investigative approach and are proactive (Lyne 2017)

To achieve this, information must be provided in the most appropriate and accessible form to enable participation. Interventions by professionals are required to be informed by person-centred approaches.

### **Who is at risk?**

#### Loneliness, social isolation and scam involvement

The reported incidence of loneliness and social isolation is increasing; it is a global issue resulting in a lack of social engagement and sense of belonging (Chen et al. 2014). Research in the UK found that 200,000 older people (65+) have not had a conversation with friends or family for a month; 1.2 million older people (65+) are persistently/ chronically lonely (Age UK 2016). The experience of loneliness has been linked to increased scam susceptibility due to increased emotional vulnerability (Oliver et al. 2015; NTSB 2015). A scam contact may be viewed as a potential new relationship and the scammer will build the relationship by creating a growing sense of intimacy and encouraging the individual to reveal more about themselves. They will express their concern by using words such as 'love' and 'darling', building dependency through encouraging secrecy and separation from family and friends. The exchange of presents and 'rewards' for 'good' behaviour on the part of the respondent maybe used to reinforce the 'bond' between scammer and their victim (Button et al. 2014).

There are many reasons why a person with dementia may be at risk of responding to a scam, these include:

Communication - As difficulties with language develop, the person living with dementia may have problems communicating, for example being unable to refuse entry to someone knocking on their door. They may also have difficulty telling a carer or family member about contact they have had with a scammer.

Poor concentration - This can lead the person to repeat actions many times or become agitated and angry as the world seems unfamiliar.

Confusion - Skills of financial judgement may be compromised so the person living with dementia cannot recognise scam indicators. The person may develop altered financial priorities.

Depression and paranoia - Loss of interest or being suspicious can be a sign of depression or paranoia. Depression is common in people living with dementia (Alzheimer's Society 2018).

Tiredness - Sleep disorders such as insomnia or night-day reversal can increase tiredness. It can lead to other difficulties such as problems with concentration or difficulties with coordination.

These factors impact on cognitive functions including financial literacy, making it difficult for people to understand risk and apply caution to decision making. This may make people with dementia at increased risk of responding to a scam.

Vulnerable people may be reluctant to report such crimes because they are frightened, they feel foolish about being duped or are worried they may lose their independence. Those who are socially isolated and lonely are most at risk. Of particular concern is that victims can fail to recognise that they have been conned and believe that a decent job has been carried out and that unscrupulous traders are actually their friend.

### **Who Presents a Risk?**

Perpetrators of financial abuse are likely to be a person acting in a trusted capacity. This could either be as a member of family or friend as well as care workers or other professional.

For Example:

- Person who has Power of Attorney or Deputyship misappropriating money or belongings for their own gain
- Members of care staff or other professionals exploiting adults and gaining control of finances
- Family members receiving an adults benefit allowance and using this for their own gain
- Care staff and other professionals using adult's money to purchase items for their own use

There is a growing prevalence of fraudulent activity by persons unknown to the adult. This can be via doorstep crime or through scams. Scams are becoming more sophisticated in nature and the perpetrators are coming up with new methods all

the time. Scams can come through in a variety of ways including telephone, letters, emails, texts.

These scams can include lottery scams, romance scams and false emails from trusted companies such as Ebay and banks.

### **Doorstop Crime**

Doorstep Crime can occur through cold-calling at the homes of consumers, most commonly older adults and/or vulnerable people. The cold caller may offer services or items such as property repairs including roofing, tarmac work, block paving, fascia and soft installations or gardening work.

Products and items that they may sell include fish, furniture, mobility aids, security systems and energy saving products.

It often involves charging extortionate prices for the goods or services including charging for unnecessary work, deliberately damaging property in order to obtain work, leaving work unfinished, substandard or poor-quality work, claiming to have done work which has not been done and making false statements about goods and services supplied for specific reasons.

It may also involve intimidating and aggressive behaviour on the part of the offenders or an element of befriending or grooming of the victim to facilitate the offending or repeat victimisation. In some cases, the visit to the person's home may be preceded by a telephone cold call. This is more common with the sale of goods. In other cases, the person may have received a flier through the door or even been targeted by scam mail. The offenders involved in doorstep crime are often associated with distraction burglary (e.g. bogus water board and other bogus officials).

Rogues will insist on payment in cash, often escorting the victim to the bank to withdraw their savings. A good indicator of rogue trading is a lack in the provision of paperwork, especially a written cancellation notice or cooling off period which is legally required under Trading Standards legislation.

