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Changing policy landscape around elder abuse in England and Wales

Health and legal professionals must advocate together for the strongest possible safeguards

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Abuse of older people is a global public health problem.¹ In 2021, the World Health Organization launched the United Nations Decade of Healthy Ageing, with a key focus on tackling elder abuse.² The UK is also giving attention to the problem.³ In 2023, the domestic abuse commissioner for England and Wales, Nicole Jacobs, supported a call by the UK charity Hourglass, which focuses on violence against older people, for a prevention framework across the four nations.³

Predatory marriage and abuse of lasting powers of attorney (LPA) are two forms of elder abuse that are of growing concern in the UK. Predatory marriages are under-reported but a rising problem.⁴ LPA abuse of older people is also under-reported but may be more widespread, linked to the enormous numbers of LPAs registered annually at the Office of the Public Guardian: there are now almost seven million LPAs in the UK, with over a million registered in 2023 alone. Over 50% of people signing powers of attorney (donors) are aged over 75 years.⁵

For most older people, LPAs are an important means of planning for trusted others to make decisions on their behalf if mental capacity fails. However, as the Law Society cautions: “An LPA is one of the most important legal documents a person will make. The consequence of an attorney making a poor decision could result in the donor losing all their assets, being admitted into a care home against their wishes or even premature death.”⁶ Even based on limited statistics from the Office of the Public Guardian, LPA abuse figures are alarming: more than 20 000 full investigations of attorney abuse took place from 2010 to 2023. Between 2010 and 2020, over 4000 such cases went to the Court of Protection for action.⁷

Changing legal landscape

An editorial in *The BMJ* in 2021 highlighted safeguarding concerns about plans to “modernise” legislation around both marriage and LPAs in England and Wales.⁸ Since then proposals by the Law Commission that may protect against predatory marriage have moved slowly. Modernisation of marriage legislation is paused⁹; and proposals on wills are under development until 2025.¹⁰ LPA “modernisation” has progressed much faster, however. The Powers of Attorney Act 2023, aimed at streamlining LPA procedures, is now law.¹¹ The act seeks primarily to digitise LPAs—giving donors the ability to sign and execute LPAs online alongside changes to witness and certification requirements, a streamlined approach towards registration of LPAs, and amended processes for raising concerns and objections.

Legal professionals express mounting alarm about LPA abuse,¹² and for many the new law raises further concerns.^{13 14} Most people making LPAs are older than 75 and may not have digital access or the skills to use online services securely.¹⁵ Allowing donors to sign online, apparently without a witness, may undermine the safety of LPAs, especially given concerns about how the identities of signatories will be verified securely. That a wider range of people are now able to raise concerns may not protect donors—it seems unfeasible when there is no requirement to notify registration of an LPA (unlike, for example, for enduring powers of attorney).

The Law Society is also concerned about the role of certifiers in the digital system—including whether they will be required to assess capacity or potential coercion of donors (or both) at the point of signing.¹⁶ The Ministry of Justice has committed to an improved paper version alongside the digital plan but gives no details of how this will work.¹⁷ Overall, the new law for England and Wales now contrasts starkly with safeguards in the rules of the Scottish Office of the Public Guardian, which require donors to obtain a certificate of capacity from a solicitor, advocate, or GP before their power of attorney can be registered and used.¹⁸

Update guidance for health professionals

Healthcare professionals, particularly those in primary care, are often the first to speak with patients and formally evaluate when people’s memory and cognitive status are in decline. They are often involved at key opportunities for protecting older people. The BMA warns: “Sadly, more and more health professionals are becoming aware that their patients may be victims of financial abuse. This can be particularly important in assessments of capacity in relation to the transfer of decision-making authority to proxies such as attorneys.”¹⁹

We are now in a critical policy window for protecting older people in England and Wales from abuse: the Ministry of Justice is still working on the regulations needed to implement the Power of Attorney Act 2023, and the Law Commission’s proposals are still in development.

In this context, health professionals have an even more important role in protecting older people. This requires, at a minimum, that all guidance on elder abuse produced for health professionals is kept up to date with changes in regulations.^{19–21} Health professionals should also work with the legal profession to advocate that the strongest possible safeguards be incorporated into the Ministry of Justice regulations protecting older people from LPA abuse,

and to support Law Commission proposals that may help protect older people from predatory marriage.

Competing interests: We have read and understood BMJ policy on declaration of interests and declare the following: CS and RA have personal experience of some of the problems raised in the editorial. AS is a senior practising lawyer and author of books on lasting powers of attorney and financial abuse of older clients. AB is a senior practising lawyer advising MPs on predatory marriage and LPA abuse.

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