

Comment

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Even loving families can turn on each other

Elderly people's finances need better protection than the power of attorney system provides

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I have just signed the papers that give me power of attorney over an elderly relative's money, should they reach the point where they cannot manage it themselves. I thought I was being responsible and protective. Now I discover that my relative may have unwittingly granted me the licence to steal their assets without much chance of being detected or stopped.

This week the man who recently retired as the senior judge in the Court of Protection said that powers of attorney are so often misused that he would never agree to one himself. Denzil Lush spent two decades ruling on whether attorneys had abused their power and should have it removed. He dealt with thousands of cases, and he estimates that about one in eight attorneyships go badly wrong. With two and a half million POA agreements currently registered with the government, and the numbers climbing — 650,000 were added last year — that means hundreds of thousands of elderly people potentially being defrauded by those they most rely on.

Most POAs are between parents and children; a minority are with close friends. Attorneys are free to spend money as long as it is in a vulnerable person's best interest. The

cases that reach the courts are a miserable insight into how misplaced that trust can be.

Last month a man from Swindon was convicted of using a power of attorney to empty his demented father's bank accounts in 17 months. Paul Keen, a gambler, stole more than £80,000, cashing in his father's ISAs and spending his pension. He cheated his brother of £33,000, and his sons of £5,000 each. He was jailed for just over two years.

In 2015 a teaching assistant from Rochdale was convicted of taking more than £120,000 from her elderly mother. Gaynor Casey spent the money on a kitchen, a conservatory, football tickets and foreign holidays, rather than on care home fees. When her mother died the arrears came to £24,000, money which Casey could not pay back. Her nephew lost his £80,000 inheritance.

Many murky cases of abuse are never investigated at all

Casey claimed that her mother would have given her the money anyway as "she was a generous lady". The judge said it must be clear that the penalty for untrustworthiness was always a custodial one, and jailed her for a year.

That may be the judge's hope but the vast majority of misused POAs never go to the criminal courts, because the issues are too grey or require too much evidence. In 2015, for instance, an entrepreneur with a mother in her 90s appeared before

the Court of Protection. She had gone into care and he had taken all of her £300,000 in assets, selling her house and raiding bank accounts.

Judge Lush, who ruled in that case, removed the man's attorneyship and railed against him for having broken every rule in the book, for not having put his mother's welfare first and for "blithely" leaving Surrey taxpayers to pay her bills. Her son was unrepentant. He argued that as sole heir he was entitled to the money, to meet his "life's requirements". He said all he had done was to take his inheritance early.

There was no criminal sanction because the Court of Protection's role is to rule on an attorney's suitability, not charge them, while the police are often reluctant to take these cases up, seeing them only as private family theft.

Many murky cases are never investigated at all. The website of the charity Action on Elder Abuse is full of anxious queries from people who fear family members with a POA are looting a vulnerable person's resources. Most involve confused relatives, who are being intimidated into giving money away, or are miserably confined to a small room in their own home while other relations live rent-free in it. That or they are being neglected by a son or daughter who won't put them into the care home they need because they intend at all costs to hang on to the family house.

The advice is always to contact adult safeguarding teams, but it is clear that often the elderly relation is too frightened or muddled to co-

operate, or desperately wants to maintain existing relationships with their carer.

A disillusioned former police officer on the site says that in his experience forces don't have the will or resources to pursue any but the most obvious cases. And it's easy to see where temptation lies. The reasoning might easily move from thinking that after a tiresome day with an elderly parent, they can pay for a beer, to "I need a night out, so why not spend more? They'll never know." As holders of POAs don't have to file any records, proof is difficult to find.

This is a pressing issue. Most of us will live to over 80, and one in six of that group will develop dementia. Lush says that rather than a POA, people should apply for a deputy to run their affairs. Deputies must keep detailed records and reasons for spending, take out insurance against misbehaviour and are supervised by the Office of the Public Guardian, to whom they send annual reports.

The problem is that supervision and record-keeping are onerous and costly. Deputies must pay several hundred pounds a year. Nor does the law currently allow them to be chosen before a person loses their mind; they are only appointed by a court once that's gone. That rule needs to change.

Lush's warning confronts us with a sad reality: families are not synonymous with duty or love. Temptation without supervision is more than some people can bear. If we hold any private doubts, we need either to pay out, or leave our future selves at risk.