The sums of money taken may not necessarily be large. Perpetrators may befriend their victim who is then targeted repeatedly for small sums of money. There have been instances where victims have been persuaded to sign over their property in exchange for free property repairs for life.

In addition to financial abuse from scams such as those described below, be aware of some of the 'sharp practice' commercial techniques used by some legitimate businesses and even charities, which can be a form of financial exploitation. Sharp practice refers to unethical business practices, for example where vulnerable people may be repeatedly contacted for multiple charitable donations or frequent orders of products they do not need in order to meet sales targets.

**Advance fee fraud** - is when the perpetrators target victims to make advance or upfront payments for goods or services that do not materialise.

**Lottery Scams** - When people are told they have won a lottery jackpot or prize draw to tempt people, so they can steal details or hand over an advance fee to release the winnings. The lottery and prize money doesn't exist, or fraudsters pretend to be a genuine lottery.

**Romance Scam** - When an adult thinks they have met the perfect partner through an online dating website or app, but the other person is using a fake profile to form a relationship with them. They're using the site to gain the adults trust to obtain money or enough personal information to steal the adult's identity.

**Consumer Scams** - They could involve someone pretending to sell something they don't have. The fraudster takes a person's money without giving anything in return for it. It could also be a person supplying goods or services which are of a lower quality than those paid for or failing to supply the goods and service bought altogether. Someone trying to persuade a person to buy something they don't really want using oppressive marketing or sales techniques.

**'419' emails and letters** - When a stranger contacts an adult and asks them to pay an administration fee to help move a large amount of money from one country to another with the promise they will be rewarded with a cut of the cash later on. These emails can involve countries such as Iraq, South Africa or somewhere in west Africa such as Ivory Coast, Togo or Nigeria, where the name '419' (an article of the country's criminal code) originates.

**Government agency scams** – These are when fraudsters send out official looking letters or emails to ask for money or personal information. The correspondence gives the impression that they are from a government department and imply they have some form of authority. The letter or email might advise the receiver must register in order to comply with some kind of legislation – for a fee. Other alternatives include asking people to pay a fine for breaches to the law, or requesting bank details to claim a tax rebate.

If information is received to suggest that an adult has been or is likely to become a victim of doorstep crime or scams contact:

**Trading Standards Tel: 01782 237788 (Stoke) or 0300 111 8045 (Staffordshire).**

**Trading standards** is the local government service that works to protect consumers and support legitimate business. The daily work of a Trading Standards Officer (TSO) involves responding to and investigating consumer complaints and conducting routine inspection of businesses for compliance with legislation. They are able to conduct investigation and have powers to instigate a range of sanctions and prosecutions, which includes:

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- Informal action and Advice
- Service of a Legal Notice
- Written Undertaking
- Enforcement Orders
- Injunction
- Simple Caution
- Fixed Penalty Notice
- Revocation, suspension, modification or refusal of a licence, approval or registration
- Prosecution
- Action under the Proceeds of Crime 2002
- Applications for Anti-Social Behaviour Orders ('ASBOs') or Criminal ASBOs
- Voluntary surrender or forfeiture applications in the event of illegal, dangerous, unsafe, or mis-described goods being discovered officers will make all efforts to ensure these are disposed of swiftly and effectively. In the event of animals which are diseased, suffering unnecessarily or being subject to any form of illegal activity officers will take all necessary action to ensure the health and well-being of animals and the public. In certain circumstances for illegal items this will entail a formal application to the Courts for forfeiture of the goods or animals or agreement to voluntary surrender by owner / keeper.
- Apply for a review of a licence issued under the Licensing Act 2003

**Action Fraud** is the UK's national reporting center for fraud and cybercrime where you can report fraud if you have been scammed, defrauded or experienced cybercrime in England, Wales and Northern Ireland. They provide a central point of contact for information about fraud and financially motivated internet crime. The service is run by the City of London Police working alongside the National Fraud Intelligence Bureau (NFIB) who are responsible for assessment of the reports and to ensure that your fraud reports reach the right place. The City of London Police is the national policing lead for economic crime. You can report fraud or cybercrime using their online reporting service any time of the day or night; the service enables you to both report a fraud and find help and support. They also provide help and advice over the phone through the Action Fraud contact center 0300 123 2040. When you report Action Fraud you will receive a police crime reference number. Action Fraud does not investigate the cases and cannot advise you on the progress of a case, reports taken are passed to the National Fraud Intelligence Bureau.

