



**A Safeguarding Strategy
for Recognising, Preventing and Dealing
with the Abuse of Older and Vulnerable People**

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Using this document

This is a reference guide aimed at legal professionals, but may be useful for others working with older and vulnerable adults. It is not a definitive statement of the law relating to safeguarding older and vulnerable adults but aims to provide signposts for recognising, preventing and dealing with abuse and neglect. For more detailed information, reference should be made to the SCIE Report 50: Safeguarding adult at risk of harm: A legal guide for practitioners.¹

| CONTENTS | PAGE |
|---|-------------|
| 1. What do we mean by abuse? | 3 |
| 2. The risk factors for being abused | 4 |
| 3. Identifying abuse | 4 |
| 4. Abuse and discrimination | 8 |
| 5. Abuse and human rights | 8 |
| 6. A general overview of the perpetrator of abuse | 8 |
| 7. Professional conduct issues for legal advisers | 9 |
| 8. Preventing financial abuse by an attorney | 10 |
| 9. Preventing abuse by the professional attorney | 12 |
| 10. Dealing with abuse in the person's own home | 12 |
| 11. Dealing with abuse in care homes | 13 |
| 12. Dealing with abuse in the NHS | 15 |
| 13. Remedies for financial abuse by the attorney | 16 |
| 14. Remedies for financial abuse by others | 19 |
| 15. Remedies for physical and sexual abuse | 19 |
| 16. Remedies for psychological abuse | 23 |
| 17. Remedies for neglect | 23 |
| 18. Problems of legal remedies | 27 |
| 19. Changing the culture | 28 |
| 20. Resources | 28 |
| Annex | |
| Information for an attorney acting under a property and financial affairs Lasting Power of Attorney | 32 |

¹ <http://www.scie.org.uk/publications/reports/report50.asp>

1. What do we mean by abuse?

1.1 Abuse takes many forms - financial, physical, sexual, emotional and psychological including neglect, abandonment or isolation. Any or all of these forms of abuse may be perpetrated as the result of deliberate intent, negligence or ignorance.

1.2 The term 'elder abuse' originated in the USA, but has no legal status, no clear definition and would not always be recognised.

Action on Elder Abuse defines abuse as:

'A single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person'.

This definition has been adopted by the World Health Organisation and appears to exclude abuse by a stranger, who is unlikely to be in a position of trust.

1.3 'No Secrets Guidance on Developing and Implementing Multi-Agency Policies and Procedures to Protect Vulnerable Adults from Abuse' the Department of Health's Adult Protection Policy for Local Authorities in England and the National Assembly of Wales 'In Safe Hands' guidance, applies to all adults and not just older people. It defines abuse in terms of vulnerability as:

'A vulnerable person is one who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation'.

The definition has limitations because it only includes those who are or may be in need of community care services, and overlooks institutional abuse or discrimination. The definition creates a threshold (i.e. the need for community care services) which must be met, before a public body will intervene.

1.4 The Commission on Equality and Human Rights defines the term as follows:

'... Abuse may consist of a single or repeated act. It may be physical, verbal or psychological. It may be an act or omission of an act or may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented or cannot consent. Abuse can occur in any relationship and result in significant harm and exploitation of the person subjected to it.'

1.5 The lack of a clear definition can make it harder to identify whether a person is being abused, and whether public bodies and/or private individuals can take intervention and redress measures.

1.6 The Department of Health built on the 'No Secret's' guidance in 2011, by introducing a statement of principles for use by local authority social services and housing departments, the NHS, the police and other agencies for developing and

assessing the effectiveness of their local safeguarding arrangements.² The key principles are to empower individuals by providing support, assistance and information, and enabling them to make choices and give informed consent; to protect the person from significant harm; and enabling the person to exercise their legal rights or others to do so on their behalf. Most interventions require the consent and participation of the vulnerable adult, and therefore advisers must pay due regard to the Mental Capacity Act 2005, when assessing capacity.

1.7 Public assistance and intervention is based on the principle of proportionality and least intrusiveness. That is, the extent, nature and degree of a response should be commensurate with the extent, nature and degree of the risks in question. This may mean that the adviser has to manage the expectations of those interested in the vulnerable person's welfare, as intervention may not always occur or to the extent they expect it should be.

2. The risk factors for being abused

2.1 Abuse occurs for many reasons and the causes are not fully understood. The following risk factors have been identified as being associated with abuse³: -

- Those abused usually have fewer social contacts than those who were not abused.
- A history of poor quality long-term relationships between the abused and the abuser.
- A pattern of family violence exists.
- The person who abuses may have been abused as a child, not necessarily by the person being abused.
- The person who abuses is dependent upon the person abused for accommodation, financial and emotional support.
- Stress and frustration of those providing care, particularly if the cared for person is verbally or physically combative with the caregiver, can put a strain on relationships.
- The person who abuses has a history of mental health problems, personality disorder, and drug or alcohol problems.
- Abuse in an institutional setting, is likely to occur when staff are poorly trained, poorly supervised, there is little support from management or they work in isolation.

3. Identifying abuse

3.1 The prevalence of elder abuse is unknown. Evidence submitted to the Parliamentary Health Select Committee on Elder Abuse in 2004, estimated that about 5% of the elderly population in the community suffer verbal abuse and up to 2% were the victims of physical or financial abuse. The Committee estimated that in the region of 500,000 people per annum are subject to acts of admitted abuse. However, this is likely to be the tip of the iceberg because abuse may be hidden, ignored and generally swept under the carpet.

3.2 Former Master Lush of the Court of Protection on the BBC programme, 'Real Lives' in 2004 suggested that in the region of 100,000 unregistered Enduring Powers

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/215591/dh_126770.pdf

³ World Health Organisation, 2002.

of Attorney (EPAs) may be used to perpetrate financial abuse and between 10-15% of registered EPAs are used as vehicles of abuse. The difficulty in identifying this kind of abuse arises because there is no direct supervision or accountability of attorneys and there is no record of how many unregistered EPAs exist. In contrast, all Lasting Powers of Attorneys must be registered with the Office of the Public Guardian to be valid, enabling the Public Guardian to investigate relevant safeguarding concerns.

3.3 Abuse occurs in many settings and can be difficult to identify, particularly as there is a fine line between poor practice and abuse. Identifying these boundaries can be difficult. Advisers need to be alert to the risk and to take steps to ensure prevention and where it has happened or is happening, take steps to deal with the issues.

- 3.4** The difficulties in identifying and dealing with abuse are complex but include:
- Fear of further abuse and the ramifications, such as dependence on the abuser and jeopardy of care
 - Fear they will not be believed
 - The action is not always recognised as abuse
 - Trauma suffered as a result of the abuse
 - Embarrassment to admit abuse
 - Secrecy of the perpetrator
 - Cultural and language barriers
 - Lack of knowledge and training by professionals involved in care and so may fail to identify, report and act
 - Lack of reporting and recording incidents of abuse by the abused and those caring for them

3.5 The main types of abuse can be identified as follows: -

Physical abuse

Typical examples of physical abuse would include hitting or slapping, burning pushing, kicking, restraining, inappropriate sanctions or giving too much medication or the wrong medication.

Indicators of physical abuse

The individual may present one or more of the following: -

- ▶ Cuts, lacerations, puncture wounds, open wounds, bruises, welts, discoloration, black eyes, burns, fractures, broken bones and skull fractures
- ▶ Untreated injuries in various stages of healing or not properly treated
- ▶ Poor skin condition or poor skin hygiene
- ▶ Dehydration and/or malnourished without illness- related cause
- ▶ Loss of weight
- ▶ Soiled clothing or bed
- ▶ Broken eyeglasses/frames, physical signs of being subjected to punishment or signs of being restrained
- ▶ Inappropriate use of medication, overdosing or under dosing
- ▶ A person telling you they have been hit, slapped kicked or mistreated

Psychological abuse

The client may be subjected to behaviour, including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks.

Indicators of psychological abuse

- ▶ Helplessness
- ▶ Hesitation to speak openly
- ▶ Implausible stories
- ▶ Confusion or disorientation
- ▶ Anger without apparent cause
- ▶ Sudden changes in behaviour
- ▶ Emotionally upset or agitated
- ▶ Unusual behaviour (sucking, biting, or rocking)
- ▶ Unexplained fear
- ▶ Denial of a situation
- ▶ Extremely withdrawn and none communicative or responsive
- ▶ A person telling you they are being verbally or emotionally abused

Financial

Evidence will be found to demonstrate the illegal or unauthorised use of a person's assets, which may include theft, fraud, exploitation, pressure in connection with wills, powers of attorney, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.

Indicators of financial abuse

- ▶ Signatures on cheques, etc, that do not resemble the person's signature or signed when the person cannot write
- ▶ Any sudden changes in bank accounts, including unexplained withdrawals of large sums of money by a person accompanying the holder of the account
- ▶ The sudden inclusion of additional names on the person's bank accounts.
- ▶ Abrupt changes to, or unexpected creation of a will
- ▶ The sudden appearance of previously uninvolved relatives claiming their rights to the person's affairs and possessions
- ▶ The unexplained sudden transfers of assets to a family member or someone outside the family
- ▶ Numerous unpaid bills, overdue rent, care home bills, public utilities bills etc when there is someone who is supposed to be paying the bills
- ▶ Unusual concern by someone that an excessive amount of money is being expended on the care of the person
- ▶ Lack of amenities such as TV, personal grooming items, appropriate clothing items, that the person should be able to afford
- ▶ The unexplained disappearance of funds or valuables such as art, silverware, jewellery
- ▶ Deliberate isolation of the person from their friends and family, resulting in the carer having total control

Sexual

For example, forcing a person to take part in any sexual activity without their consent, irrespective of the relationship.

