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*The role of the Public Guardianship
Office in safeguarding vulnerable
adults against financial abuse*

Prepared for the PGO by Hilary Brown, Sophie Burns and Barry Wilson

The role of the Public Guardianship Office in safeguarding vulnerable adults against financial abuse

This research project was commissioned by the Public Guardianship Office and took place between 2001 and 2002. It was undertaken by a team based at the Salomons Centre for Applied Social and Psychological Development, consisting of Hilary Brown, Sophie Burns and Barry Wilson.

Although the research was specifically designed to assist the PGO to better understand and respond to financial abuse in its own context, much of what was revealed has wider implications and applicability. In addition, since the PGO is arguably one of the main statutory agencies available to intervene when financial concerns arise, (the other being the Benefits Agency), examination of its work and systems has relevance for all those interested in protecting vulnerable adults from financial abuse. The agency also identifies individuals whose money is not being appropriately spent to meet their needs and who may be at risk of serious neglect which is the province of social services departments, so these links need to work both ways.

The first paper in this project by Hilary Brown explores a working definition of financial abuse by bringing together the literatures on both financial abuse and neglect to explore the interplay between “greed and need” in making judgments about when to intervene.

The second paper by Sophie Burns, working with PGO staff, provides a profile of the PGO’s work describing the agency’s remit and the mechanisms it has available to manage and protect the assets of vulnerable people. This review also cites a review of case files that was designed to identify an approximate incidence rate for potential financial abuse amongst its client group from a stratified random sample of PGO case files. Its conclusions were that in approximately 4% of cases (in the order of 2000 per annum) there were significant concerns about financial abuse.

The next paper by Hilary Brown, Sophie Burns and Barry Wilson looks in some detail at a selection of PGO cases where financial abuse was believed to have occurred. This describes different dynamics of abuse and abusing and includes a range of illustrative case examples of interest to practitioners.

Finally, there follows a paper by Barry Wilson, Sophie Burns and Hilary Brown reporting on a small-scale survey of adult protection co-ordinators within social services departments to describe their experience in addressing cases of financial abuse and their contact with the PGO as a part of this work. The study revealed considerable variation across the contributing social services departments both in terms of their work on adult protection cases and their ongoing links with the PGO in terms of active management of client’s finances.

WHAT IS FINANCIAL ABUSE?

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What is “abuse”?

The term “abuse” can be defined narrowly or broadly to cover a range of different acts and failures to act, by different perpetrators and in different settings. It is defined in a recent report from the Council of Europe (2002) as:

“Any act, or failure to act, which results in a significant breach of a vulnerable person’s human rights, civil liberties, bodily integrity, dignity or general well-being; whether intended or inadvertent; including sexual relationships or financial transactions to which the person has not or cannot validly consent, or which are deliberately exploitative.

and in “No Secrets” (DoH 2000) as

“a violation of an individual’s human and civil rights by any other person or persons (DoH 2000 para 2.5)”

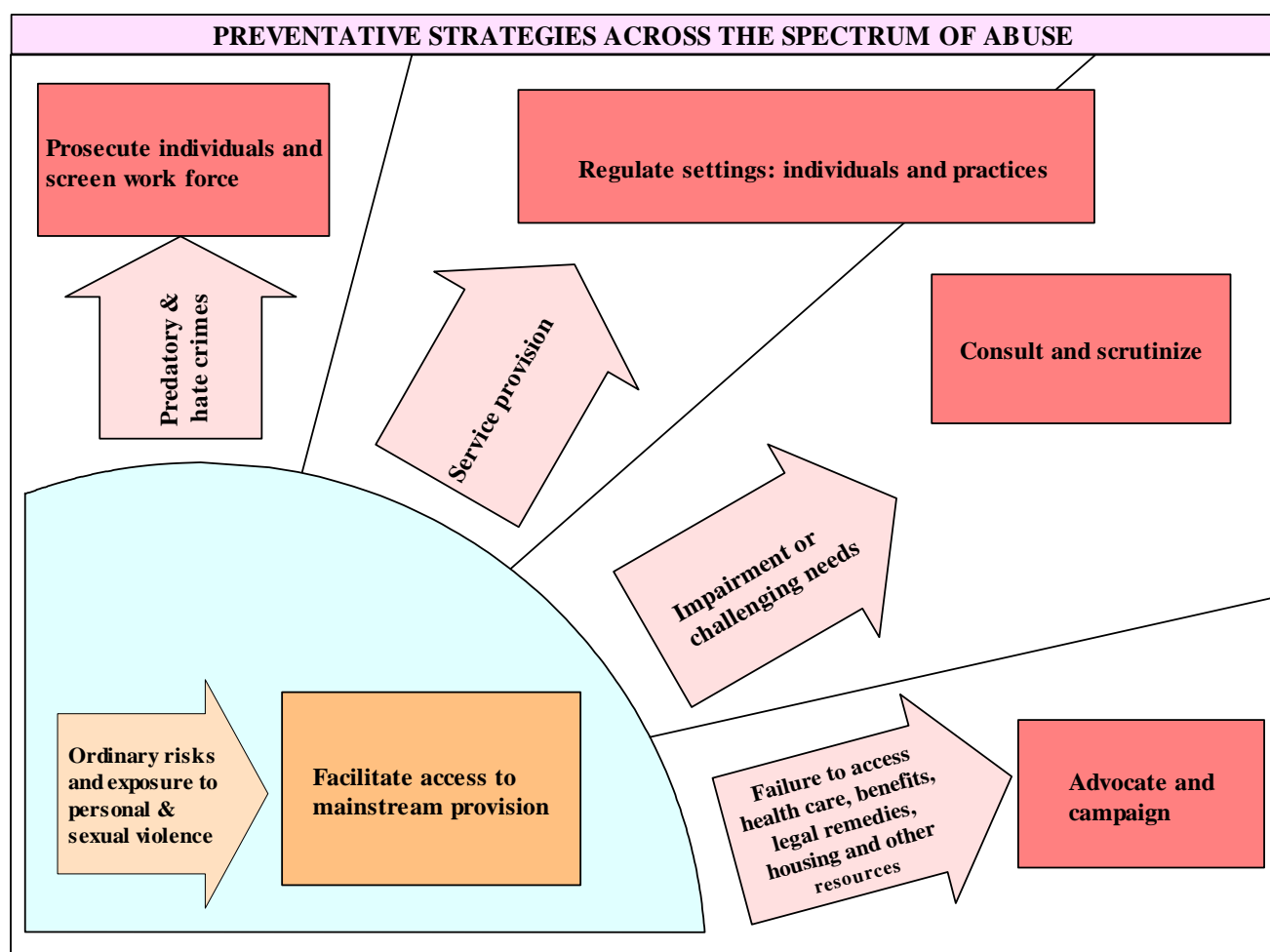
“... including physical abuse, sexual abuse; psychological; financial or material abuse; neglect or acts of omission; and discriminatory abuse (ibid, para 2.7).”