### **Planning Enquiries into Financial and Material Abuse**

When concerns of financial and material abuse have been raised, consideration will need to be given to the appropriate response and which agencies may need to be involved.

Where an adult has care and support needs a section 42 enquiry will need to be considered. Local authorities have the lead responsibility for safeguarding adults which includes:

Making enquiries, or causing enquiries to be made, 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. (s42, 1)

The enquiries must enable the local authority to decide whether any action should be taken in the adult's case and, if so, what and by whom (s42, 2).

**Prevention:** A key aspect of health and social care services and, in respect of scamming, this means that adult social care and other agencies are enabled to work collaboratively to prevent people becoming involved in scams and prevent further harm to those already involved. This can be achieved through, for example, the sharing of intelligence about current scams and vulnerable populations in order to provide appropriate support to targeted groups.

Research indicates that involvement in scams can have profound and potentially long-term impacts on an individual's health and wellbeing. Promoting wellbeing means 'actively seeking improvements' (Galpin 2016) in the wellbeing domains.

### **Practical interventions**

Mail scams:

- Request permission to remove existing scam mail (consent required).
- Consider Mail Redirection (chargeable service through Royal Mail).
- Consider using Mail Collect, a free service offered by Royal Mail where mail will be held at the local office; to be collected rather than delivered.
- Attempt to have the respondent's details removed from any mailing lists.
- Ensure that any ongoing charitable donations are being sent to genuine charities. Check the Registered Charity number against the official Charity Commission's website.
- Change telephone number (consent required) as this can be a very effective way to break the cycle of victimisation.

Cyber/internet scams:

- Change bank details (consent required).

Doorstep scams:

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- ‘No cold calling’ stickers: These can be obtained from Age UK. There are two stickers: one to remind the user that they can refuse cold callers and the other to tell cold callers that they are not welcome at the address.

### Telephone scams:

- Telephone Preference Service (TPS): although this will not deter scam callers, it will reduce the amount of marketing calls from legitimate companies that a customer receives, making it easier for them to recognise the calls that are scams. This service is free, however several organisations purport to be the TPS and charge users. These are scams.
- Consider the installation of a call blocking device which connects to a user’s phone and allows them to block calls from certain numbers.

### **Signposting**

The National Trading Standards Scams Team provides specialist scam support, enforcement and coordinates work across England and Wales.

- Citizens Advice Bureaus offer face-to-face advice and guidance about scams. Some CAB’s run scams awareness sessions and are able to offer awareness materials (such as leaflets).
- Age UK provide support, information and befriending services.
- Adult Social Care for those with care and support or safeguarding needs.

Debt advisory agencies – These are various according to location and will be particularly important for victims that have encountered financial difficulties due to losing money to scams.

Financial Sector – Take Five is a national awareness campaign led by FFA UK (part of UK Finance). The website <https://takefive-stopfraud.org.uk> contains advice and a toolkit to help you protect yourself from financial fraud.

### **Informal Management of finances**

The Mental Capacity Act 2005 encourages the informal support with finances of people who may lack mental capacity, but it is important to recognise the limitations and risks associated with this.

Informal management of small amounts of money to provide for necessary items and to pay bills is generally not problematic and is to be encouraged as a means to promote independence and normality. There are a number of situations that are fraught with risk and which may be unlawful, and these should be discouraged to prevent future problems.

### **Managing a person’s bank account**

This should only be done where there is a formal authority and where the bank is fully aware of the situation. Signing of cheques for a person, using their cashpoint

card or debit/credit cards are all potentially fraudulent and the person who does this could be liable for prosecution.

Adopting a joint bank account with a person who lacks mental capacity

The hazards of this are similar to the above and although the person who is the joint account holder will have authority to use the account there is a high risk that the management of the account will be questioned. This is less likely where the account is held by a married or co-habiting couple but even here there can be difficulties if one party lacks capacity. It is unlikely that it will ever be acceptable for a joint account to be opened with a person who is not a partner or family member. Where a person does not have capacity to decide for themselves and there is no-one with legal authority to make the decision on their behalf it is not possible for a bank account held in the person's sole name to be changed to a joint account. In the event of the death of one joint account holder the contents of the account become the property of the other.

Transfer of money from a service user to another person's bank account

This is also not advisable, as it could be seen as theft and the person doing so will clearly appear to have enriched themselves at the service user's expense.