Indicators of sexual abuse

- ▶ Bruises around the breasts or genital area
- ▶ Unexplained venereal disease or genital infections
- ▶ Unexplained difficulties in walking or standing
- ▶ Marked changes in behaviour
- ▶ Unexplained vaginal or anal bleeding
- ▶ Torn, stained or bloody underclothing
- ▶ A person tells you that they have been sexually assaulted or raped

Neglect

This may be demonstrated by for example where person is deprived of food, clothing, health or social care, comforts or essential medication. Self-neglect is not covered by Government guidance.

Indicators of neglect

- ▶ Dirt, faecal or urine smell, or other health and safety hazards in the person's living environment whether in their own home or in a care home
- ▶ Rashes, sores, lice, inadequate clothing
- ▶ The person is malnourished or dehydrated
- ▶ The person has untreated medical conditions
- ▶ Poor personal hygiene
- ▶ The withholding of medication or over medication
- ▶ Lack of assistance with the eating and drinking
- ▶ Unsanitary and unclean conditions

Indicators of caregivers abuse

- ▶ The cared for person may not be allowed to speak for themselves, or see others, without the presence of the caregiver and (suspected abuser) being present
- ▶ Attitudes of indifference or anger towards the cared for person, or the obvious absence of assistance
- ▶ The caregiver blames the cared for person (e.g. accusation that the incontinence is a deliberate act)
- ▶ Aggressive behaviour (threats, insults, harassment) by the caregiver towards the cared for person
- ▶ Previous history of abuse or exploitation by others
- ▶ Inappropriate display of affection by the caregiver to the cared for person
- ▶ Flirtations, coyness, etc, which might be indicators of inappropriate sexual relationships
- ▶ Social isolation from family, or isolation or restriction on the activity of the cared for person by the caregiver
- ▶ Conflicting accounts of incidents by family, supporters or the cared for person
- ▶ Inappropriate or unwarranted defensiveness by the caregiver
- ▶ Indications of unusual confinement (closed off in the room; tied to furniture; changing routine activity)
- ▶ Obvious absence of assistance or attendance
- ▶ Previous history of abusive behaviour

Stranger abuse

This can include distraction burglaries, bogus trades people, exploitative 'cold calling' or street robbers who target vulnerable people.

4. Abuse and discrimination

Abuse can be linked to race, sex, and a person's disability. There have been a number of high profile cases, such as the case of Fiona Pilkington who killed herself and her learning disabled daughter, following nearly ten years of abuse by local youths. The inquest heard evidence of failings to tackle the matter within the police, education and social care systems. The Equality Act 2010 makes it unlawful for a public body to discriminate against a person with a disability or a condition associated with a disability when carrying out its functions and could be used to ensure public bodies act when abuse is identified.

5. Abuse and human rights

5.1 Under the Human Rights Act 1998, which in the main applies to public bodies, such as local authorities and the NHS, the European Convention on Human Rights has been enshrined in UK law. In particular:

- Article 2 – 'Everyone's right to life shall be protected by law'.
- Article 3 – 'No one shall be subjected to ... inhuman or degrading treatment'.
- Article 5 – 'Everyone has the right to liberty and security of person': The 'lawful detention of ... persons of unsound mind' is allowed for but everyone who is deprived of his liberty by detention shall be entitled to have the lawfulness tested by a court and to compensation if it was unlawful.
- Article 6 – 'In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'.
- Article 8 – 'Everyone has the right to the right to respect for his private and family life, his home and his correspondence'.
- Article 1 First Protocol – 'Every ... person is entitled to the peaceful enjoyment of his possessions'.
- Article 14 – 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race ... religion ... property, birth or other status'.

5.2 The Commission on Equality and Human Rights extensively promote human rights and provide useful advice and guidance, which may assist advisers (see section 20 below).

6. A general overview of the perpetrator of abuse

6.1 The abuser may be an informal carer such as a relative, friend, associate or neighbour, or a person acting in a paid capacity, such as a professional involved in care in the person's own home, in a care home or day centre or by the person's professional adviser. The abuser could hold a position of trust, such as being an attorney or deputy. They could be a trade or sales person or be a total stranger.

6.2 Abuse may have occurred due to neglect, an omission to act or as a deliberate and premeditated act. The deliberate abuser is one who sets out with intent to abuse the vulnerable adult and may have access to information, which opens up opportunities for abuse, such as bank accounts, correspondence and other personal information. Sometimes it may be the result of desperation due to lack of support from others, such as relatives, the NHS and/or social services, for example, where the caring role places undue pressure upon the carer who takes out their frustration on the cared for person.

6.3 Vulnerable adults may themselves be the perpetrators of harm. For example, some people may exhibit challenging behaviour, as a symptom of their condition, including aggression, shouting and screaming.

7. Professional conduct issues for legal advisers

7.1 It is important to recognise the following issues:

- The adviser should handle the matter with care and sensitivity, as the client may not be prepared to take advice due to the nature of the abuse.
- Clients do not like or indeed may be unwilling to admit abuse by others, for example, in relation to financial abuse, being sold a driveway or double-glazing or roof repairs or an unsuitable item.
- The client may need additional help and support, both emotionally and practically. Consider support from advocacy groups and support from the NHS and/or local authority's social services department. All local authorities have vulnerable adults' procedures in place to deal with abuse in accordance with the Department of Health's, 'No Secrets' and the National Assembly of Wales', 'In Safe Hands' guidance. All local authorities have (Vulnerable) Adult Protection Officers, which may also be known as, 'Adult Safeguarding Officers', who will involve multi agency teams to tackle cases as they come to their attention. Local protocol in dealing with safeguarding should be publicly available, usually on the local authority's web site.
- Abuse is often 'hidden'; so do not always take the situation at face value.
- Identify situations where there is the risk of abuse.
- Abuse may start by being unintentional and the abuser may rationalise the abuse, for example using the client's money for their benefit, as an advancement of their inheritance entitlement or a belief the owner would give them permission if they were capable of consenting.
- People may not like airing their 'dirty linen in public' and may rectify abuse by internal management, for example amending their will or making gifts to non-abusers to equalise their estate distribution.
- The client may be subject to different forms of abuse and the solution may involve a number of public bodies and/or legal proceedings.

7.2 The Solicitor's Professional Role

Advisers must remember that they have to have regard to the Solicitors' Regulation Authority's Code of Conduct 2011, in particular they must:

▶ act in the client's best interests.⁴ This will require the adviser to identify who is the client, and to whom they owe a duty of care. Under common law, the duty of care is higher in cases where a professional is appointed as an attorney or deputy. The client will usually be the donor (whether mentally capable or incapable) in the case of an Enduring Power of Attorney or Lasting Power of Attorney and 'P', sometimes referred to as the 'Patient' in Court of Protection cases, unless they are already separately represented.

▶ Consider, ascertain and record whether the client has the necessary capacity to give instructions and undertake the specific transaction. The Mental Capacity Act 2005 governs the assessment of mental capacity, but reference should also be made

⁴ SRA Code of Conduct 2011, Principle 4.

to the common law, as to the information which the client would be expected to understand to enter into the relevant legal transaction:

- Making a will - Banks v Goodfellow [1870] LR 5 QB 549
- Revoking a will – Re Sabatini 1970 114 SJ 35
- Making a gift - Re Beaney (1978) 2 All ER 595
- Make a Lasting Power of Attorney – Re Boar (Court of Protection, 19.2.2010): Re Collis (Court of Protection, 27.10.2010)
- Contracting a marriage – In the Estate of Park deceased [1954] P 89 CA: Sheffield City Council v E and Another Times Law Reports Jan 5 2005
- Conducting legal proceedings – Masterman Lister v Jewell [2003] 3 All ER 162
- Consenting to medical treatment – Re C (adult refusal of treatment) [1994] 1 All ER 819
- Managing property and financial affairs - White v Fell [1987] Unreported and Masterman Lister v Jewell [2003] 3 All ER 162

► In taking instructions and during the course of the retainer, the adviser should have proper regard to the client's mental capacity or other vulnerability, such as incapacity or duress.⁵ Consider whether the client is making the decision freely and of their own volition and that they are not being subjected to fraud, pressure or undue influence. You should not act for a client where there are reasonable grounds for believing that the instructions are affected by duress or undue influence without satisfying yourself that they represent the client's true wishes.⁶

This could be done by carrying out a risk/ benefit analysis at the outset so that the client understands the risks and the benefits of what they are doing and the consequences of the steps they are taking. This is a very simple analysis and does not require the adviser to take very sophisticated steps but it can prevent problems.

8. Preventing financial abuse by an attorney

8.1 Regard should be had to the Law Society's Practice Notes for Solicitors on the making of Lasting Powers of Attorney (December 2011), Making Gifts of Assets (October 2011) And Financial Abuse (June 2013).

8.2 Advisers are in a position, particularly in relation to financial abuse, to build in protection for the client, when advising and drafting documents. The advice given must to be tailor-made to each client's circumstances and needs.

8.3 Lasting Power of Attorney or Deputy?

In some cases the outcome for the client may be better were the Court of Protection to appoint a deputy, rather than the client making a Lasting Power of Attorney, because of the supervision given by the Office of the Public Guardian and the Court's usual requirement for a security bond to protect against a defaulting property and affairs deputy.⁷ This may be particularly relevant where the client has a history of being exploited or where their relevant relationships are dysfunctional.

8.4 Check capacity and undue influence

Advisers need to be careful when receiving instructions for Lasting Powers of Attorney, if they receive those instructions from a third party or where they are acting

⁵ Indicative Behaviour 1.6.