The term “abuse” is controversial, some commentators argue that it downplays serious crimes committed against vulnerable people, while others see the term as unnecessarily stigmatising and inflammatory. These differences of opinion reflect its use to describe a disparate range of acts arising out of different dynamics and in different contexts. At one end of a spectrum abuses include “ordinary” crimes such as theft, fraud or aggravated burglaries where these are committed against victims who happen to have additional vulnerabilities. At the other end of the scale some abusers deliberately target and exploit people financially and sexually because they are visibly vulnerable. Other forms of abuse arise out of the settings, dynamics and arrangements that are associated with service usage, paying for care, having a home carer, living in a residential home or entering into a professional relationship: in these cases vulnerability is as much a product of the setting as the circumstances of the individuals involved. Abuse can also arise out of genuine dilemmas when service users have challenging needs such as fluctuating mental health problems or behaviours which are difficult to manage, which lead to difficult judgement calls and contentious interventions. Abuses also occur out of neglect or omission- vulnerability is created as well as exacerbated by poverty, which is made worse by discrimination and/or a failure to access benefits and entitlements.

These different types of abuse have to be countered using different systems to protect, adjudicate and apply appropriate sanctions and Figure 1 outlines the

different mechanisms which have to be engaged in these different risk contexts.

FIGURE 1: DIFFERENT CONTEXTS OF ABUSE AND RELATED SYSTEMS FOR PROTECTION

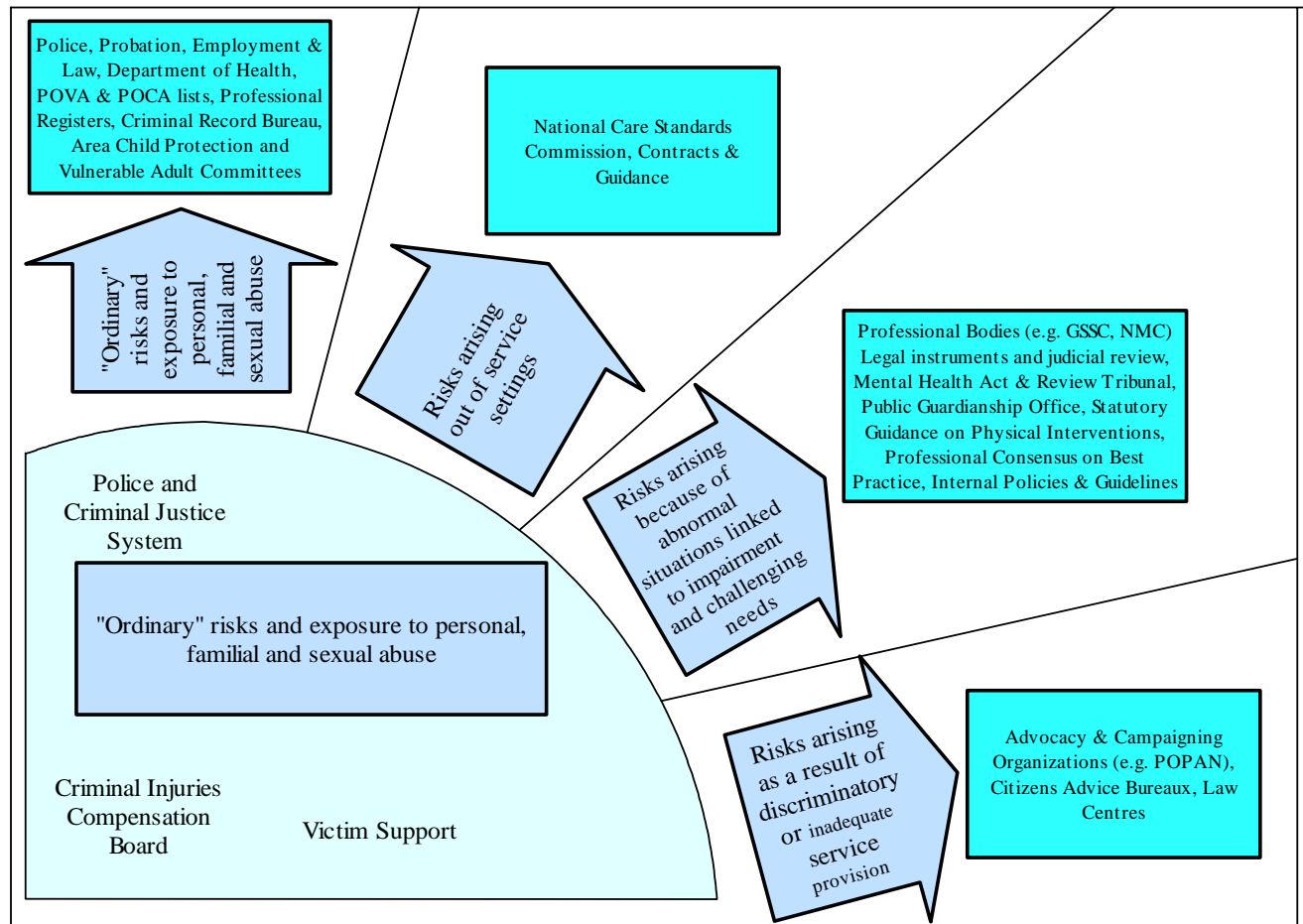


Financial abuse occurs across all these boundaries. Occasionally the mechanisms established to assist (e.g. those of the PGO) are corrupted as part of deliberate exploitation and fraud. Sometimes abuse occurs against the backdrop of payment for services, misuse of clients' funds by service agencies or theft by social care professionals. Vulnerable adults who have lost capacity to manage their affairs, often require complex decisions to be made on their behalf and will often be referred to the Court of Protection. However, even for the Court it is not always easy to decide whether a particular course of action is in their best interests. The Court provides a formal mechanism for scrutinising such decisions in that it monitors the activities of appointed day to day decision makers (receivers). In other instances, the Court becomes the decision maker, such as when the receiver makes an application for money to be released from the client's Court Funds Account for a particular purpose.

The Court and its administrative arm, the PGO, do not get involved in arranging the uptake of benefits although receivers are required to maximise entitlements and the agency will provide advice in this respect, as well as investing clients' monies efficiently on their behalf. Concern about vulnerability to crime may be one trigger for a referral into the Court/PGO on behalf of someone losing their ability to manage their affairs. So it is clear that a range of systems, formal and informal mechanisms are brought into play in

response to financial abuse and hence the need for a multi-agency approach and coordination (see Fig 2) .

FIGURE 2: MECHANISMS FOR ADDRESSING RISK HEIGHTENED RISK FACED BY VULNERABLE ADULTS



What is financial abuse?

Hence it can be seen that the term “financial abuse” refers to different forms of wrong-doing, which need to be unpacked as a first step in recognition and response (Tueth, 2000). The term is used to describe

- misappropriation of money and/or other assets by various means such as theft or fraud
- transactions to which the person could not consent or which were invalidated by intimidation, deception or exploitation
- misuse of assets legitimately accessed but wrongfully spent
- non-use of assets to meet the legitimate needs of a vulnerable person.