All of the above situations are best resolved through a timely use of Lasting Powers of Attorney or Deputyship. The larger the amount of money in question, the greater the need for clear legal authority and accountability.

**The Court of Protection and the Office of the Public Guardian (OPG)**

The Court of Protection is a superior court of record. It has the same rights, privileges, powers and authority as the High Court. It is able to establish precedent – this means it can establish case law which gives examples of how the law should be put into practice. The Court of Protection has been established to build up expertise in matters relating to mental capacity.

The Court of Protection makes decisions on behalf of people who are unable to make decisions about their personal health, welfare and property and financial affairs.

The Court of Protection may appoint Deputies to act in the best interests of an individual in order to;

- look after property and financial affairs
- look after a person's health and welfare

The range of decisions the Court of Protection includes single orders for example regarding contact issues or serious medical treatment decisions.

Court appointed Deputies

The Court of Protection can assist an individual lacking capacity by appointing a Deputy to manage their affairs. The appointment does not require the consent of the individual, but family members are notified of the application and are given the opportunity to object to the appointment.

An application to become a Deputy must be supported by evidence which establishes that the person lacks the capacity to manage their own affairs. The Deputy can be a family member, other trusted person, a solicitor, the Local Authority or a representative of the Court. An officer of a Local Authority may be appointed Deputy in appropriate cases, usually where there is no one else including family or friends able to act in the best interests of the person. The fees incurred in making and maintaining the appointment may be paid from the individual's funds. The Office of the Public Guardian (OPG) oversees the Deputy, ensuring that the person's affairs are being managed properly.

### Office of the Public Guardian (OPG)

The Mental Capacity Act created the role of the Public Guardian; an individual appointed by the Lord Chancellor to protect people who lack capacity. The Public Guardian is supported in his role by the Office of the Public Guardian. The Public Guardian and his office help protect people who lack capacity by:

- Setting up and managing a register of Lasting Powers of Attorney (LPA);
- Setting up and managing a register of Enduring Powers of Attorney (EPA);
- Setting up and managing a register of court orders that appoint Deputies;
- Supervising Deputies and Attorneys (where the Power of Attorney has been registered);
- Instructing Court of Protection Visitors to visit people who lack mental capacity to make particular decisions and those who have formal powers to act on their behalf such as Deputies;
- Receive reports from Attorneys and from Deputies; and
- Provide reports to the COP and respond to cases where there are concerns raised about the way in which Attorneys or Deputies are carrying out their duties.

The OPG's role will include investigating where there are concerns regarding abuse by the Attorney or Deputy and if necessary referring these concerns to other agencies including the Police and raising a safeguarding alert. It should be remembered that the only sanction available to the OPG is referral of a case to the Court of Protection and therefore an OPG investigation should not be seen as an alternative to a criminal investigation.

The OPG keeps a register of Attorneys and Deputies these can be checked through a simple application to the OPG.

The powers of the individual Attorney or Deputy can vary significantly depending what is stated within the document. It is therefore important that the original documentation is available and is seen to ensure that the Attorney/ Deputy is legally authorised to make the specific decision on behalf of the person.

### Powers of Attorney

Anyone aged 18 or older who has the mental ability to make decisions for themselves can arrange for someone else to make these decisions for them in the future. This can be done at any time. This legal authority is called "Power of Attorney". The person who is given Power of Attorney is known as the 'Attorney' and must be over 18 years old.

### Appointing attorneys

The person can appoint one person as their Attorney. Or they can appoint more than one Attorney to act as follows:

"jointly", meaning they must make all decisions together;

"jointly and severally", meaning that the attorneys can make decisions together and also that each attorney can make decisions acting by themselves. The donor may grant a power for the attorneys to act only jointly on some decisions and individually on others.

For example, someone can appoint Attorneys to act jointly when making decisions regarding their money but state that only one Attorney, acting independently (or "severally"), should decide where the person should live. The person has the right to say that the Attorneys must act jointly on all their affairs.

It is up to the person who is making the Power of Attorney to decide how many Attorneys they want and how they should act. However, if more than one Attorney is appointed to deal with the same issue, then they must act jointly unless the Power of Attorney states they do not need to.

A Lasting Power of Attorney (LPA) is a legal document that enables a person with capacity to appoint people (known as Attorneys) to make decisions on their behalf. It is primarily used if the person becomes unable to make their own decisions.