⁶ Indicative Behaviour 1.28.

⁷ see Re Treadwell, Court of Protection, 30.7.2013.

for a donor who has previously been unknown to them. Third party instructions must be confirmed by the donor. Always see the client alone for at least part of the interview to identify capacity and that the power is what the client wants and is being made free from the influence of others. This is independent to the role of the certificate provider in the power, but will overlap when the adviser is also acting as such.

If the client is unknown to the adviser or they have not seen the client for a long while, take some time to talk about wider issues to be sure the client has the necessary capacity and they are not acting under the undue influence or pressure of another. If mental capacity is in doubt, it is advisable to involve medical practitioners to assist with ascertaining capacity.

8.5 Insert restrictions and conditions in the power

Consider when drafting the power, building in protection so there is accountability and external supervision. A condition in the power to have the accounts checked by a third party, such as an accountant, solicitor or friend would provide accountability. If accounts are not rendered in accordance with the condition, then a concern could be raised with the Office of the Public Guardian, which could investigate and make a Court application for cancellation of the power on the grounds that the attorney is exceeding their authority and is not acting in the donor's best interests. Checking accounts is a service that the legal practice could undertake. Letters of wishes or guidance contained in the power, which set out a framework for the attorney to act, may also help to prevent abuse, as it provides a clear baseline against which the attorney's actions can be judged. This could include specific provision naming the people, the attorney should consult when making decisions.

8.6 Check suitability of attorney

It may be appropriate for the probity of the attorney to be investigated, with enquiries made about whether the attorney has the requisite skills, such as their ability to manage the client's property and financial affairs. The appointment of a sole attorney provides more scope for abuse than a joint or several appointment, yet a joint and several appointment also provide a greater opportunity for exploitation than a joint appointment due to there being less accountability.

8.7 Provide information on the limitation of the power

The donor and the attorney should be given information, ideally in writing about the limits of the power, in particular that they are not authorised to make health and welfare decisions under a property and financial affairs Lasting Power of Attorney and the limited power to make gifts and financial provision for others (see page 32-34 of this document).

8.8 Record and track the use of the power

The adviser should confirm the circumstances in which a Lasting Power of Attorney is to be used, so that the power can be released to the attorney at that point. Although the power could contain a condition that the property and financial affairs Lasting Power of Attorney is only to be used when the donor lacks mental capacity to make a financial decision, it may cause practical administrative problems, as third parties would have to satisfy themselves that the condition was fulfilled on each occasion the power needed to be used. Only provide certified copies when the power is to be used and keep a record and track of where they are, in order to detect and prevent potential misuse.

9. Preventing abuse by a professional attorney

9.1 In cases where a professional has been appointed, develop a practice wide policy of monitoring and auditing files on a regular basis, by someone who is not involved with the case.

9.2 Use the practice's accounts' department to make payments and draw up cheques and present audited accounts.

9.3 Discourage, where possible a single or an unqualified member of staff from being a sole attorney - use joint or joint and several appointments instead.

9.4 Make clear that in the event of anyone being found to have abused their power and taken advantage of their position as an attorney that the matter will be referred to the Police and the Solicitors' Regulation Authority or other professional regulatory body and that internal disciplinary proceedings will result.

10. Dealing with abuse in the person's own home

10.1 Abuse can be hidden, particularly where there is one to one dependence on a carer, where supervision is weak and there is little or no contact with others who might otherwise pick it up. Detection may be poor if the various agencies involved in providing care do not communicate with each other.

10.2 Abuse may be identified by professionals involved, for example a social worker during a community care assessment, an Independent Mental Capacity Advocate appointed under the Mental Capacity Act 2005⁸ or a Court of Protection General Visitor.⁹

10.3 Regulated care providers

For those in receipt of social services assistance, there should be a review by social services three months after the start of service provision and at least annually thereafter. For extremely vulnerable clients more frequent review may be necessary. The review by social services should identify inappropriate care packages. Often the first indication of abuse may be the issue of raising complaints about service delivery that may expose abuse. Alert social services by contacting the local authority's Monitoring Officer, (Vulnerable) Adult Protection Officer and/or make a formal complaint to social services (see below at 11.6). In addition, and for those who have independently arranged their care, a complaint can be made to the care agency, and/or the Care Quality Commission (CQC)/Care and Social Care Inspectorate Wales (CSSIW) (see 11.1 below for more details).

Carers employed by registered care providers will be subject to the Disclosure and Barring Service (DBS) check, which undertakes searches of police records and, in relevant cases, barred list information. Abuse by such a carer, may necessitate notification to the DBS and the CQC/CSSIW to prevent future abuse.

10.4 Independent unregulated care providers

Day care services and personal assistants employed directly are unregulated. The individual will need to be confronted directly and if necessary the police called to investigate. The relevant local authority social services department and (Vulnerable) Adult Protection Officer should also be alerted.

⁸ ss.35-41 MCA 2005.

⁹ S.61 MCA 2005.

Advisers may be able to prevent abuse by considering contracts and terms of employment as well as carrying out a DBS check and setting up supervision systems, particularly in relation to financial management. Advisers should ensure that adequate references are followed up. Direct employment of those who have left agencies and have poor employment track records or about whom there may be suspicions, is inherently risky.

See also 11.3 –11.4,11.6 and 11.7 below for other action to be taken.

11. Dealing with abuse in care homes

11.1 The Regulatory Authority for Care Homes

The Care Quality Commission (CQC) registers and inspects all health and social care provision in England and ensures they meet essential standards of quality and safety. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010¹⁰ set out the essential standards of quality and safety expected from service providers of regulated activities such as care homes. These are set out in Regulations 9 to 24 and are supported by compliance guidance.

Service providers are required to ensure service users are protected from abuse, or the risk of abuse, and their human rights should be respected and upheld.¹¹ The CQC expect service providers to:

- Take action to identify and prevent abuse from happening in a service.
- Respond appropriately when it is suspected that abuse has occurred or is at risk of occurring.
- Ensure that Government and local guidance about safeguarding people from abuse is accessible to all staff and put into practice.
- Make sure that the use of restraint is always appropriate, reasonable, proportionate and justifiable to that individual.
- Only use de-escalation or restraint in a way that respects dignity and protects human rights, and where possible respects the preferences of people who use services.
- Understand how diversity, beliefs and values of people who use services may influence the identification, prevention and response to safeguarding concerns.
- Protect others from the negative effect of any behaviour by people who use services.
- Where applicable, only use Deprivation of Liberty Safeguards (see 15.8 below) when it is in the best interests of the person who uses the service, in accordance with the Mental Capacity Act 2005.

The Care and Social Services Inspectorate Wales (CSSIW) has similar functions to ensure care homes and domiciliary services in Wales meet national minimum standards that place requirements on the service provider to protect the service user from abuse.

The requirements include: -

► Protection from physical, financial or material harm, psychological or sexual abuse, neglect, discriminatory abuse or self-harm, inhumane or degrading treatment, through deliberate intent, negligence or ignorance in accordance with written policies.

¹⁰ SI 2010/781.

¹¹ Reg 11, 2010 Regulations.

- ▶ Putting robust procedures in place to respond to suspicions or evidence of abuse or neglect and passing these concerns to CSSIW in accordance with the 'In Safe Hands' guidance and the Public Interest Disclosure Act 1998.
- ▶ Follow up action in relation to all allegations or incidents of abuse.
- ▶ Staff who are considered to be unsuitable to work with vulnerable adults are to be referred for placement on the DBS list and this is to be recorded on the Inspection Report.
- ▶ Policies and practices to be in place so that physical and/or verbal aggression by service users is understood and dealt with appropriately.
- ▶ Policies to be in place to protect abuse of service users financial affairs.
- ▶ Complaints procedures are in place and made known including a requirement that written information should be provided to all service users for referring a complaint to the CSSIW at any stage should the complainant wish to do so.

In England, inspections are undertaken in accordance with a risk assessment. In Wales, inspections are limited to once every three years, although without notice visits can be made at any time, particularly if concerns have been raised about a care home. Reporting poor standards and/or suspected abuse will trigger other inspections which can be very effective in limiting abuse and getting rid of the perpetrators.

11.2 Identifying risk before moving into the care home

Advisers need to anticipate a move into a care home by setting up a protective framework in relation to financial matters, checking care contracts and keeping full records of assets and personal possessions at the start of occupancy. A trial period at the home is useful to see how things are run and quality of care given. Talking to other residents and their families can also be helpful, as can speaking to social services about their experience with a particular home.

The care home's Inspection Reports, (available from the CQC or CSSIW), may highlight problems, for example whether or not the home has a reputation for poor practice. The care home should undertake a DBS check prior to employing staff.

11.3 Action to take on detecting or suspecting abuse

On suspicion or detection of abuse, complain to the proprietor of the home. The home may remove, dismiss or prevent the perpetrator from being in the home. They may also decide to call the police to investigate. If the internal complaints procedure does not provide the required solution it may be necessary to report the matter directly to the CQC in England or CSSIW in Wales, which should take appropriate action.

At the same time contact the local authority's social services department, the NHS and the local Clinical Commissioning Group in England or Local Health Board in Wales who may place residents and commission care in the care home.

11.4 Charities, such as Age UK and the Alzheimer's Society at local level may offer advocacy support and help in presenting complaints.

11.5 If the abuse occurred as a result of another resident or visitor, the home should take action to avoid the abuse from reoccurring.

11.6 Social services complaints

Where the care is being provided by social services, a complaint can also be made using the local authority complaints' procedure. Social services should provide the complainant or their representative's details of how to complain in accordance with

the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009. In Wales, the Social Services Complaints Procedure (Wales) Regulations 2005 set out a more complex process.