Agencies and systems may be alerted to any or all of these problems and will make different judgments about how they interact. For example, an enduring power of attorney (EPA) may be set up at the time when a vulnerable person's capacity is already failing but although this is questionable at law the arrangement may then be used entirely positively for the benefit of the vulnerable person. On the other hand, EPAs may be set up quite correctly but subsequently used as a mechanism for accessing monies in the context of an exploitative relationship. Donors can make EPAs consensually because as long as they have capacity, they are free to appoint whomsoever they like to act on their behalf. But a transaction which looks above board may be the product of an exploitative or potentially abusive relationship. Moreover, judgments have to take account of issues arising in relation to inheritance: receivers and attorneys may have an interest in preserving estates and assets which conflicts with their duty to use those resources to meet the immediate needs of the vulnerable person in the last years of their life.

These intentions and conflicts of interests may be manifested in abuse that is planned or opportunistic. Planned financial abuse is deliberately targeted and may have similar dynamics to those observed in relation to sexual abuse including "grooming" of a vulnerable person in order to infiltrate their networks, replacing other more legitimate social contacts (if there are any) worming their way into a position of trust. These abusers are difficult to challenge because what is a relationship of exploitation on one side may be perceived as a relationship of choice on the part of the vulnerable person. Loneliness and isolation on the part of the vulnerable person may then play a part in marking them as potential targets for predatory abusers. This type of abuse is of particular concern in that it is likely to be repeated with other vulnerable adults targeted simultaneously or sequentially.

Opportunistic abuse is more likely to emerge over time and present as a series of boundary violations, each one difficult to "tie down" but becoming cumulatively more serious. This is the situation of receivers or attorneys who stretch rules for example by moving into the vulnerable person's property, awarding themselves increasingly generous allowances or gifts, or buying goods nominally for the vulnerable person which are instead primarily used for themselves or their families. The person may initially act legitimately but take liberties because they find they can or because they find themselves in unforeseen situations such as in debt or having business problems. In this situation the abusing person has to overcome any external barriers which are placed in the way, for example in response to a request to the Court of Protection/PGO, but also their own internal reservations or qualms (see Finkelhor 1984). They may then rationalise or justify the questionable transaction in a number of ways:

- by saying it is what the person would have wanted, for example that their relative or friend would have wanted to help them over lean patches in their own financial affairs
- by appealing to the 'unfairness' of the situation e.g. "they have all this which they do not really need whereas I have less than I need" and/or
- by portraying the gift, loan or payment as a reward for services or sacrifices made in the course of caring for the person (which may have been considerable),
- by justifying the payment as an advance on money that will be rightfully theirs when they eventually inherit.

Because there is likely to be a germ of truth in these arguments, individual instances will be difficult to take issue with and the overall and often escalating pattern needs to be tracked and monitored. Internal systems will be needed to facilitate this especially where there are discontinuities in staff assigned to individual cases.

A working definition

Given the complex dynamics, assessment of financial abuse has to take into account:

- the intentions of the (potential) abuser and their relationship with the vulnerable person,
- the nature of the transaction(s) whereby the mechanisms were put in place to access the money,
- the extent to which the money is being used properly to meet the vulnerable individual's needs
- the degree of harm or loss to the vulnerable person
- any conflicting interest the attorney/ receiver has in terms of eventual inheritance
- any competing claims from other relatives/ associates that are being overlooked or sidelined.