### Types of Power of Attorney

There are three different types of Power of attorney for people who lack mental capacity:

- Lasting Power of Attorney (LPA), for matters relating to property and financial affairs
- Lasting Power of Attorney (LPA) for matters relating to the person's health and welfare
- Enduring Power of Attorney (EPA) concerning only property and financial affairs, made under a previous law, the Enduring Powers of Attorney Act 1985 (before the Mental Capacity Act 2005 came into effect. An EPA made before October 1 2007 remains valid).

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The LPA has to be created in a prescribed manner and cannot be used until it is registered with the Office of the Public Guardian. The person making the Power of Attorney (known as the donor) can register the LPA while they are able to make decisions for themselves. Alternatively, it can be registered by the Attorney at any time. A Property and Affairs LPA can be used both before and after the donor loses capacity to manage their financial affairs. The donor can specify whether the power can be used immediately (i.e. while the donor has capacity). However, a Health and Welfare LPA can only be used after the donor has lost capacity.

An EPA made under the old law can only be registered if the person is losing, or has lost, their mental capacity. It must be registered by the Attorney.

Once registered a Power of Attorney allows the Attorney(s) to make decisions on behalf of the individual.

A Power of Attorney may have specific limitations on the decisions that can be made.

### Abusing a Power of Attorney

A Power of Attorney (Deputy) gives the Attorney (Deputy) the legal authority to act on behalf of the Donor in his/her best interests. If the Attorney (Deputy) acts in a way which is not commensurate with that responsibility, he/her may be personally liable for any legal action arising from his/her actions. If the Attorney's (Deputy's) action appears to amount to theft or fraud a complaint should be made to the Police who may carry out enquiries to establish whether a criminal offence has been committed.

### Gifts

Section 12 of the MCA 2005 gives the Attorney(s) limited authority to make gifts of the donor's money or property. Gifts made by an Attorney or Deputy using the donor's money should only be made where:

The recipient of the gift should be either an individual who is related to or connected with the donor (including the Attorney(s)), or a charity to which the donor actually made gifts or might be expected to make gifts if they had capacity.

The timing of the gift must occur within the prescribed parameters. A gift to charity can be made at any time of the year, but a gift to an individual should be of a seasonal nature, or made on the occasion of a birth or marriage/civil partnership, or on the anniversary of a birth or marriage/civil partnership.

The value of the proposed gift is not unreasonable having regard of all the circumstances and in particular the size of the donor's estate.

The following go beyond the powers of an Attorney:

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- Passing assets to the next generation in order to mitigate a potential Inheritance Tax liability of the estate of the donor.
- Purchase of an insurance product also designed to mitigate potential Inheritance Tax liability.
- Building an extension to the Attorney's house.
- Lending money to a family member.
- Using the Donor's money to pay off an overdraft or loan, possibly at the same bank, of another family member.
- Passing money on `because the donor no longer needs it` as he or she is adequately provided for, and no longer has any need of money apart from nursing home fees.
- Paying over money because the donor would not want it to be used to pay for nursing care, if he or she had to go into a care home.

### Failure to register a Lasting Power of Attorney

If a Donor loses capacity the Lasting Power of Attorney must at that point be registered with the Office of the Public Guardian if it is not already registered. Any dealings with the Donor's financial affairs purportedly under an LPA which is unregistered are not lawful. The Attorney would be dealing with the Donor's financial affairs with no legal authority to do so. The Attorney is therefore likely to be personally liable for any legal action against the Donor arising from the unauthorised action of the Attorney. The Attorney may also be the subject of criminal charges where they are believed to be involved in an offence e.g. theft or fraud.

It is important to note that there is a charge to register a Power of Attorney however this can be reclaimed from the donor's capital.

Information regarding the Office of The Public Guardian can be found at <https://www.gov.uk/government/organisations/office-of-the-public-guardian>

Office address

*PO Box 16185*

*Birmingham*

*B2 2WH*

*United Kingdom*

Email

[customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)

Telephone

0300 456 0300

### Appointee ship

Where a person in receipt of state benefits is incapable of managing their own financial affairs and no Deputy or Attorney has been appointed to act for him an appointee should be considered. An appointee can be an individual, an organisation or be a representative of an organisation. An Appointee has the legal authority to

receive and manage the person's benefits until such time as the person is no longer unable to act or a Deputy or Attorney is appointed by the Court of Protection. The Appointee does not require the consent of the person whose benefits are to be managed but is required to make decisions on the persons behalf and in their best interests. An Appointee is authorised by the Department of Work and Pensions to the most appropriate person, such as a family member, the local authority, the manager of a care home where the person is resident or a domiciliary care manager.

