



"it's only fraud"

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Fraud committed by carer / family = High Harm Fraud

- Targets vulnerability
- Highest losses
- Biggest impact – emotionally and financially

Fraud by abuse of position of trust

Dishonest conduct, namely the dishonest abuse of a position, where a person has been expected by virtue of that position 'to safeguard, or not to act against, the financial interests of another person'.

S. 4 (1) (a)- (b) of the Fraud Act 2006.

the person must have acted **dishonestly**, and that they had to have acted with the **intent** of making a gain for themselves or anyone else, or inflicting a loss (or a risk of loss) on another.

Omission as well as overt act

Theft / Fraud by false rep?

- Criminal threshold very high
- Often seen as civil so evidence not preserved
- Often victim unable to give clear evidence
- Suspect may have partial 'consent'

Case studies

R V S

- Suspect 1 of several carers
- Daughter of victim identified financial anomalies
- Evidence shows systematic financial abuse by carer (purchases Inc. flights, dental work and designer clothing purchased using victim's bank card).
- Victim passed away before suspect arrested.
- Suspect claims victim consented to the purchases and gifted the items to him

R V DF

- Victim met suspect in local pub
- Victim isolated and suffering various medical issues
- Suspect 'befriended' victim and began doing shopping and errands for him.
- Suspect built barriers to victim's family and visited with her own children.
- Victim found collapsed at home following FFW call from family
- Family found bank statements showing over £200k missing from victim's accounts
- Financial enquiries reveal large online bank transfers to suspects' accounts
- Victim has never used online banking

Protect the carer and cared for (pre and post death)

- Capacity?
- Audit trails
- Specific accounts
- 3rd party mandates
- Joint accounts
- LPA for finances
- Deputyships
- Wills and probate
- 3rd party oversight / family involvement
- Professional oversight

LPAs

Lasting Power of Attorney

Two types, covering either property and finances OR health and welfare. Must be registered before it can be used.

Enduring Power of Attorney

Covers only property and financial affairs. Can be used pre-registration but **MUST** be registered if and when the Donor starts to lose capacity.

Ordinary/General Power of Attorney

Can be used only while Donor retains capacity. Can be general or specific to authorise another to undertake a particular transaction.

Attorney Responsibilities

- Guidance books from OPG (LP10, LP11)
- Follow principles of MCA – cannot plead ignorance
- Always act in Donor's best interests
- Duty to keep records and account to OPG (reactive)

Restrictions

- Must not receive payment, must keep money separate from their own, must seek authority from COP for potential conflicts of interest, gifting and loans.
- Not entitled to 'get inheritance early'

All decisions must be reasonable, justified, proportionate and **in the Donor's best interests.**

Deputyships

Court of Protection - COP

Court which makes decisions for those **who lack capacity** to make decisions for themselves.

Appoint Deputies, consider validity of LPAs, disputes and investigations into Attorneys and Deputies, additional powers (e.g. gifts, IHT planning, buy donor's house) and authority, DOLS.

Deputy Order

Alternative when individual lacks capacity > Apply directly to Court - capacity assessment, service of parties, Order – timescales (6m+)

Online portal

Deputy Responsibilities and Powers

- Responsibilities addressed on Declaration; Powers derived from Order (with quite specific restrictions) but includes general authority to manage financial affairs
- Security Bond as insurance
- Annual report and supervision – **proactive** reporting requirement

Mental Capacity Act 2005

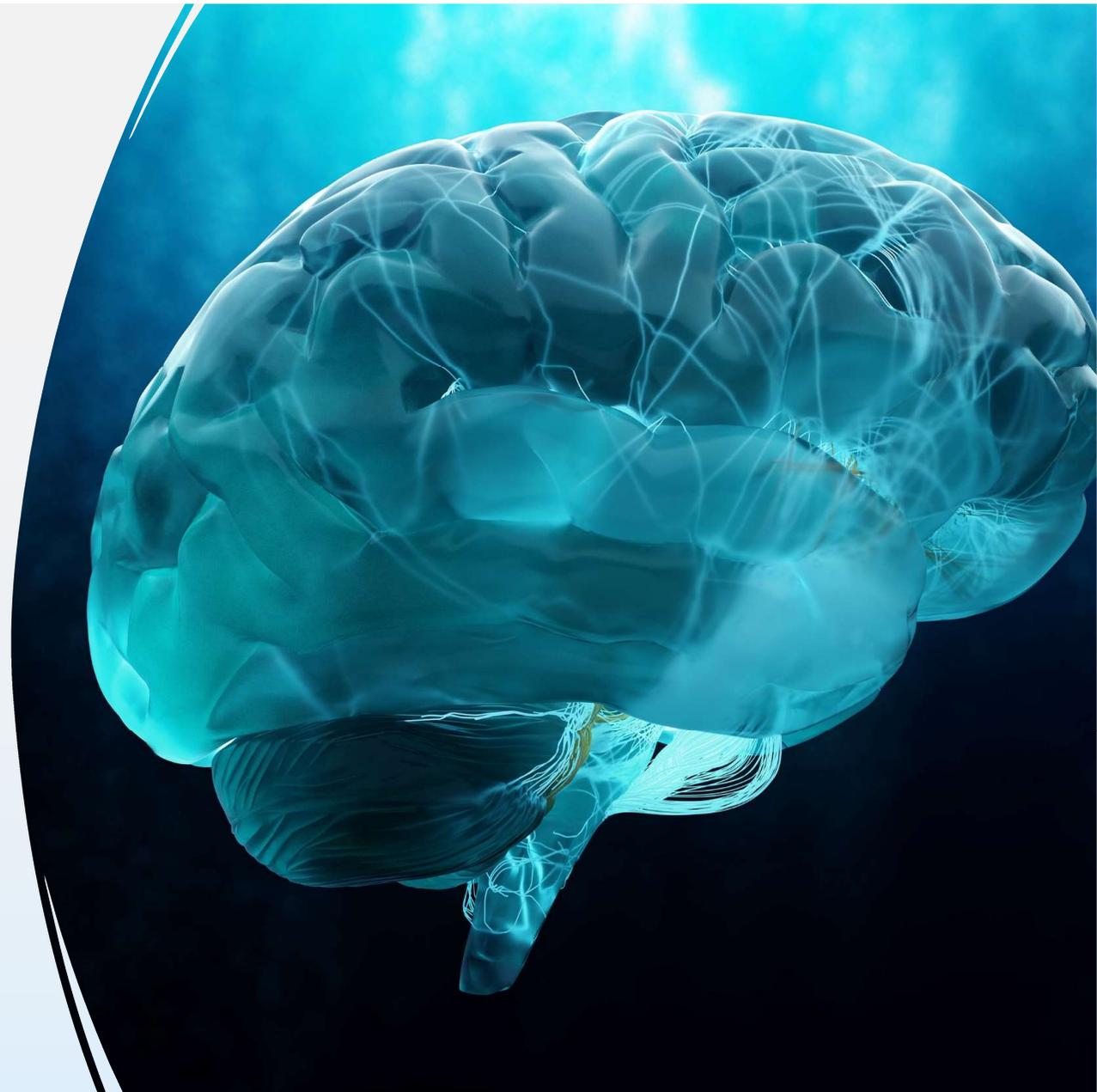
Test for capacity (Sections 2 & 3 MCA)

- 1) Does the person have an impairment or disturbance of the mind or brain?
- 2) Does this impairment impact the person's ability to make the decision in question?

No capacity if person cannot:

- Understand the relevant information
- Retain that information to make a decision
- Use or weigh up the information
- Communicate the decision

Capacity is **time** and **decision** specific



Any questions?

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