A working definition of financial abuse may be stated as:

The intentional or opportunistic appropriation of the income, capital or property of a vulnerable person through theft, fraud, deception, undue influence or exploitation; including the hoarding of a vulnerable person's resources for future gain which is also a form of exploitation and may be associated with culpable neglect.

A working typology

This grid illustrated in Figure 3 maps the possible relationships involving a vulnerable adult and someone who is "assisting" them with their financial affairs – for example an attorney, receiver or person in a similar position, plotting the possible gain/potential gain of this person against the extent to which they are meeting the vulnerable person's needs to highlight against different patterns of, or justifications for, abuse encountered in typical cases encountered in the research. Case studies drawn up from PGO case files (in the interests of anonymity significant details have been changed or composite cases created).

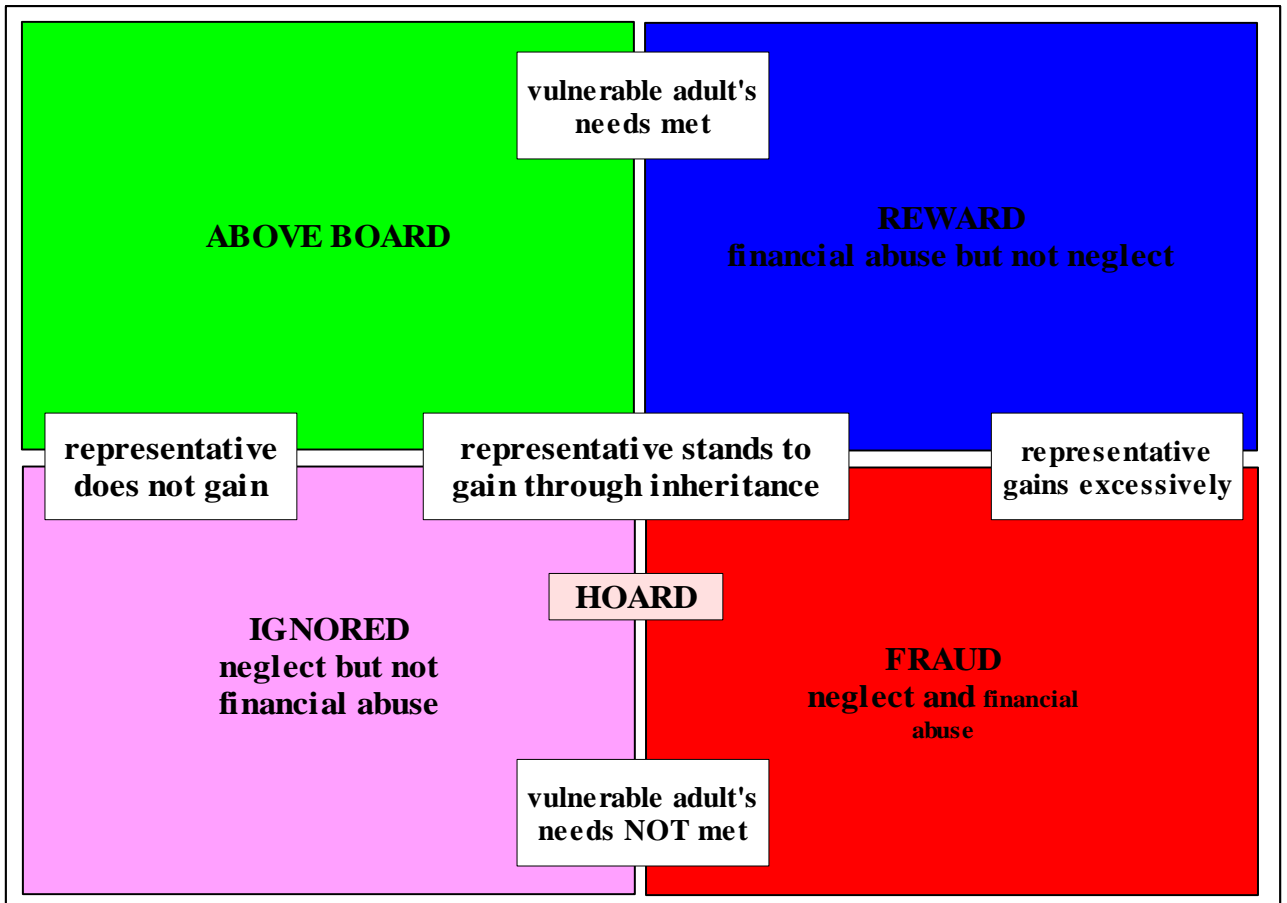


FIGURE 3: THE RELATIONSHIP BETWEEN “GREED AND NEED” IN ASSESSING FINANCIAL ABUSE

Using this typology the following case example illustrate this dynamic.

Reward?

Miss Jones gave up her job ten years ago to care for her mother who has dementia. She arranged for her mother to sign an enduring power of attorney when it became clear that she could no longer manage her affairs - bills were going unpaid and Mrs Jones on several occasions left large amounts of cash around the house or in her handbag even though she had been warned of the risk that she might be burgled or mugged. Mrs Jones has a small pension; an average sized semi-detached house and a modest amount of capital (£12,500). According to the GP it was questionable as to whether Mrs Jones actually knew what she was signing at that point but everybody agreed that it was for the best to 'fudge' the issue. Miss Jones registered the EPA with the Court of Protection several years later by which time it was clear that her mother had definitely lost capacity. Around this time Miss Jones sold her own flat and moved into her mother's house: she spent £9,500 decorating the upstairs and having a small conservatory built on the side of the house opening onto a re-equipped kitchen, but shortly afterwards she decided that it would be best for her mother to go into residential care. Miss Jones said that it was becoming increasingly difficult to look after her mother who was up all night and since she was now very frail as well as disorientated she "needed watching constantly". The local authority are in dispute with Miss Jones about whether they are entitled to put a charge on the home and require it to be sold to meet the residential home fees. They have queried whether Miss Jones spent the capital deliberately to avoid paying towards the fees. Miss Jones says that she is going to put the house into her name as this is what her mother would have wanted and anyway she has "earned it" having given up her job and her own home and jeopardized her pension in the process. One of Miss Jones's former colleagues recently visited with photos of his recent three week luxury holiday in the Bahamas: his mother had been as fit as a fiddle but then died very suddenly from a heart attack and so he had inherited his mother's house without any complications, and he continues to work in a job which has a good pension scheme. His visit has heightened Miss Jones's sense of unfairness about her situation and has said that she will make a complaint unless Social Services top up her mother's pension to fund her placement and "get off her back".