Where a person does not have family/friends willing to act as appointee and where it is in their best interests an agency involved in caring for the person is likely to be the most suitable appointee. Only as a last resort will assessment and care management teams consider acting in this role. All agencies likely to become appointees should have a policy/procedure to ensure consistent good practice. This guidance should ensure that all actions that are taken are in the persons best interests, are clear and transparent and that the persons finances are appropriately safeguarded from misuse and fraud.

### Duties and responsibilities of appointees

An appointee has the same rights and responsibilities (though not all responsibilities) as the person on whose behalf they are acting, and in effect acts as though they are that person in relation to their benefits. This means that they are responsible for:

- completing DWP claim and renewal forms
- receiving or collecting benefits – these will be in the name of the appointee; the money must be used for the welfare of the claimant
- responding to any correspondence about the benefits
- reporting any changes in the claimant's circumstances
- repaying any overpayments of benefit

The appointee has a responsibility to involve the person as much as possible in making decisions about their money. This means seeking their views about how their money is spent, consulting other people who know them well and taking the time to work out what they might have chosen to do if they had capacity to make the decision.

Remember, being an appointee relates solely to benefits. It does not create duties relating to any other money or property that the person may have; this would include such things as signing a tenancy in the person's name or signing a contract for a mobile phone. If there is a situation in which these sorts of decisions need to be made, an attorney or deputy may need to be appointed.

### Abuse by Appointees

Where it appears that an Appointee is abusing the position e.g. by not passing benefits on to the person entitled, evidence may be put before the Benefits Agency of the Appointee's unsuitability. Where satisfied that the Appointee is unsuitable the Benefits Agency may revoke the Appointee and, where appropriate, appoint

another to act. Failure to pass on or properly apply benefits may amount to theft. Where there are concerns that this may be the case, the Police should be informed. The person entitled to the benefits may, if they have capacity, make a complaint to the Police. Where the person is considered to be an adult at risk of abuse or neglect, a complaint may be made on their behalf.

### Criminal Offences

Each case must be decided upon on by its own merits and at the very least there must be a degree of information which would suggest that a criminal offence has occurred or will occur for police to make the decision of commencing an investigation.

There are other agencies who can carry out initial investigations to establish facts and should information be found that will lead to a criminal prosecution a referral will be made to police e.g. Her Majesty's Revenue and Customs; the Office of the Public Guardian.

### Offences commonly used to prosecute incidents of financial abuse:-

The legislation below outlines some of the more commonly used offences used by Police in prosecuting offenders who are financially abusing adults at risk.

This list is not exhaustive and there are many other offences that can be utilised, however these are a few examples:

The Fraud Act 2006 defines scams as fraudulent criminal activity with different types of scams falling into the three categories of fraud:

- (a) Fraud by false representation.
- (b) Fraud by failing to disclose information.
- (c) Fraud by abuse of position.

(Fraud Act 2006, Chapter 35 (1)).

Section 4 of the Fraud Act 2006 sets out one way of committing fraud under section 1 of the Act, namely fraud by dishonestly abusing one's position. It applies in situations where the defendant has been put in a privileged position, and by virtue of this position is expected to safeguard another's financial interests or not to act against those interests.

4(1) A person is in breach of this section if he;  
occupies a position in which he is expected to safeguard, or not to act against the financial interests of another person;  
dishonestly abuses that position and  
intends, by means of the abuse of that position:-  
to make a gain for himself or another, or

to cause loss to another or to expose another to a risk of loss.

4(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Section 1 of the Theft Act 1968 provides the legal definition of theft;

1(1) A person is guilty of theft if he dishonestly, appropriates, property belonging to another, with the intention of permanently depriving the other of it and 'thief' and 'steal' shall be construed accordingly.

1(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

Section 24A of the Theft Act 1968 creates an offence of dishonestly retaining a wrongful credit (funds) that has been made to a bank account (or a similar business process).

24A (1) A person is guilty of an offence if –

a wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;

he knows or believes that the credit is wrongful; and

he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

24A (2) References to a credit are to a credit of an amount of money.

24A (2A) A credit to an account is wrongful to the extent that it derives from:-

theft;

blackmail;

fraud (contrary to section 1 of the Fraud Act 2006); or

stolen goods.