The complaint should be made in writing within twelve months of the incident forming the basis of the complaint or within twelve months of becoming aware of the circumstances about which you want to complain. In exceptional circumstances these time limits may be waived.

If after going through the complaint's procedure, the desired outcome has not been reached, the complaint can be pursued through the Local Government Ombudsman for England or Public Services Ombudsman for Wales.

11.7 Complain to perpetrator's regulatory body

The Health and Care Professions Council is the regulatory body for the majority of professionals working in health and social care in England, who are required to undergo continuing professional development annually in order to stay on the register and to comply with professional standards. The Care Council for Wales is the Welsh equivalent body. Doctors and nurses are separately regulated by the General Medical Council and the Nursing and Midwifery Council. A complaint can be made concerning the registered perpetrator.

11.8 Death in a Care Home

All deaths in care homes have to be notified to the CQC¹² or the CSSIW.¹³ The information submitted must include details of the circumstances of death. Records of deaths may indicate trends and could potentially identify areas of abuse. GPs who are called into care homes to certify death are in a position to observe whether anything untoward has happened. Advisers who have concerns about the death of a client should consider contacting the CQC/CSSIW or the GP concerned.

The Births and Deaths Registration Act 1953 imposes a requirement on the doctor who last attended the deceased to issue a medical certification of death. This has the potential to identify abuse but Dr Harold Shipman highlighted the potential for abuse of the system of certification. This is of greater concern where the resident's GP or GP's relatives own and run the care home in which they live.

12. Dealing with abuse in the NHS

12.1 A complaint can be made using the NHS complaint's procedure. In England the Local Authority Social Services National Health Service Complaints (England) Regulations 2009¹⁴ should be followed. The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011¹⁵ applies to complaints in Wales. The Patient Advice and Liaison Services, (PALS) based in local hospitals in England or Community Health Councils in Wales can provide information about the NHS complaint's procedure.

12.2 The complaint should be made in writing within twelve months of the incident forming the basis of the complaint or within twelve months of becoming aware of the circumstances about which you want to complain. In exceptional circumstances these time limits may be waived. The complaint will be dealt with at local NHS level, including any investigation.

¹² Reg 16 CQC (Registration) Regulations 2009.

¹³ Reg 38 The Care Homes (Wales) Regulations 2002.

¹⁴ SI 2009/309.

¹⁵ SI 2011/704 W.108.

12.3 Local authorities in England have a statutory duty to commission independent advocacy services to provide support for people making, or thinking of making, a complaint about their NHS care or treatment. Arrangements vary between local authority areas. In Wales this function is carried out by the Community Health Council.

12.4 If after going through the NHS complaint's procedure, the desired outcome has not been reached, the complaint can be pursued through the Health Service Commissioner in England, also known as the Ombudsman or the Public Services Ombudsman in Wales.

13. Remedies for financial abuse by an attorney

13.1 Donor with mental capacity

If the donor has mental capacity, they should revoke the power by a Deed of Revocation. The donor's capacity to revoke the power is determined by their understanding:

- (1) who the attorney is, or who the attorneys are — and, if more than one, whether they were appointed to act jointly or jointly and severally.
- (2) what authority they have.
- (3) why it was necessary or expedient to revoke the power; and
- (4) the foreseeable consequences of revoking the power.¹⁶

In addition to this, the donor should notify the attorney. With a registered Lasting Power of Attorney, the donor must also notify the Public Guardian¹⁷. Unlike a registered Enduring Power of Attorney, (see 13.8 below) it is not necessary to seek confirmation by the Court of Protection for the donor to revoke a registered Lasting Power of Attorney. It is advisable to also notify any third party organisation that has had notification of the power, such as a bank.

Revocation may be very difficult if the donor is frightened of the ramifications and should be dealt with sensitively. The adviser owes a duty of confidentiality, which must not be breached. It is prudent to obtain the client's consent in writing to proceed.

Both civil (see 13.10 & 13.11 below) and criminal (see 14.2 below) remedies may be available. It may also be appropriate to involve social services (see 13.3, & 17.1-17.7 below).

13.2 The donor without mental capacity

Notwithstanding the loss of mental capacity, the adviser continues to owe the donor a duty of confidentiality¹⁸. However, they must also always act in the client's best interest, which may allow the adviser to do such acts to safeguard the client.¹⁹ At common law, the doctrine of 'necessity' enables any person to take action to prevent significant harm occurring where it is necessary to act. Under the Mental Capacity Act 2005,²⁰ any person taking action which relates to the care and treatment of a

¹⁶ Re S, unreported 13.3.97.

¹⁷ Reg 21 of Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007 (SI 2007/1253).

¹⁸ Outcome 4.1 SRA Code of Conduct 2011.

¹⁹ Principle 4 SRA Code of Conduct.

²⁰ s.5 MCA 2005.

person who lacks mental capacity, provided it is in that person's best interests, is protected from liability.

13.3 If the donor is in receipt or needs to be in receipt of community care services, concerns can be raised with the (Vulnerable) Adult Protection Officer in social services. They may organise an assessment and put into place suitable measures (see 13.3, & 17.1-17.7 below). This could result in the local authority applying for injunctive relief.²¹ (See 17.1-17.7 below). Both civil (see 13.10 & 13.11 below) and criminal (see 14.2 below) remedies may be available.

13.4 Where appropriate, speak to the Solicitors' Regulation Authority about ethical concerns on Tel: 0870 606 2555 and keep a file note of any discussion.

13.5 If the abuse relates to another professional, report the matter to the Compliance Officers for Legal Practice (COLPs) and Compliance Officers for Finance and Administration (COFAs) in the practice concerned.

13.6 Unregistered Enduring Power of Attorney (EPAs)

The Public Guardian has no function in respect of unregistered EPAs. If the attorney of an unregistered EPA is not prepared to register the power and so enable a challenge to be made, then an application to the Court of Protection should be made for the appointment of a financial deputy. Evidence of the existence of the EPA and that the donor lacks mental capacity to manage their property and financial affairs may be required. The attorney will need to be served with notice of the application. The Court will resolve the matter as appropriate. This could be by ordering the attorney to register the power or the removal of the attorney and/or revocation of the power. The cost of making an application in good faith is usually borne by the donor, although the Court has wide power to order the errant attorney pay the costs.

13.7 Investigation by the Office of the Public Guardian

The adviser can report concerns to The Office of the Public Guardian's Investigation Unit, which has power to investigate concerns about registered Enduring or Lasting Powers.²² (This may involve requesting a Court of Protection Visitor to see the donor and/or the attorney to investigate concerns.²³ A Lasting Power of Attorney is not valid until registered so the Public Guardian has no investigative functions until then.

13.8 Revocation of registered Enduring Power of Attorneys (EPAs)

If an EPA has been registered, it can only be revoked with the confirmation of the Court of Protection.²⁴ There is no automatic revocation of an EPA by a donor subsequently making a Lasting Power of Attorney (LPA),²⁵ although making a property and financial affairs LPA in the same terms but appointing a different attorney, may constitute revocation of an EPA by conduct.²⁶

13.9 Court of Protection orders for revocation of power/ or removal of attorney

If concerns are warranted, the Public Guardian can make an application for the removal of the attorney or the revocation of the power, in respect of a registered power.²⁷ A third party can also make an application to the Court on the basis that the

²¹ s222 Local Government Act 1972).

²² Regs 46, 47 & 48, of Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007.

Reg 44 Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007, s58 (1)(d)&(f) Mental Capacity Act 2005²³

²⁴ Sch 4, para 10 (c), Mental Capacity Act 2005.

²⁵ Re E (Enduring Power of Attorney [2000] 1 FLR 882.

²⁶ Re Boar, 19th February 2010, Decision of SJ Lush, Court of Protection (unreported): In the matter of Cloutt (Court of Protection) (Reported ACTAPS Journal October 2008).

²⁷ Reg 43 Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007.

attorney is unsuitable (Enduring Power of Attorney) or not acting in the best interests of the donor, or exceeding their authority (Lasting Power of Attorney). The Court can make an order appointing a deputy instead. The cost of making an application in good faith is usually borne by the donor, although the Court has wide power to order the errant attorney pay the costs.

13.10 Other orders of the Court of Protection

The Court has wide power to deal with the consequences of abuse, which could include:

- An order prohibiting a specified person from having contact with the abused person.²⁸ As the Court of Protection can only make an order in respect of a decision which the incapacitated person could make themselves, but for their mental incapacity, the order cannot be used to exclude a person who has a right to occupy the abused person's property. In such cases, an alternative jurisdiction may provide the desired outcome.
- An order enabling another person to bring proceedings on behalf of the abused person for example, for recovery in the civil court, this may involve claims of fraud, coercion, undue influence, lack of capacity, and breach of fiduciary duties.²⁹
- Residency orders.³⁰
- The appointment of a deputy.³¹
- Contact orders.³²

The cost of making an application relating to the donor's property and financial affairs in good faith is usually borne by the donor, although the Court has wide power to order the errant attorney to pay the costs. In contrast, the cost of a personal welfare application is usually borne by the applicant. In most cases this should be the local authority.

13.11 High Court orders

The High Court can also make freezing injunctions to prevent money or property being disposed of, search orders to allow access to the perpetrator's home or workplace to search for documents. Injunctions can also be obtained to prevent the perpetrator from leaving the country. The donor with capacity or a person acting as litigation friend for the mentally incapacitated donor can also apply to the High Court for recovery of funds and setting aside a transfer of an asset, procured by undue influence, duress or fraud.