Ignored or hoard?

Mr. T is a retired civil servant who has been appointed receiver for his widowed father. When his father moved into a local nursing home, he sold his own flat and moved into what had been the family home. He is a lonely man himself and may have mental health problems. As the only child there is no one else to keep an eye on his father's estate. Although he lives very close to the nursing home he very rarely visits and sometimes even leaves his car engine running when he pops by to drop something off for his father. He has only made three short visits in the last nine months. One of his father's few pleasures in life is a good malt whiskey but he has only been "allowed" to have one bottle during this whole period. Staff at the residential home have queried this with the PGO as they want to set up a small fund so that Mr. T senior can buy adequate toiletries and luxuries to make his life more comfortable.

Hoard or fraud?

Mrs Smith is a woman in her late 80's with dementia. An Enduring Power of Attorney (EPA) was drawn up in favour of her son, Mr Smith, in the early stages of her illness, but the rest of the family were not informed at this stage. With hindsight, there were some concerns about her capacity to create the EPA, even at this early stage of her illness. Mr Smith set up support from a home care service, with himself as her main carer. Mrs Smith's other son and daughter soon became worried that their mother was not eating well and that her clothes were very worn out; they suspected their brother was spending her money on himself. They alerted local Social Services to their concerns and asked for an investigation to be carried out. They also lodged a complaint with the PGO. Although the Court of Protection issued a court order for the home care support service to provide information about Mrs Smith's on-going care, the other son and daughter were suspicious that the service was shielding their brother and presenting him in an unjustifiably favourable light. They were dissatisfied with investigations carried out by Social Services because they perceived the home care service as colluding with their brother. They tried to gain access to financial records to build evidence that Mr Smith was taking their mother's money, but he blocked all their attempts by citing the Data Protection Act. Mr Smith (junior) and Miss Smith challenged his version of events and it was their view that he had manipulated the situation by being present at the medical assessment at which it was decided that their mother was capable of creating the EPA and that he had then hidden subsequent medical reports that might have indicated that he should register the EPA with the PGO on the grounds that she had lost capacity. The EPA was revoked four and a half years later, by which time there was very little money left in Mrs Smith's estate.

Fraud

A care manager in the North of England raised serious concerns that one individual has befriended several of her clients and that she has reason to think that he might be a serial perpetrator of financial abuse. He has involved himself in the financial affairs of four different older women, even though he is not directly related to any of them during the course of which he has:

Registered an EPA for a woman who lacked capacity and who later “gifted” him her house

Registered another EPA for a second older woman who has a disabled son. She then “gifted” him her property in the belief that he would care for her son. She has since died and the son has been moved into residential care. The man is now acting as an informal receiver for the son’s money; this was discovered when a cheque written to the son was sent to him.

Taken out an EPA for another older woman who had capacity and has since died.

Registered an EPA for a fourth woman who had capacity who also subsequently gifted him her house.

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The work of the Public Guardianship Office in protecting vulnerable people from financial abuse

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Abstract

This paper explains the role, remit and mechanisms available to the Public Guardianship Office in relation to the administration of the financial affairs of adults who are not able to manage their affairs. The PGO administers the affairs of approximately 20,000 clients under receivership orders and also has in the region of 60,000 Enduring Powers of Attorney registered for clients who have lost capacity since setting these arrangement in place. A review of 51 random cases suggested a rate of potential abuse amongst at least 4% of these cases.

Introduction

The PGO was established in April 2001 as an Executive Agency within the Lord Chancellor's Department. The PGO acts as the administrative arm of the Court of Protection and undertakes the mental health functions previously carried out by the Public Trust Office (PTO).

Based in North London, the aim of the PGO is to promote the financial and social well being of persons unable to administer their own financial affairs due to mental incapacity. This service is provided in England and Wales. Similar but separate arrangements exist in Scotland, which has its own Office of the Public Guardian whilst the Office of Care and Protection provide coverage in Northern Ireland.

The PGO provides a service to its clients (i.e. the person with mental incapacity) that aims to safeguard their financial interests whilst avoiding unnecessary state intervention. The PGO does this in three main ways;

By appointing receivers under a First General Order to administer the affairs of clients with mental incapacity

By appointing persons under Short Orders to administer the affairs of clients with mental incapacity

By registering Enduring Powers of Attorney (EPA) at the point where the donor of the power loses capacity

The Court of Protection appoints receivers upon application by individuals (whether acting in person or representing organisations such as Local Authority Social Services Departments) who have put themselves forward as being suitable to manage the financial affairs of the person with mental incapacity. Many receivers are relatives or close

friends of the client although there are others, such as solicitors or local authority staff, who carry out this service on a professional basis. The Court can also appoint Panel Receivers who are professionals (usually solicitors) specifically authorised by the PGO to carry out this function when no other suitable receiver has been identified. Once a receiver has been appointed, the receiver is accountable to the PGO through the submission of annual accounts and by gaining clearance for capital expenditure from the client's funds. The function of the PGO is to provide assurance that the receiver is acting in the best interests of the client when dealing with their financial affairs. The PGO monitors their receivership clients by sending out Lord Chancellor's Visitors, who effectively provide the Court with a set of eyes and ears concerning what is happening "out there" and also they can send out a Medical Visitor in cases where there is some doubt about the mental incapacity of the client at the time the instruments were put in place.

