

FINANCIAL TIMES

Your Questions **Advice & Comment**

Is my grandmother being defrauded? I'm considering putting a lasting power of attorney in place



Lucy Warwick-Ching
5 HOURS AGO

I look after my elderly grandmother and have recently noticed regular payments are being made from her bank account to the same individual. I am extremely worried that something is amiss and that someone may be taking advantage of her. I have been told that there is a means of safeguarding her wealth by putting in place a lasting power of attorney? How would I go about this?

The first line of defence against financial abuse has to be a well-drafted lasting powers of attorney (LPAs) document. As we live longer and have to manage our money and estates to provide for our **old age**, it is sensible to put in place protective measures while we are still able.

Ann Stanyer, partner at law firm Wedlake Bell, says that as your grandmother's carer you should broach the subject sensitively. She may feel foolish and need reassurance that you can help protect her and her finances. It may be that she has been writing cheques in response to a phone scam or has "allowed" someone else to use her bank cash card to withdraw funds ostensibly for her benefit but they are then helping themselves to her money. It is known that the wealthy elderly are even more trusting than others and can easily succumb to the charms of fraudsters.

By discussing this with her, you will be able to gauge her understanding of these payments. Is she paying for services or products? Are they simply cash withdrawals? Are strangers calling at her door and demanding money from her?



Ann Stanyer, partner at law firm Wedlake Bell

If she has mental capacity then you must ask her permission to speak to any third parties about the problem. For example, could a neighbour shed light on house callers? They may see her going regularly to an ATM with an unidentified individual.

One of the steps she can take is to make an LPA, appointing attorneys to take decisions for her, both when she has capacity and when she has lost that capacity. If your grandmother does not have mental capacity, an application should be made to the Court of Protection for the appointment of a deputy

to manage her financial affairs.

Financial abuse has been defined as having money or other property stolen, being defrauded, being put under pressure in relation to money or other property, and having money or other property misused. An LPA relating to finances and property can ensure that you or another person your grandmother chooses to act for her can help prevent that abuse.

However, she must take good professional advice. This will involve consideration of who is appropriate to act as her attorney. Do they have financial acumen? Do they understand what they are taking on? Should the LPA include additional protections such as annual accounting or independent oversight over decisions?

Your grandmother should also consider how the person she appoints is to take investment decisions, including whether to grant them extra powers in the LPA to enable a delegation of discretionary investment management. LPAs are enabling documents that allow your attorneys to take significant decisions concerning your estate.



**Rosamond McDowell partner
at law firm Payne Hicks Beach**

Rosamond McDowell, partner at law firm Payne Hicks Beach says there are two types of LPA: one that covers a donor's property and financial affairs and another their health and welfare. Obviously the first type is most relevant in safeguarding wealth, but decisions as to where someone lives or their medical care can also be critical.

The donor must have mental capacity to make an LPA, and a certificate provider must attest to that on the LPA form. Making an LPA does not allow the attorney to usurp the donor's authority. Rather, the attorney is required to assist the donor, so far as possible, in managing her own affairs, as the process of losing capacity rarely happens overnight. Once capacity is lost, the attorney will need to assume full control of the donor's affairs.

If mental capacity has already been lost, the fallback position is that an application may be made to the Court of Protection for the appointment of a "deputy". The deputy will have the authority to manage the person's affairs in a similar way to an attorney.

It is worth stressing that if your grandmother's capacity is not in doubt, and if she has freely chosen to make regular payments to a particular individual, then an attorney under an LPA cannot prevent this continuing. If, on the other hand, you discover there has been some level of undue influence exercised, or even duress or fraud, the situation may need very careful handling; elderly people can be extremely vulnerable, even if they retain their capacity.

The forms for executing an LPA are available online, but taking legal advice is sensible to avoid the expense and inconvenience of correcting errors once the donor has lost mental capacity. If there are issues of undue influence or duress, legal advice is imperative to assist in protecting the vulnerable elderly and indeed undoing wrongs to which they have fallen prey.

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