The exercise of the High Court's inherent jurisdiction may also be used to obtain appropriate orders, where the person is vulnerable, even if not incapacitated by mental disorder or mental illness, or is reasonably believed to be, either: (i) under constraint; or (ii) subject to coercion or undue influence; or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.³³ Munby J has described a 'vulnerable adult' (rather than defined) as 'someone who, whether or not mentally incapacitated, and whether or not suffering from any mental illness or mental disorder, was or might be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation, or who was substantially handicapped by illness, injury or congenital deformity'.³⁴

²⁸ s.17 (1) (c) MCA 2005.

²⁹ s.18 (1)(k) MCA 2005.

³⁰ S.17 (1)(a) MCA 2005.

³¹ s.16 (2)(b) MCA 2005.

³² s.17 (1)(b) MCA 2005.

³³ DL v A Local Authority [2012] EWCA Civ 253 .

³⁴ SA (Vulnerable Adult with Capacity: Marriage) (2006) 1 FLR 867.

14. Remedies for financial abuse by others

14.1 Investigation of deputies by the Office of the Public Guardian

The Office of the Public Guardian when supervising Court appointed deputies, can investigate, identify and deal with abuse, which can include an application to the Court of Protection for the removal and replacement of the deputy. The Court can order that any security bond in place is 'called in' and paid to remedy the loss. This power extends after the death of the incapacitated person.³⁵ The Court can also make appropriate orders as set out in 13.10 above.

14.2 Criminal offences

Any person who gains unauthorised access to the person's finances and takes assets belonging to another can be charged with various criminal offences, including theft, blackmail,³⁶ robbery or forgery.³⁷ Section 4 of the Fraud Act 2006 makes it a criminal offence where a person intentionally and dishonestly takes advantage of their position. A person who destroys, defaces, conceals or falsifies accounts, records or documents with a view to gain or to cause loss to somebody else may be charged with false accounting under s.17 of the Theft Act 1968 and can extend to making use of these, when the person knows they may be misleading, false or deceptive.

The police should be contacted and a complaint made. It may be possible for the Court to order the recover of stolen assets as proceeds of crime. See also 17.9 below.

14.3 State pensions and allowance decisions

It may be necessary to involve the Department for Work and Pensions (DWP), particularly if the perpetrator is an appointee or agent or third party acting under a mandate set up with a bank or other financial organisation. These should be cancelled and the organisations made aware of the position. The DWP Fraud Investigation Unit³⁸ should be contacted and their advice sought. Banks and other financial organisations also have fraud investigations teams.

14.4 Civil remedies

13.10 and 13.11 above may also be relevant.

15. Remedies for physical and sexual abuse

15.1 Criminal proceedings

Slapping, hitting, pushing, shoving and administering any kind of physical damage to a person amounts to assault and battery³⁹ and is therefore a matter for the police and the inspection bodies. An offence may be committed where the victim believes they will suffer physical harm, but are not actually harmed.⁴⁰ A wide range of criminal charges can be brought against the perpetrator. In particular, common assault,⁴¹ sexual assault, rape,⁴² actual and grievous bodily harm⁴³ and murder or manslaughter charges. It may also be the case that an organisation commits the offence of corporate manslaughter where it owes a duty of care, grossly breaches

³⁵ Reg 37, Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

³⁶ S.21 Theft Act 1968.

³⁷ s.1 and s. 8 of the Theft Act 1968; s.1 the Forgery and Counterfeiting Act 1981 & s.25 Identity Card Act 2006.

³⁸ Tel: 0800 854 400 – lines are open Monday to Friday 8.00am to 6.00 pm.

³⁹ s.47 of the Offences Against the Person Act 1861.

⁴⁰ ss.4, s.4A & 5 Public Order Act 1986; s.16 Offences Against the Person Act 1861,

⁴¹ s. 39 of the Criminal Justice Act 1988

⁴² The Sexual Offences Act 2003.

⁴³ ss. 18 and 20 of the Offences Against the Person Act 1861.

that duty because of how its activities are managed or organised, which result in a person's death.⁴⁴ Under the Domestic Violence, Crime and Victims Act 2004, it is an offence to cause or to allow the death of a vulnerable adult, when a member of the household had either caused or allowed the death.

If needed, the police can enter premises in order to save life or limb or prevent serious damage to property.⁴⁵ It is imperative, to obtain evidence as soon as the abuse has been identified. In the case of sexual abuse, to preserve evidence the victim should not wash until seen by the police surgeon. It may be helpful to obtain photographs of any injuries, which have been incurred as a result of the abuse. In practice, it may be difficult to obtain a medical report from the victim's own medical practitioner if they care for both the perpetrator and the victim or may feel insufficiently qualified to prepare such a report. In any event the local police surgeon is likely to be involved and should be able to provide evidence.

If the perpetrator is convicted, the Court can make an order for compensation, which unlike the civil system is based on ability to pay and so may be low.

15.2 Criminal Injuries Compensation

Victims of violent crimes can apply to the Criminal Injuries Compensation Authority for payment of compensation. It does not matter that a prosecution was not brought or that the perpetrator could not be held responsible they were suffering from a mental disorder. The claim must be brought within 2 years from the date of the incident and any responsible person on behalf of a victim who is mentally disabled can make a claim.

15.3 Compensation in the civil courts

Under the civil law of trespass to the person, (which encompasses assault and battery); it is possible for the victim to sue for compensation. Trespass to the person is a wrong committed against the personal security or personal liberty of one person to another. The act must be either intentional or negligent and without the victim's consent. It is also possible to claim compensation for negligence and resulting injury suffered. A claim for damages may be made against a public body, where a person's human rights have been infringed by the public body when carrying out its functions, such as false imprisonment or an unlawful deprivation of the person's liberty.

15.4 Injunctions under the common law

Obtain a common law injunction to stop future abuse and/or stop a person entering the abused person's home. It cannot be used to exclude a person who has a right to occupy the property and there is no power of arrest for breaching this type of injunction. See also 13.11 above on the exercise of the High Court's inherent jurisdiction.

15.5 Orders from the Court of Protection

The Court of Protection has power⁴⁶ to make an order, which may stop future abuse by making a contact order, which stops the perpetrator from entering the abused person's home. It cannot be used to exclude a person who has a right to occupy the property. The Court has power to include a penal notice.⁴⁷ See also 13.10 above for other orders, which the Court may make. The local authority social services department, in the area in which the abused person resides, usually makes these

⁴⁴ the Corporate Manslaughter and Corporate Homicide Act 2007.

⁴⁵ s. 17 of the Police and Criminal Evidence Act 1984.

⁴⁶ s.17 (1)(c) MCA 2005.

⁴⁷ s.47 (1) MCA 2005.

applications. As such, the cost of making these applications are borne by the local authority. (See 15.8 below).

15.6 Harassment Injunctions

Under the Protection from Harassment Act 1997 the police can arrest and charge a person for harassment. Harassment includes, nuisance phone calls, stalking, threats, excessive noise etc and covers any behaviour which causes 'alarm' or 'distress'. Alternatively an 'Anti-Harassment Injunction' may be obtained from the County or High Court. Compensation for 'anxiety', 'distress', 'alarm' or financial loss can be made at the same time.

15.7 Injunctions against family members

The Family Law Act 1996 enables an injunction to be granted excluding the abuser from the home and restraining conduct. Breaches can be dealt with by a fine or imprisonment. If there is cause, it is possible to obtain an interim injunction without giving notice to the abuser, pending a final hearing. Injunctions can be obtained against 'associated persons', defined in s.62 (3) as people who:

- are or have been married to each other;
- are or have been cohabitants (defined as a man and a woman, not married to each other by living together as husband and wife);
- have lived in the same household (other than one of them being the other's tenant, lodger, boarder or employee). This does not therefore include those in lesbian and gay relationships and those sharing a house;
- are relatives (this is defined to include most immediate relatives)
- have agreed to marry (evidence by a written agreement, the exchange of a ring, or a witnessed ceremony);
- in relation to a child (they are both parents, or have or have had parental responsibility for a child);
- are parties to the same family proceedings (other than under Part IV of the Act, but excluding the local authority).

15.8 Restraint and Deprivation of Liberty

Whilst proportionate restraint is acceptable to prevent serious harm occurring to a vulnerable person, anything that exceeds this or amounts to a deprivation of the person's liberty without proper authority (such as detention under the Mental Health Act 1983; an order from the Court of Protection under s16A or s15 or authorisation under the Deprivation of Liberty Safeguards under Schedule A1 of the Mental Capacity Act 2005 is unlawful.⁴⁸

Positive duties are imposed on a local authority to protect vulnerable persons against interferences with liberty carried out by private persons.⁴⁹ As such, they must take reasonable steps to prevent (or seek Court authorisation for) a deprivation of liberty which they are aware of, or which they ought to be aware of. This includes investigating whether there is a deprivation of liberty, monitoring the situation if appropriate, and taking steps to end the deprivation of liberty (for example by providing additional support services) or, if that is not possible, bringing the matter to Court. However, the local authority must seek the assistance of either the Court of Protection or the High Court 'before it embarks upon any attempt to regulate, control, compel, restrain, confine or coerce a vulnerable adult'.⁵⁰

⁴⁸ See Deprivation of Liberty Safeguard Code of Practice (Ministry of Justice, 2008).

⁴⁹ *Stork v Germany* [2005] 43 EHRR 96.

⁵⁰ See *Re BJ (Incapacitated Adult)* [2009] EWHC 3310 (Fam), [2010] 1 FLR 1373, at paras [21]-[22], and *Re Z (Local Authority: Duty)* [2004] EWHC 2817 (Fam).