The Court can also appoint persons under Short Orders in cases where the assets of the client amount to less than £16,000. In such cases, there is no accounting requirement but as with cases where a receiver has been appointed, the Court can intervene at any time and make orders discharging the person appointed and appointing a replacement. The Court usually hears cases where a whistle has been blown or where there is an objection to a particular person being appointed to manage a client's affairs.

Under an Enduring Power of Attorney, the donor appoints an individual to manage their financial affairs. The concept behind EPAs is that the individual decides who they want to manage their affairs whilst they still have mental capacity and the power only comes into force once the EPA is registered with the Court, which is at the point where the donor loses capacity. As with other mechanisms, the Court only has the power to intervene in cases where it is not satisfied that the best interests of the vulnerable adult are being served by such an arrangement.

The PGO has access to limited information and limited powers in relation to EPA's. The case files show that

- There is often no direct evidence about (in)capacity, either when the EPA was created or when it was registered, and no information about the reason for the donor's lack of capacity, other than a clue from her date of birth that she may have an age-related dementia. In the vast majority of cases, the EPA has been set up as a legitimate way of managing the client's finances without the expense of setting up a receivership. Where there are concerns about abuse, it is impossible to establish capacity retrospectively.
- Part A of the EPA document explains that the donor can stipulate restrictions and cites examples but

there is often no record of whether or how this was discussed with the client: this leads to an implicit assumption that the donor did not intend there to be any restrictions, but had their capacity been at all in doubt, this might not have been the case.

- **It is impossible to tell how big the estate might be or might have been**
- **There is no sign of where the donor is living, and no way of checking if (s)he may be at risk of neglect or abuse**
- **There is no information about whether this person is a client of social services, or whether a referral might be appropriate**
- **in most cases there is no evidence about the relationship of the attorney to the donor.**

Opinions differ as to how the current legislation for Enduring Powers of Attorney might be changed to improve safety without jeopardising the autonomy allowed by the current system.

The PGO deals with a wide a range of clients and the nature of their incapacity varies considerably from case to case as does the size of their estates. Most of these clients are adult although a few are still minors and the PGO plays a particular role in relation to children or young people in receipt of large compensation claims (either medical or in relation to road traffic accidents) which are awarded to meet their need over a whole lifespan.

Receivers and persons appointed to administer the financial affairs of clients under Short Orders or EPAs also have varying experience and backgrounds.

Review of case files to establish an approximate incident rate for financial abuse

In order to evaluate current safeguards available to clients of the PGO, a sample of 51 ordinary case files, designed to be as random as possible, were reviewed using a standard format. The data arising from this review has been compared, where possible, with a recent review of 800 PGO cases (Suto, Clare & Holland, 2002) to check the validity of the findings. Of those included in the review, 28 were First General Orders, 12 were Short Orders and 11 were Enduring Powers of Attorney.

There were 24 male clients/donors and 27 female clients/donors which confirmed an earlier study in which Suto et al (2002) found that more women than men were clients of the PGO – with 71.3% of receivership clients being female and 66% of EPA donors being female. The majority (29) were single, with 6 married, 2 divorced, 3

widowed, 2 co-habiting and 9 whose marital status was unknown. In the majority of cases (38), ethnicity was unknown. 11 of the patients/donors could be identified as White British, 1 as Sri Lankan and 1 as Spanish. Although ethnicity is not routinely recorded on any of the standard Court of Protection or PGO forms, cultural factors have been found to be important in the literature on financial abuse, for example Sanchez (1996) investigated cases of older Mexican American people who had been identified by standard screening tools as either being financially abused or as vulnerable to financial abuse. But within this community's cultural norms, many of the exchanges defined as abusive in a predominantly white American system were not perceived to be abusive in this community where pooling of family finances was the norm. This is an important area to consider in the introduction of additional safeguards against financial abuse.

Membership of different social services client groups among the sample was distributed as follows:

TABLE 1: DISTRIBUTION OF REVIEWED CASES BY SOCIAL SERVICES CLIENT GROUP

Client group	Distribution Number (%)
Brain Injury	12 (23.5)
Learning disability	11 (21.6)
Mental Illness	3 (5.9)
Mental Impairment, e.g. dementia	8 (15.7)
Other	17 (33.3)
Birth damage/negligence	6 (11.8)
Older person, no specific disability	6 (11.8)
Co morbid brain injury & mental illness	2 (3.9)
Not known	2 (3.9)

The client's place of residence was only known in 80% of our cases; 30% were living in residential or nursing homes and 34% were living in their own homes or their relatives' home. In 24% of the cases, the source of the client's money was not known. 31% had received money from a compensation payment, 20% had inherited money, just 2% were in receipt of benefits only and the remainder had their own property, savings, pension or trust funds. In 28% of cases, the size of the client's assets could not be established from the PGO case file; again, the majority of these

were EPA cases, where it is not a legal requirement to state information about the donor's assets. In 11 (22%) of the cases, the assets totalled less than £16,000 and 10 of these were short orders. 10% had £16-50,000; 6 had £50-100,000; 7 had £100-999,000; and 7 had more than £1million.

Information about who managed the money

Information was obtained, where possible, about the relationship of the receiver or attorney to the client. In the literature about financial abuse, the relationship of the victim to the person abusing them financially is often considered as an important feature in identifying and tracking financial abuse (Wilbur & Reynolds, 1996; Bond et al, 1999). Table 2 shows the relationship broken down by the type of case in our sample of 51 cases. Parents were the most common receivers under a first general order, adult children were the most common group of attorneys under an EPA and Social Services and parents were equally represented in those receiving a Short Order on behalf of the client.