## **Other Financial Concerns**

### **Payment for outings, meals, activities and general expenses**

These are occasions where a service user wishes to take part in activities in the community but will require support from a carer. These activities can empower and notably improve quality of life for the service user. If applicable the service user's representatives should be involved in agreeing expenses.

Often physical or general support and assistance is required to enable a service user to attend a concert or go on holiday etc.

Providers must have a transparent protocol and recording procedures in place to support service user expenditure on activities and these must have been explained to any commissioners or care managers arranging the service.

The payment of any carer expenses must be agreed in detail between the service user and the member of staff and recorded before the activity takes place. Where

the service user lacks mental capacity, the issue should be subject to the consultation and best interests considerations required by the Mental Capacity Act 2005. In all situations the expenditure must take account of the financial resources of the service user and the benefit and enjoyment they will derive from the activity. There should also have been proper investigation of any discounts or exemptions that the service user might benefit from (e.g. free or reduced ticket prices).

As good practice, the Provider may decide to implement a formal sliding scale authorisation process for expense levels. For example: Going out to lunch – immediate supervisor. Attending a concert - line manager. Escorting a service user on holiday - senior manager agreement. Managers must ensure that there is no undue staff benefit from any arrangement and that there is evidence of all expenses and clarity on what element relates to staffing costs.

Providers should ensure that they are aware of services which have an allowance available from the funding authority user for these types of activities.

### Deprivation of Assets

*This section is taken directly (slightly abbreviated) from the guidance in Annex E: Deprivation of Assets in the Care and Support Statutory Guidance 2014*

#### What is meant by deprivation of assets?

Deprivation of assets means where a person has *intentionally* deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support.

Where this has been done to remove a debt that would otherwise remain, even if that is not immediately due, this must not be considered as deprivation.

Has deprivation of capital occurred?

It is up to the person to prove to the local authority that they no longer have the asset. If they are not able to, the local authority must assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:

- (a) A trust deed;
- (b) Deed of gift;
- (c) Receipts for expenditure;
- (d) Proof that debts have been repaid.

A person can deprive themselves of capital in many ways, but common approaches may be:

- (a) A lump-sum payment to someone else, for example as a gift;
- (b) Substantial expenditure has been incurred suddenly and is out of character with previous spending;
- (c) The title deeds of a property have been transferred to someone else;
- (d) Assets have been put in to a trust that cannot be revoked;

- (e) Assets have been converted into another form that would be subject to a disregard under the financial assessment, for example personal possessions;
- (f) Assets have been reduced by living extravagantly, for example gambling;
- (g) Assets have been used to purchase an investment bond with life insurance.

However, this will not be deliberate in all cases. Questions of deprivation therefore should only be considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded.

Example of where deprivation has not occurred:

Max has moved into a care home and has a 50% interest in a property that continues to be occupied by his civil partner, David. The value of the property is disregarded whilst David lives there, but he decides to move to a smaller property that he can better manage and so sells their shared home to fund this.

At the time the property is sold, Max's 50% share of the proceeds could be taken into account in the financial assessment, but, in order to ensure that David is able to purchase the smaller property, Max makes part of his share of the proceeds from the sale available.

In such circumstance, it would not be reasonable to treat Max as having deprived himself of capital in order to reduce his care home charges.

Example of assets to be considered (1):

Emma gives her daughter Imogen a painting worth £2,000 the week before she enters care home. The local authority should not consider this as deprivation as the item is a personal possession and would not have been taken into account in her financial assessment.

However, if Emma had purchased the painting immediately prior to entering a care home to give to her daughter with £2,000 previously in a savings account, deprivation should be considered.

There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:

- (a) Whether avoiding the care and support charge was a significant motivation;
- (b) The timing of the disposal of the asset. At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?; and
- (c) Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

For example, it would be unreasonable to decide that a person had disposed of an asset in order to reduce the level of charges for their care and support needs if at the time the disposal took place they were fit and healthy and could not have foreseen the need for care and support.

Example of assets to be considered (2):

Mrs Kapoor has £18,000 in a building society and uses £10,500 to purchase a car. Two weeks later she enters a care home and gives the car to her daughter Juhie. If Mrs Kapoor knew when she purchased the car that she would be moving to a care home, then deprivation should be considered. However, all the circumstances must be taken into account so if Mrs Kapoor was admitted as an emergency and had no reason to think she may need care and support when she purchased the car, this should not be considered as deprivation.

Has deprivation of income occurred?

It is also possible for a person to deliberately deprive themselves of income. For example, they could give away or sell the right to an income from an occupational pension.

