

Rise in power of attorney being abused

A rise in the number of people taking up an attorney's role is leading to abuse of the system

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Some who hold power of attorney are making improper gifts to themselves

The number of people with power of attorney being taken to court for abusing their positions and failing to act in the best interest of the vulnerable people they have sworn to help is soaring.

There have been 721 applications to censure or remove attorneys in the past year, compared with 465 the year before and 250 in 2017. Experts fear this is only the tip of the iceberg. Many of these court actions are likely to have followed tip-offs to the authorities by concerned relatives and carers.

Power of attorney (POA) is when one person is given legal authorisation to act on another's behalf, usually to help them with financial, property, health and welfare decisions if they lose mental capacity through illness or an accident. Last year 2,883 safeguarding investigations were launched to look into whether abuse of vulnerable people had taken place as a result of attorneys not abiding by the rules.

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Peter King, a partner at Nockolds, a law firm, says: "Some attorneys think it quite in order to make a substantial gift from the donor's estate on the basis that they will inherit it in the long run anyway and they might save themselves some inheritance tax. The rise in legal actions against attorneys is vastly greater than the rise in the number of attorneys on the register, which raises some fundamental questions about how the system operates and whether there are sufficient safeguards. Misconduct among attorneys is very difficult to detect, so these numbers are likely to be the tip of the iceberg.

"People need to understand that handing over power of attorney is like giving someone your cheque book. With most banking conducted online, there is little to no oversight of the transactions, which leaves the system open to abuse."

King adds: "Attorneys often fail to understand that they cannot second-guess a vulnerable person's wishes and, for example, claim that paying university fees for the attorney's children is what they would have wanted."

There are two types of POA: health and welfare, and property and financial affairs. The cost of setting up a POA through a solicitor is about £700, or £1,000 for two. You can set up a POA online, which costs £82, or as little as £41 for those that earn less than £12,000 a year, according to Chase de Vere.

King says it has always been possible to set up a POA yourself, but people's growing realisation of this is probably adding to the problem.

"If you go to a professional adviser or solicitor they are obliged to spend hours explaining the process and making sure that you understand the Mental Capacity Act — it is not just a case of printing off a form and signing it."

Kelly Greig, the head of later life planning at Irwin Mitchell, a law firm, says: "With modernisation comes the need to make sure the proper safeguards are in place to protect the elderly and vulnerable from financial abuse. One way of solving the problem would be to ensure it is mandatory for both parties to take advice when they begin to act."

Step, a professional body for inheritance and trust advisers, says: "You may want to consider inserting a clause [into the POA] to give a third party, such as a solicitor, oversight of your attorney, or if you do not have anyone that you think will be appropriate to manage your affairs, a solicitor can be appointed as an attorney. Bear in mind that a professional will charge for this service."

Power with responsibility

The Mental Capacity Act 2005 has five principles that people with power of attorney must follow:

- Always assume a person has capacity unless proved otherwise
- Take all practical steps to enable people to make their own decisions
- Do not assume incapacity simply because someone makes an unwise decision
- Always act, or decide, for a person in their best interests
- Choose actions which interfere least with their rights and freedoms