TABLE 2: RELATIONSHIP OF RECEIVER/ATTORNEY TO CLIENT IN EACH CASE TYPE

Relationship to Client	Total	Case Type		
		First General Order	Enduring Power of Attorney	Short Order
Panel Receiver	2	2		
Solicitor	7	6		1
Social Services/ Local Authority	5	1		4
Spouse/ Partner	6	4	2	
Adult Child/ Step child	9	3	5	1
Parent	14	9	1	4
Other relative	2	1	1	
Sibling	6	2	2	2

Enduring Powers of Attorney

The sample only included 11 EPA cases, which is too small to make more than a tentative analysis but a pattern does emerge of two "bands" ,-one where the EPA had been created a long time before registration and the other where the gap between creation and registration was very small. The number of months between creation and registration in our sample of 11 EPA cases varied between 1 month and 75 months, but these are not evenly distributed; in 8 cases, registration took place less than six months after creation of the EPA, and in the other 3, registration took place 16 months or more after the EPA was created.

The gap between creation and registration of an EPA is potentially an indicator of financial abuse. On creation, the donor (the person creating the power) must have the capacity to understand the arrangements they are making, and the registration of the document can only take place when s/he has lost the capacity to manage his or her own affairs. If there is a very small gap, there may be doubts as to whether the donor did have capacity at the time when the EPA was created. Out of the 8 cases where the gap between creation and registration was less than 6 months, only one was questioned. In this case, the signature on the EPA was wobbly in the extreme, although due to the involvement of a solicitor and the fact that all other family members had been informed, a judgement was made that the attorney was 'above board' and the EPA was allowed to stand.

Of the 11 EPA cases reviewed, none contained evidence about capacity on the creation of the EPA and only one contained evidence about capacity when the EPA was registered, in the form of a psychiatrist's letter. Suto et al (2002) also found a dearth of information about capacity in the EPA cases included in their review, with only 6% containing some reference to capacity on the application to register. This is not surprising given that capacity evidence is only required by law if there is some objection to the EPA when the donor and other family members are informed of its registration.

Correspondence with other agencies

The Court of Protection and the PGO do not routinely seek information as to whether individuals are known to social services. In 23 of the 51 case files, there was evidence that the client was known to social services, either from the initial application or from later correspondence. In 16 of these, there was evidence that the person had a care manager. There was direct correspondence between the PGO and Social Services in 13 cases (including care managers, medical practitioners, finance departments, appointees and home managers). The nature of this correspondence was as follows:

TABLE 3: NATURE OF CORRESPONDENCE WITH SOCIAL SERVICE

Nature of correspondence	Frequency
Director of Social Services is receiver – correspondence about the use of finances	3
Request money for specific needed items to be paid to receiver	3
Request by Local Authority for fees to be paid direct to service	2
PGO request accounts from Local Authority as never returned by receiver	1

PGO enquiry about welfare/monies to care manager	1
Request for evidence about testamentary capacity from GP	1
Disagreement with PGO over benefits assessment	1
Request for special school fees to be paid direct from the Court Funds Account	1

In cases where there was correspondence between the PGO and social services, social workers and care managers were often able to provide useful information to the PGO about the welfare of the client and the use of their money. This is a good source of information that could be tapped if better links could be established between the PGO and social services, and a more responsive approach set in motion in response to queries from social services.

Cases with concerns arising out of the review of 51 cases

Of the 51 cases reviewed, there were 2 in which the research team had serious concerns about potential abuse, which they flagged up PGO staff to explore. One of these cases concerned a receivership case first set up in 1993 for a woman with learning disabilities who inherited money from her father, but her brother, acting as receiver had never returned an account. The second case involved an EPA which was being dealt with by, or at least through, a dubious intermediary/ interpreter. If this were generalised into an overall incidence rate for the PGO's current client caseload of approximately 60k, it would suggest that approximately 4% or 2350 cases may need to be flagged up or held under a higher level of scrutiny. Others have estimated an even higher level of abuse: Master Lush's (1998) estimate is that financial abuse occurs in 10-15% of EPA cases that are registered with the PGO, and that this figure may well be much higher in cases that are not registered.

More information

More information about the PGO can be found on their website:

www.guardianship.gov.uk

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Suspected financial abuse amongst cases administered by the Public Guardianship Office (PGO)

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Abstract

The danger and actuality of financial abuse and related activities has long been a concern of the Court of Protection and the PGO. Indeed Master¹ Lush is often quoted as suggesting that some 10-15% of the cases brought to the Court probably involve some element of abuse or impropriety. The review explored in this paper analysed case files of those who had been identified as probable victims of abuse with a view to proposing additional safeguards.

Nature of the review

This study explores the risk of financial abuse amongst clients of the Public Guardianship Office in England and Wales, who are drawn from all vulnerable client groups who lack mental capacity to manage their own affairs. The cases reviewed focus primarily on older people as it is clear that old age and mental impairments, such as dementia, create heightened risk of financial abuse which in turn is more likely to come to the attention of responsible agencies. This supports the view that *“...elders with dementia who have lost the ability to administer their affairs might be expected to be at particular risk of suffering financial abuse” (Rowe et al 1993)*. This should not however lead responsible agencies to overlook the considerable extent of financial abuse amongst other client groups including those with intellectual disabilities (who usually have fewer assets) and people with mental health problems or acquired brain injuries whose capacity is more variable and difficult to assess.

Information for the review came from an audit of 24 case files drawn from a list of 44 cases in which concerns had been identified and recalled by PGO staff, considered together with 28 court cases provided by the Master of the Court of Protection. Four of these cases overlapped with the cases provided by Master Lush, so in total 48 cases giving rise to concerns about financial abuse were used as the basis for the review.