Although misuse of medication can be an artificial form of restraint, actual physical restraint of vulnerable people is also a serious issue. This could be by placement of furniture, physical confinement, electronic tagging and are unacceptable. It may also include locking people in their rooms and ignoring their needs. Cot sides should only be used, where appropriate, and with informed consent and/or agreement with those interested in the person's welfare. Other forms of restraint with the potential to be considered criminal offences include: - restriction of liberty by locking someone in their room; misuse of furniture or equipment including bedrails and Buxton chairs (chairs which restrain or restrict movement by the use of integral tables); unsafe or outmoded restraint practices which risk physical injury. This should be distinguished from a reasonable, proportionate and entirely appropriate regime implemented by devoted carers in the context of a loving relationship and with the single view to the welfare, happiness and best interests of the cared for person.⁵¹

Such restraints may amount to the tortious act of negligence or trespass to the person and/or a criminal offence of assault and battery. See 15.1 & 15.3 above for available redress.

15.9 Local Authority Assistance

It may be appropriate to contact the (Vulnerable) Adult Protection Officer at the local authority's social services department. They will be able to decide the best course of action. See 17.1- 17.7 below for remedies necessitating the involvement of the local authority.

15.10 Misuse of Medication

The over and inappropriate medication of vulnerable people, particularly with anti-psychotic medication is a matter of serious concern, if it is used as a tool for behavioural management and may amount to abuse. The administration of this type of medication poses a particular risk to older people and the lack of training in the administration of these drugs particularly by unqualified staff is worrying.

There can be insufficient local prescribing guidelines in relation to powerful painkilling drugs; a lack of rigorous review of pharmacy data on high levels of prescribing on wards/care homes caring for older frail people; an absence of supervision of prescribing and a lack of multidisciplinary assessment to determine care needs and medication.

Health and social care records may be obtained under the Data Protection Act 1998, when requested by a welfare deputy or attorney of a registered Health and Welfare Lasting Power of Attorney or the written consent of the patient with capacity to enable the monitoring of their client's medication. Attorneys acting under Enduring Powers or Property and Financial Affairs Lasting Powers, have no express authority to access health and social care records, although advance consent may have been given when the power was prepared. The release of records may be provided in respect of patients who lack mental capacity without their consent, if the health or social care body believe the release of the records would be in the patient's best interest.

The Department of Health's, National Service Framework for Older People is helpful in that it recommends that all those over 75 years who receive prescriptions for more than four drugs at any one time should have an annual review of their prescriptions. The local NHS body should monitor these issues closely. Some GP practices do this for all their patients as a matter of good practice

⁵¹ In the Matter of A (a minor) and in the Matter of C (an adult) [2010] EWHC 978. At the time of writing this update, judgment is awaited from the Supreme Court on the required components for a deprivation of liberty to occur.

If over medication is observed, make a complaint to the registered provider and/or the CQC/ CSSIW (see 11.1 above) and where appropriate, the local Clinical Commissioning Group in England or Local Health Board in Wales and the police.⁵²

16. Remedies for psychological abuse

Due to its nature, psychological abuse can be difficult to detect. It may be possible to obtain an injunction if it amounts to harassment and for criminal proceedings to be brought. Humiliation, intimidation, emotional blackmail, verbal abuse and being shouted at may amount to harassment, alarm or distress and an offence under the Public Order Act 1986.⁵³ Harassment in a person in their own home may also be an offence under s.42A of the Criminal Justice and Police Act 2001.

Under the Malicious Communications Act 1988, those sending letters, electronic communication, or making telephone calls with intent to cause distress or anxiety are guilty of a criminal offence. Similarly, it is an offence under s.127 Communications Act 2003 to send a message which the perpetrator knows to be indecent, obscene, of a menacing character or grossly offensive for the purpose of causing annoyance, inconvenience or needless anxiety.

See 15.4-15.7 above for suitable civil redress and for possible help from the local authority, see 17.1-17.7 below.

17. Remedies for neglect

Most of the interventions likely to occur within the abuse of neglect will involve the local authority and the NHS.

17.1 Community care provision by Social Services

Section 47 of the NHS and Community Care Act 1990 requires local authorities to carry out assessments for people who may be in need of community care services or who are disabled. The assessment may be multi agency. Entitlement to an assessment is not linked to the person's own financial resources. It is unlikely that the abused or neglected person will ask for an assessment and will rely heavily on 'whistle blowers' to alert of possible abuse and/or neglect. Service provision may be made where the individual qualifies under the local authority's eligibility criteria. Those at risk should qualify for services as a priority. The individual will be means tested to contribute towards the cost of the service.

17.2 Removal order under the National Assistance Act 1948

Section 47 of the National Assistance Act 1948,⁵⁴ authorises the local authority's 'Proper Officer', (who will usually be person from the Environmental Health Department) to remove a person to a place of care where such a person is:

- (i) Suffering from a grave chronic disease or, being aged, infirm, or physically incapacitated, is living in unsanitary conditions and
- (ii) Is unable to devote to him/herself, and is not receiving from other persons, proper care and attention and
- (iii) Refuses to go into hospital or an institution even though a bed is available.

⁵² Misuse of medication to manage behaviour can amount to an assault, false imprisonment, and the application of stupefying over-powering drugs with intent to commit indictable is an offence under s.22 of the Offence Against the Person Act 1861, poisoning with intent to injure, aggrieve or annoy under ss. 23 and 24 of the Offence Against the Person Act 1861, and/ or unlawfully administering medication under s.58 of the Medicines Act 1968.

⁵³ ss.4,4A & 5.

⁵⁴ as amended by the National Assistance (Amendment) Act 1951.

Social services will be closely linked in the application, as will the person's GP. They must have tried without success to obtain the person's agreement to receive help and assistance.

The application is made by the Proper Officer in writing with medical support to the Magistrates Court certifying that they are satisfied after a thorough inquiry and consideration that it is necessary to remove the person from the premises in which they are residing because:

- (i) It is in that person's interests; or
- (ii) It is to prevent injury to the health of, or serious nuisance to other persons; or
- (iii) To prevent serious nuisance to other persons.

The order can last up to 3 months and is renewable with no right of appeal. Alternatively, in an emergency it is possible to obtain immediate removal without giving notice to any person involved, which lasts only 3 weeks, provided it is established by the Proper Officer that it is in the person's interest.⁵⁵ As with less urgent applications, there is no appeal and it is doubtful if this procedure is compliant with the European Convention on Human Rights, is now rarely used and will be abolished if and when the Care Bill 2014 is passed and in force.

17.3 Section 48 duty to protect property under the National Assistance Act 1948

The local authority is under a duty to take reasonable steps to prevent or mitigate loss or damage to the person's property when they have been admitted to hospital, residential accommodation under s.21 of the National Assistance Act 1948 or removed under s.47 powers (see 17.2 above). The local authority can enter the premises to take steps to protect it. Any reasonable expenses incurred in doing such are recoverable from the person concerned.

17.4 Entry and inspection of premises

Under s.115 of the Mental Health Act 1983, an approved mental health professional can enter and inspect any premises (other than a hospital) occupied by a mentally disordered person, if they think that the person is not receiving proper care. They cannot use force to break in, and have no power to remove the person. If it is thought that removal is necessary then a warrant under s.135 (see 17.5 below) should be obtained. Anyone refusing entry to the approved mental health professional would be committing an offence.⁵⁶

17.5 Place of safety order of a person in a premises

Section 135 of the Mental Health Act 1983 enables an approved mental health professional to apply to a Magistrate for a warrant which will allow a police officer to enter premises where it is thought that a person who is suffering from a mental disorder is residing and:

- (i) They are being (or have been) ill-treated, neglected, or
- (ii) Not kept 'under proper control'; or
- (iii) They are living alone and unable to care for them self.

An approved mental health professional and a doctor should accompany the police officer that is to execute the warrant, which is valid for 28 days. They can break into the premises, if appropriate and where necessary remove the person and take them

⁵⁵ National Assistance Amendment Act 1951.

⁵⁶ under s.129 of the Mental Health Act 1983.

to a place of safety. A place of safety can be a police station, a hospital, a care home or other suitable place.

The detention lasts for up to 72 hours from the time that the person arrives at the place of safety. The person should be assessed during this period and once a decision is made as to the treatment or care required, then the detention ceases. There is no right of appeal.

17.6 Place of safety of a person in a public place

Section 136 of the Mental Health Act 1983 enables a police constable to remove a person to a place of safety, if he finds that person in a public place:

- (i) Who appears to be suffering from a mental disorder;
- (ii) Is in need of care and control; and
- (iii) It is in the interest of that person or for the protection of others for such removal.

Detention can be up to 72 hours, during which time an assessment would take place for any necessary arrangements for care to be made, with no right of appeal. Once this has been done the detention ceases to be in effect.

17.7 Guardianship orders

The Mental Health Act 1983 enables a guardianship order to be made.⁵⁷ To be received into guardianship the person must be suffering from a mental disorder of a nature or degree that warrants the order and it is necessary in the interests of the person, or for the protection of other people.

The order may specify:

- (i) Where the person lives;
- (ii) That the person attends a place or at a time for medical treatment, occupation, education, and training; or
- (iii) That a doctor, an approved mental health professional or anyone else the guardian specifies must have access to see the person.⁵⁸

The guardianship lasts for 6 months and is renewable for a further 6 months and then for a year at a time under s.20. There is a right of appeal to the First-tier Tribunal (Mental Health).

17.8 Criminal proceedings by those providing care under the Mental Health Act 1983

Section 127 of the Mental Health Act 1983 makes it a criminal offence to ill treat or wilfully neglect a patient receiving treatment, subject to a guardianship order or otherwise in his custody or care for treatment of a mental disorder in hospital or a care home by staff. Any proceedings required the approval of the Director of Public Prosecutions.

