Punishment for Power of Attorney Abuse in the UK: Protecting Vulnerable Adults

It has been reported that there were nearly 13,000 investigations of potential financial abuse by the Care Quality Commission (the independent regulator of health and adult social care in England) between 2013 and June 2017. This is worrying because, with increasing life expectancy and a growing elderly population, it is likely that these types of cases involving financial abuse, particularly the abuse of power of attorney, may also rise.

Recent Cases Highlighting the Risk

In fact, a brief online search for cases involving financial abuse in 2018 alone returns a number of results. For example, Jill Seeley, a carer from Grimsby, recently received a 10-month jail sentence for abusing a power of attorney. She took £5,500 from her 93-year-old victim by making a series of withdrawals from the victim's accounts using a Lasting Power of Attorney (LPA)The court commented that Seeley had access to the victim's assets and that the victim's "faculties were fading and she was extremely vulnerable". This case exemplifies the serious nature of power of attorney abuse, highlighting the need for vigilance and oversight.

Christine Beeston was also recently jailed for 2 ½ years after she took nearly £50,000 from her vulnerable parents, leaving them with just over £500. Reports state that her brother raised concerns, which brought the theft to light. Ms Beeston initially had initially obtained a power of attorney for her parents in 2013 and, when her brother later became a joint attorney in 2015, he queried his parents' financial position and reported the matter to the Police. When interviewed by Police, Ms Beeston apparently said she had taken the money so that her brother could not inherit any of it.

The Nature of Lasting Power of Attorney

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Both of the above cases involved the abuse of a Lasting Power of Attorney (LPA). This is a legal document which authorises someone else to make certain decisions on your behalf when you can no longer do so. There are two types of LPA, one which deals with your finances and the other deals with your health and welfare. These documents are generally very useful for future planning, but it's also important to be aware of potential risks.

Legal Expertise on LPA Concerns

In 2017 a BBC News article contained an interview with Denzil Lush, a retired Senior Judge of the Court Protection (the court which deals with cases involving vulnerable adults). The article stated that Denzil Lush would not make an LPA himself. Perhaps this is not surprising, given the nature of some of the cases which he dealt with whilst at the Court of Protection. The writer deals with Court of Protection disputes and cases involving the financial abuse of vulnerable adults can be worrying and distressing.

However, it is important to mention that most attorneys do a good job and that LPAs can be an effective way of ensuring that, should you become mentally incapable of making certain decisions, there is someone who can assist you with a wide variety of issues, ranging from paying your monthly bills to liaising with medical practitioners about your future care.

Legal Safeguards Against Abuse

There are also legal safeguards in place which can reduce the possibility of someone like Ms Seeley or Ms Beeston being able to take advantage of a vulnerable person. Generally, attorneys are accountable to the office of the Public Guardian and Court of Protection and must provide information to the latter when requested to do so.

Potential Risks with Attorneys

When things do go wrong with attorneys, it is usually because the attorney is acting alone, their conduct goes unchecked or the person appointed is simply not the right person for the role. Some problems with LPAs can also stem from a lack of planning when making them. Therefore, it is important to consider obtaining specialist legal advice and deciding who you will appoint as your attorneys, considering the significant level of power you are potentially handing over to them in the future.

Remember that there are ways to try and restrict the level of power granted by LPAs. For example, if you worry about an attorney possibly abusing their position, you can appoint more than one attorney and stipulate that they cannot act without the other's knowledge and consent. You can also appoint a mixture of both professional and non-professional attorneys, for example, a solicitor and a family member who will understand your day-to-day needs.

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The key point to remember with an LPA is that it allows you to choose who you want to act as your attorney role and it can provide significant peace of mind knowing that someone you have selected can later take over the management of your affairs or help you with making certain decisions should they need to do so.

It is also important to consider that you could still require assistance, whether or not you have an LPA. If you do not have an attorney, a court-appointed Deputy may take over the management of your affairs. The difficulty with this is that you will not have any say about who is appointed and this can also incur costs.

Before making or updating an LPA it is important to ask the following questions:

1. How well do you know your attorneys?

This may seem like a basic point, but sometimes attorneys are appointed without either any research or much thought. If you are appointing a professional, it is prudent to enquire about any complaints which they have received in the past. An internet search might assist in that regard. If they are a relative, carer or friend, how well do you really know them? Have they previously been made bankrupt, had financial problems or have a criminal conviction?

2. Are your attorneys likely to work well together?

If you appoint family members or individuals who either do not speak to each other or are likely to have very polarised opinions, then there is little point in appointing them to deal with your affairs. Attorneys are sometimes asked to make difficult decisions on your behalf. If they have a good working relationship, that should help the attorneyship to run more smoothly.

3. Do your chosen attorneys understand what the role means?

It is critical to check whether or not those appointed are happy to adopt that role. For example, if they do not have sufficient time to deal with your affairs, then problems may arise.

4. Are your attorneys aware of their duties under the attorneyship?

Becoming an attorney is a legal role and there are duties which your attorney will have to carry out. If your attorneys do not want that level of responsibility, then they should not be appointed.

5. Are your assets large or complex?

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If they are, you may need to instruct at least one professional attorney who can deal with issues such as tax.

6. Are your attorneys likely to carry out your wishes, or will they have their own agenda?

In some cases, an attorney might misuse assets. Other cases can also arise where, although the attorney does not behave fraudulently, they will make decisions based upon their own wishes, rather than those of the donor (the person who has granted the LPA). For example, if they believe that expenditure on a particular item is unnecessary, but it would bring some benefit to the donor, there could be a conflict of interest.

7. How old is your attorney?

It is perfectly possible and acceptable to appoint an attorney of a similar age or someone who is older than you. However, this may mean that there is a possibility that your attorney could die before you. If your attorney dies whilst you are mentally incapacitated, this can cause problems. It is therefore important to consider whether your attorney is likely to survive you and, if so, whether or they will also be physically or mentally able to carry out the role.

8. Have you discussed your wishes with your attorneys?

If you do not discuss your wishes with your proposed attorneys, it is very difficult for them to make the right decisions on your behalf. It is therefore important to clearly communicate with your attorneys whilst you are in good health, as they will be making decisions which could significantly affect you in the event that you are unable to deal with those issues yourself.

9. Have you let anyone else know about your wishes?

One way to try and prevent an attorney from abusing their position is to also let others know your wishes; for example, your solicitor, family members or a friend. If an attorney later deals with your affairs in a very different way to that which you have instructed, this may alert others to query their actions.

10. Have you reviewed your LPA as your circumstances change?

For example, if your spouse is your attorney and you have subsequently divorced, it is unlikely that you would want them to continue to act in that role. It is therefore important that if any major changes occur in your personal circumstances, you consider whether or not it is appropriate to update your LPA.

If you would like to speak to a solicitor or have any concerns regarding Lasting Powers of Attorney, especially instances of power of attorney abuse. please contact our Disputed Wills, Trusts and Probate team on 0344 967 0793 or by emailing online.enquiries@LA-law.com.

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