It is up to the person to prove to the local authority that they no longer have the income. Where a local authority considers that a person may have deprived themselves of income, they may treat them as possessing notional income.

The local authority will need to determine whether deliberate deprivation of income has occurred. In doing so it should consider:

- (a) Was it the person's income?
- (b) What was the purpose of the disposal of the income?
- (c) The timing of the disposal of the income? At the point the income was disposed of could the person have a reasonable expectation of the need for care and support?

In some circumstances the income may have been converted into capital. The local authority should consider what tariff income may be applied to the capital and whether the subsequent charge is less or more than the person would have paid without the change.

**Local authority investigations**

In some cases a local authority may wish to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person. There is separate guidance under the Regulation of Investigatory Powers Act 2000 that has recently been updated. That sets out the limits to local authority powers to investigate and local authorities should have regard to it before considering any investigations.

What happens where deprivation of assets has occurred?

If a local authority decides that a person has deliberately deprived themselves of assets in order to avoid or reduce a charge for care and support, they will first need to decide whether to treat that person as still having the asset for the purposes of the financial assessment and charge them accordingly.

As a first step, a local authority should seek to charge the person as if the deprivation had not occurred. This means assuming they still own the asset and treating it as notional capital or notional income.

If the person in depriving themselves of an actual resource has converted that resource into another of lesser value, the person should be treated as notionally possessing the difference between the value of the new resources and the one which it replaced. For example, if the value of personal possessions acquired is less than the sum spent on them, the difference should be treated as notional resource.

### Recovering charges from a third party:

Where the person has transferred the asset to a third party to avoid the charge, the third party is liable to pay the local authority the difference between what it would have charged and did charge the person receiving care. However, the third party is not liable to pay anything which exceeds the benefit they have received from the transfer.

If the person has transferred funds to more than one third party, each of those people is liable to pay the local authority the difference between what it would have charged or did charge the person receiving care in proportion to the amount they received.

As with any other debt, the local authority can use the County Court process to recover debts, but this should only be used after other avenues have been exhausted. When pursuing the recovery of charges from a third party, a local authority must read Annex D on debt recovery.

### Example of liability of a third party:

Mrs Tong has £23,250 in her savings account. This is the total of her assets. One week before entering care she gives her daughters Louisa and Jenny and her son Frank £7,750 each. This was with the sole intention of avoiding care and support charges.

Had Mrs Tong not given the money away, the first £14,250 would have been disregarded and she would have been charged a tariff income on her assets between £14,250 and £23,250. Assuming £1 for every £250 of assets, this means Mrs Tong should have paid £36 per week towards the cost of her care. After 10 weeks of care, Mrs Tong should have contributed £360. This means Louisa, Jenny and Frank are each liable for £120 towards the cost of their mother's care.

## **Glossary of common terms**

### **FRAUD:**

The crime of getting money by deceiving people, the deliberate deception, trickery, or cheating intended to gain an advantage (Cambridge Dictionary).

### **SCAM:**

Is a slang term for personal fraud, generally used to describe "a misleading or deceptive business practice where you receive an unsolicited or uninvited contact (for example, by email, letter, phone or ad) and false promises are made to con you

out of money” (Office of Fair Trading 2009, p.12). It is an illegal plan for making money, especially one that involves tricking people (Cambridge Dictionary).

### VULNERABILITY:

Anyone can be targeted by scammers with different scams being aimed at different populations. People are made vulnerable by their circumstances (for example, by poverty, age, loneliness, social isolation or cognitive dysfunction such as memory loss

### PSYCHOLOGICAL INCENTIVES:

Scammers use marketing techniques which appeal to visceral needs and desires such as financial rewards or gifts, security or relationships emphasising scarcity and urgency to encourage rapid decision making.

### DETRIMENT:

Any negative impact the experience of being scammed has on an individual. This might be on their financial, emotional or social situation.

### PHISHING:

Unsolicited email purporting to be from a legitimate company designed to trick victims into revealing their personal information and passwords.

### VISHING:

A telephone call aimed at stealing personal information.

### SMISHING:

Mobile phone SMS text messages aimed at tricking the person into divulging personal information such as bank details or PIN numbers.

### PHARMING:

Directs the person to a website which looks like their bank.

### PONZI SCAMS:

Get-rich-quick schemes with high financial rewards for low risk payments.

### RECOVERY SCAMS:

Offer individuals who have previously lost money to investment scams the false opportunity to recover their funds for a fee.