Ill treatment and wilful neglect are separate offences. The offence does not necessarily require that the ill treatment must have resulted in actual injury to the patient or at least have caused them unnecessary suffering or injury to health. Wilful neglect is a failure to act when a moral duty demands it, whereas ill treatment is a deliberate course of action.⁵⁹ The Court of Appeal has stated that there needs to be both an objective breach of a duty of care, and an element of subjective (that is, in

⁵⁷ s.7.

⁵⁸ s.8.

⁵⁹ R v Newington [1990] 91 Cr App R 247.

the mind of the perpetrator) intention or recklessness.⁶⁰

17.9 Criminal proceedings by those acting under the Mental Capacity Act 2005

The offences of ill-treatment or neglect under s.44 Mental Capacity Act 2005, applies to three categories of people:

- Carers of a person who lacks mental capacity (this includes paid carers and informal carers such as relatives)
- The attorney of an Enduring Power of Attorney or Lasting Power of Attorney
- A deputy

It should be noted that under criminal law, the standard of proof is 'beyond reasonable doubt', however for s.44 offences, the prosecution must prove (1) to the criminal standard that the defendant ill-treated or wilfully neglected a person in his care, and (2) that on a 'balance of probability' that person was a person who at the material time lacked capacity, in accordance with s2 (4) Mental Capacity Act 2005.⁶¹

The person will be guilty of an offence if they ill-treat or wilfully neglect the person they care for or are appointed to act for. The definition of ill-treatment or wilful neglect is not defined in the legislation, but the Code of Practice,⁶² provides that for a person to be found guilty of ill-treatment, they must either have deliberately ill-treated the person, or been reckless in the way they were ill-treating the person or not. It does not matter whether the behaviour was likely to cause, or actually cause harm or damage to the victim's health. The meaning of 'wilful neglect' varies depending on the circumstances, but usually means that a person has deliberately failed to carry out an act they knew they had a duty to do.⁶³ Actions or omissions, or a combination of both, which reflect or are believed to reflect the protected autonomy of the individual (where they have mental capacity) needing care do not constitute wilful neglect.⁶⁴

Although the principles governing offences of ill-treatment and wilful neglect are identical, cases involving alleged ill-treatment do not appear to raise quite the same difficulties as cases of alleged wilful neglect, perhaps not least because evidence of ill-treatment is generally less elusive than evidence purporting to establish wilful neglect.⁶⁵

The Court of Appeal has found, neglect is wilful if a nurse or medical practitioner knows that it is necessary to administer specific treatment and deliberately decides not to carry out that treatment, which is within their power but which they cannot face performing. If the practitioner was acting at a time of stress, that would be a matter which the judge could take into account at the time of sentence.⁶⁶

Any cases brought are triable either way. On summary conviction a maximum prison term of 12 months and/ or fine not exceeding a statutory maximum could be imposed. On conviction on indictment a maximum prison term of five years and/or fine could be imposed.

⁶⁰ R v Salisu [2009] EWCA Crim 2702.

⁶¹ R v Hopkins; R v Priest [2011] EWCA Crim 1513.

⁶² Paragraph 14.25.

⁶³ R v Sheppard 1981 AC 394.

⁶⁴ Ibid, Paragraph 18.

⁶⁵ Ligaya Nursing v R [2012] EWCA Crim 2521, paragraph 17.

⁶⁶ R v Patel [2013] EWCA Crim 965.

18. Problems of legal remedies

18.1 The cost of legal remedies

Using the civil court system can incur expense and this deters many people from using this method of intervention. Those on a low income, with little or no savings may qualify for legal support through legal aid but will still need to establish that there is a viable cause of action. An application for Legal Aid and subsequent action can be made on behalf of someone who lacks mental capacity. Many practices of solicitors have given up undertaking legal aid work due to the low levels of pay. Others may act on a contingency fee basis, for personal injury cases.

18.2 Court action can take time to get to a full hearing

One would need to seriously consider the effect of this on the abused person and their life expectancy.

18.3 Evidence must be established

It is imperative that sufficient evidence is obtained as soon as possible after the event of abuse. This may take the form of medical reports, photographic evidence, written records and statements from parties involved. Where a criminal act has occurred, consider involving the police.

Although a person without capacity may pose evidential problems, it does not preclude them from having the protection of the law. An expert witness may be able to give evidence of abuse; Eyewitness's accounts may be able to provide corroborative evidence and the victim may be capable of giving evidence.

In determining whether the person is competent to give evidence, the judge has to ascertain, if they understand what telling the truth is as well as being able to recall the facts. This may involve calling an expert witness, such as a psychologist. If the person lives with dementia it may be worthwhile obtaining written evidence in the form of an affidavit during a period of capacity supported by medical evidence as to capacity to make the statement.

18.4 What does the client want the outcome to be?

It is easy to assume, but it is not always the case, that the client wants intervention of some sort. They will usually want the abuse to stop but there may be repercussions. Counselling services may be needed. The client may decide to deal with the matter without legal redress, for example by amending wills and gifts to rectify the position.

18.5 Is the perpetrator worth pursuing?

If compensation is the redress desired, does the perpetrator have any financial means to pay any court order made? In civil cases mentally disordered persons are liable to the same extent as those with mental capacity, provided they have the state of mind required for liability in the particular tort.⁶⁷ Even if the perpetrator is unaware that they may be committing a wrongful act, they may still be liable. However, if their actions are purely involuntary and automatic it cannot be litigated.

In criminal cases, the decision to prosecute a mentally disordered person depends if it is in the public interest. In such cases the Court has wide sentencing powers.

⁶⁷ Morris v Marsden (1952) 1 All ER.

19. Changing the culture

Abuse can be reduced by changing the culture in which abuse occurs: by raising awareness of the way in which vulnerable adults should be treated in the community and the standards of care to which they should be entitled.

Media coverage makes big inroads. Changes in the regulation of cold selling and door-to-door sales have been another way forward⁶⁸ and awareness of fraud by 'prize offer' schemes helps to limit scams and fraud. Community safety strategies run via Local Trading Standards Offices may also limit these activities.

Advisers may be in a position generally to prevent abuse by offering awareness training to social workers, paid carers and care homes or get involved with the development of local vulnerable adults codes of practice. Report poor practice and abuse and encourage the family and /or the client to report adverse treatment.

20. Resources

Publications

- ◆ The Law Society Practice Notes on Lasting Powers of Attorney, Making Gifts of Assets and Financial Abuse and <http://www.lawsociety.org.uk/news/press-releases/managing-a-bank-account-for-another-person-to-become-easier-thanks-to-new-framework/>
- ◆ No Secrets - Guidance on developing and implementing multi agency policies and procedures to protect vulnerable adults from abuse' Local Authority Circular LAC (2000) 7
- ◆ In Safe Hands: Implementing Adult Protection Procedures in Wales, November 2009
- ◆ Social Care Institute for Excellence Report 50, Safeguarding adults at risk of harm: A legal guide for practitioners⁶⁹
- ◆ OPG Safeguarding Policy, May 2013⁷⁰ ◆ Guidance issued by the Crown Prosecution Service (CPS) about prosecuting crimes against older people (CPS, 2008)⁷¹

Useful Contacts

Action on Elder Abuse

PO Box 60001
Streatham
SW16 9BY
Tel: 020 8835 9280
Help line: 080 8808 8141
Email: enquiries@elderabuse.org.uk
Web site: www.aea.org.uk

⁶⁸ The Cancellation of Contracts Made in Consumer's Home or Place of Work etc Regulations 2008 (SI 2008/1816); The Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277): obtaining property by deception under s.1 of the Criminal Law Act 1977:

⁶⁹ <http://www.scie.org.uk/publications/reports/report50.pdf>

⁷⁰ <http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/safeguarding-policy.pdf>

⁷¹ http://www.cps.gov.uk/publications/prosecution/older_people.html

Age UK

Astral House
1268 London Road
London SW16 4ER
Tel: 0800 009 966
Web site: www.ageuk.org.uk

Age Cymru

Tŷ John Pathy
13/14 Neptune Court
Vanguard Way
Cardiff CF24 5PJ
Tel: 029 2043 1555
Email: enquiries@agecymru.org.uk

The Commission on Equality and Human Rights**Manchester**

Arndale House
The Arndale Centre
Manchester M4 3AQ
Telephone 0161 829 8100 (non help line calls only)
Email: info@equalityhumanrights.com

London

3 More London
Riverside Tooley Street
London SE1 2RG
Telephone 020 3117 0235 (non help line calls only)
Email: info@equalityhumanrights.com

Cardiff

3rd floor
3 Callaghan Square
Cardiff CF10 5BT
Telephone 02920 447710 (non help line calls only)
Text phone 029 20447713
Email: wales@equalityhumanrights.com

Help line

England: 0845 604 6610
Wales: 0845 604 8810

Care Quality Commission National Correspondence

Citygate
Gallowgate
Newcastle upon Tyne NE1 4PA
Tel: 03000 616161
Email: enquiries@cqc.org.uk
Web site: www.cqc.org.uk

Care and Social Services Inspectorate Wales

Cathays Park
Cardiff CF10 3NQ
Tel: 01443 848450
Email: cssiw@wales.gsi.gov.uk
Web site: www.cssiw.org.uk

The Health and Care Professions Council

Park House
184 Kennington Park Road
London SE11 4BU
Tel: 0845 300 6184
Web site: www.hpc-uk.org

Care Council for Wales

South Gate House
Wood Street
Cardiff CF10 1EW
Tel: 029 2022 6257
Email: info@ccwales.org.uk
Web site: www.ccwales.org.uk

Independent Age

6 Avonmore Road
London W14 8RL
Tel: 020 7605 4200
Web site: www.independentage.org.uk

Contact the Elderly

15 Henrietta Street
Covent Garden
London WC2E 8QG
Tel: 020 7240 0630
Email: info@contact-the-elderly.org.uk
Web site: contact-the-elderly.org.uk

The Alzheimer's Society

Devon House
58 St Katharine's Way
London E1W 1LB

Tel: 020 7423 3500
Email enquiries@alzheimers.org.uk
Web site: www.alzheimers.org.uk

Counsel and Care

Twyman House
16 Bonny Street
London NW1 9PG
Tel: 0845 300 7585 (advice)
Web site: www.counselandcare.org.uk

The Court of Protection

PO Box 70185,
First Avenue House,

42-49 High Holborn,
London WC1A 9JA
Tel: 0300 456 4600
Web site: www.gov.uk/court-of-protection

The Office of Public Guardian

PO Box 16185
Birmingham
B2 2WH
Tel: 0300 456 0300
Web site: www.justice.gov.uk/about/opg

The Official Solicitor and Public Trustee

Victory House
30-34 Kingsway
London WC2B 6EX
Tel: Property and Affairs: 020 3681 2758
Tel: Healthcare and welfare: 020 3681 2751
Web site: www.justice.gov.uk/about/ospt

The Health Service Commissioner for England

Millbank Tower
Millbank
London SW1P 4QP
Tel: 020 7217 4051
www.ombudsman.org.uk

The Public Service Ombudsman for Wales

1 Ffordd yr Hen Gae
Pencoed CF35 5LJ
Tel: (01656) 641 150
Web site: www.ombudsman-wales.org.uk

Local Government Ombudsman

PO Box 4771
Coventry CV4 0EH
Tel: 0300 061 0614 or 0845 602 1983
Email: advice@lgo.org.uk

Criminal Injuries Compensation Authority

Tay House
300 Bath Street
Glasgow G2 4LN
Tel: (Freephone): 0800 358 3601
Web site: www.cica.gov.uk

This document has been written by Anne Edis, President of Solicitors for the Elderly and Caroline Bielanska, former Chief Executive of Solicitors for the Elderly, for the benefit of SFE members, the legal profession, and those interested in safeguarding the interests of vulnerable adults.

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**INFORMATION
FOR
AN ATTORNEY ACTING UNDER
A PROPERTY AND FINANCIAL
LASTING POWER OF ATTORNEY**

The role of an attorney is one of responsibility, and if in doubt it is better to seek advice, rather than get it wrong. This guidance note provides an outline of important points for acting as a financial attorney.

What the lasting power allows you to do

This Lasting Power of Attorney made by the donor gives you power to deal with their financial affairs. You must only do such things as the power allows you do.

If you have been appointed with another person it may be that you have to deal with all matters together (a joint appointment); or it could be that you can act together or independently (joint and several appointment); or some decisions together and some independently (a hybrid appointment).

You must not delegate the role to another person, as the appointment is personal to you. It does not give you power to make health or welfare decisions such as medical treatment they should have or where the donor should live.

Can you use it immediately?

Once the power has been registered with the Office of the Public Guardian and provided there are no conditions or restrictions preventing you for acting at this point, you may use the power immediately. You should only do what the donor wants you to do and always act in their best interest. If there is a condition in the power which prevents you from using the power until the donor is mentally incapable of managing their financial affairs you will usually need to produced evidence of the donor's incapacity to third parties, such as banks and building societies to accept your authority.

Following the Mental Capacity Act 2005 Principles and Code of Practice

When acting under the Lasting Power of Attorney you must follow the Principles set out in Mental Capacity Act and have regard to the Code of Practice. This means:

- You must assume that the donor can make their own decisions unless it is established that they cannot do so because they lack mental capacity.
- You must help the donor to make as many of their own decisions as possible.
- You must not treat the donor as unable to make the decision in question unless all practicable steps to help them to do so have been made without success.
- You must not treat the donor as unable to make the decision in question simply because the donor wishes to make a decision you consider is unwise.
- You must make decisions and act in the donor's best interests when they are unable to make the decision in question.

- Before you make the decision in question or act for the donor, you must consider whether you can make the decision or act in a way that is less restrictive of the donor's rights and freedom but still achieves the purpose.
- The Code of Practice provides important guidance and information to help you follow the legislation, which you can obtain from <http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf> It is important that you consider the Code when making decisions, as failure to do so may result in your removal as an attorney.

What is in the donor's best interests?

Decisions as to what is or is not in the donor's best interest is not always easy and you must consider all the relevant circumstances and in particular consider-

- The likelihood of the donor recovering in the foreseeable future and being able to make the decision;
- Involving the donor in the decisions, so far as practical;
- The donor's past and present wishes and feelings;
- The donor's beliefs and values that would be likely to influence their decision if they had capacity;
- Other factors the donor would be likely to consider if they were able to do so;
- If practicable and appropriate, consult with carers, relatives and/or friends or others, such as another attorney or court appointed deputy who has an interest in the donor's welfare.

The limits of the power

The donor may have included restrictions or conditions in the power, which limit you from making gifts. If this is not the case, you may make gifts on customary occasions, such as Christmas presents, birthday presents and wedding presents, provided it is for a friend or relative, (including yourself).

Gifts can also be made to a charity if the donor has made gifts to the charity in the past or if not, in the circumstances might be expected to make gifts to the charity.

However in all cases, the size of the gift must be reasonable in the circumstances and in relation to the size of the total value of the donor's assets. You should be cautious to avoid interfering in succession rights under the donor's intended will or their intestacy, and in any event if the donor might need the asset for their own use in the future, for example to fund their care and outgoings. It is important to have sight of the donor's will, if they had one. A will is a confidential document, which means that if it is held by a lawyer, it may not be disclosed to you without the donor's consent (which may have been provided in advance) or an order from the Court of Protection.

If you have any doubt or wish to make gifts not covered by the above you should seek professional legal advice. The cost of which can be paid out of the donor's funds.

Managing finances

Banks and other financial institutions have different ways of dealing with attorneys. Some will allow you to continue to operate the donor's account whilst others will wish a new account to be opened. Many financial institutions allow jointly held accounts to operate as normal, once the power has been registered with them. If you have difficulties, read the consumer guide and the guidance framework for bank and building society staff available from the Law Society at

<http://www.lawsociety.org.uk/news/press-releases/managing-a-bank-account-for-another-person-to-become-easier-thanks-to-new-framework/>

If you operate an account for the donor, you should sign your usual signature and then add underneath your signature the words 'as attorney'. If you have to open a new account it should be opened in your name 'as attorney for' the donor. You will then only have to sign your usual signature to deal with the account.

You should not open an account in your name without identifying that the asset belongs to the donor, as this may cause complications with your own tax and financial affairs, including succession under your own will or intestacy. If it is not possible to hold the asset in this way, it is appropriate to identify the true ownership in a 'Declaration of Trust'. Legal advice should be sought in such situations.

Keeping accounts

The power may include a condition that you prepare and produce accounts every year to be checked by someone, such as a solicitor or an accountant. Even if the power does not say this, you still have a duty to keep accounts. It is sensible to keep financial statements and retain all receipts in one place. This is because the Office of the Public Guardian could ask you to account for your dealings with the donor's money.

The common law responsibilities

Under the common law, an attorney is a 'fiduciary' which means you must act with honesty, integrity and in good faith. You must keep the donor's affairs confidential, unless you are legally required, such as a request from the Office of the Public Guardian, an order from the Court or if there is good reason to disclose it.

You must not benefit from your position, even if you believe the donor would usually agree to it. For example, it would be a breach of your fiduciary duty to use the donor's money or property for your own benefit, even if it were a loan. Such action may be authorised by the Court of Protection. If in doubt, it is better to avoid a problem by seeking legal advice.

You must act using reasonable standards of care and skill. You should consider taking independent financial advice on how best to invest and hold funds belonging to the donor. How and where funds should be invested and managed will largely depend on the following:

- The donor's age and life expectancy
- The value and nature of the donor's resources, taking into account tax and costs implications of making changes
- The donor's financial needs including any responsibility to others
- The donor's attitude to risk and views of others
- The impact of any investment on state support

Any investment will need to be suitable and spread between different investments to limit the risk of a poor return. From time to time the investments will need to be reviewed.

Reimbursement of personal expenses

An attorney is not allowed to be paid, unless the donor has authorised it in the power. You can however recover reasonable out of pocket expenses, which have been personally incurred such as petrol and stamps, and in most cases this is unlikely to exceed more than a few hundred pounds a year. The donor's own expenses, such as care costs and items they need for their own use, such as clothes, day to day

outgoings and holidays, as well as any legal fees are paid out of the donor's funds. Ideally this should be transparent from looking at the donor's financial statements.

No longer wishing to act

If in the future, you no longer wish to act as an attorney, you may retire from your appointment by completing form LPA005, and sending it, with the original Lasting Power of Attorney to the Office of the Public Guardian. The form and OPG address are available from www.gov.uk. This may result in the Lasting Power of Attorney being revoked, unless another attorney has been appointed to act.

Failing to act in the donor's best interests

Most attorneys undertake their role diligently and no doubt you will do likewise. As an ultimate safeguard for the donor against poor decision making, the Court of Protection can remove an attorney who it finds has not acted in the donor's best interests. The Court will usually appoint a deputy to replace the attorney. If the attorney's actions have resulted in financial loss, the Court can order the attorney to reimburse the donor's estate to the extent of the loss. As a deterrent to others, the Court has also been known to publicise the attorney's name.