Twenty of these cases involved a First General Order (receivership), 25 involved an Enduring Power of Attorney, 1 involved a Short Order and 2 did not initially have any arrangements through the PGO. Financial

¹ Following a long historical tradition, the Judge heading the Court of Protection is known as the Master. The current incumbent is Master Denzil Lush.

abuse was not necessarily involved (or substantiated) in all of these cases, but for the purpose of this analysis, they have been treated as cases in which there were substantial concerns about actual or potential financial abuse. For a case to find itself within this group, it would need to have gone through the following filters:

- The client's incapacity would need to have been recognised by informal or formal carers, leading to a receivership referral or registration of an existing EPA
- Financial irregularities would need to have been identified by, or brought to the attention of PGO staff and/or to have led to a court case
- Details of the case (i.e. name and salient concerns) would need to have been recalled by the PGO staff and/or details of the case noted
- The file would then need to have been located and reviewed (Brown, Stein and Turk, 1995)

Some analysis was attempted to establish whether the cases drawn from these two different pools differed significantly, i.e. those identified by the administrative staff of the PGO as opposed to the Master of the Court of Protection. From this, it seems that the court cases reviewed by Master Lush were more likely to have involved a police investigation and prosecution of the perpetrator of financial abuse than the cases identified by the PGO. This may reflect the fact that these were the more memorable cases, or those that were serious enough to come before the court; but decision-making could also have been in response to more arbitrary factors.

Characteristics of the vulnerable adult

Information was retrieved from the case files, when it was available, about the characteristics of the PGO clients considered to have been at risk of financial abuse.

Age of the vulnerable person

Table 1 shows the age distribution of the clients/donors included in the review of cases with concerns (the client's age was not recorded in 7 of the cases). This sample reflects the distribution of ages amongst the PGO's clients/donors, which has a bias towards the older age group (see Figure 1 below). The implication of these figures is that older people are more likely to have their financial affairs managed by someone else on their behalf and because of this, they are also more vulnerable to financial abuse.

TABLE 1: AGE DISTRIBUTION AMONG VULNERABLE PEOPLE

Age grouping	Frequency (48 cases with concerns)
<16	

20-40	3
40-60	2
60-80	11
80+	25
not noted on file	7
total	48

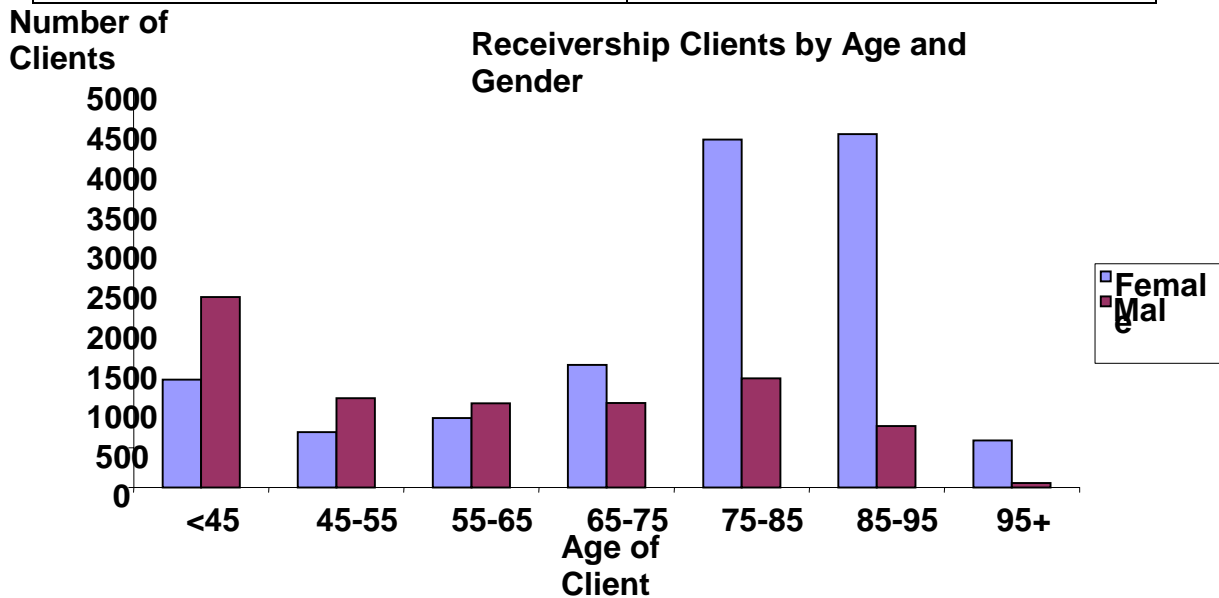


FIGURE 7: AGE AND SEX OF ALL PGO RECEIVERSHIP CLIENTS

Gender of the vulnerable person

There were 14 (29%) male clients/donors, 32 (67%) female clients/donors and 2 (4%) of the cases involved a married couple. Recent data provided by the PGO about their client base (internal memo, May 2001) shows that 64% of their clients were women, so the gender bias in our sample is representative of the overall picture. However, the sample of cases used here is too small to draw conclusions about the overall gender dynamics of financial abuse.

Marital status of the vulnerable person

41% of the clients/donors were widowed, compared to only 6% in the random sample of 50 cases reported. This lends weight to the suggestion in the literature that being widowed may interact with other factors, such as isolation and dependence, to make individuals more vulnerable to abuse (Bond et al, 1999; Choi et al, 1999).

Living situation of vulnerable person and involvement of other agencies

The living situations of clients in the cases with concerns were recorded where possible. Of those whose living situations could be identified, 45% were living in a nursing home or residential home and 28% were living in their own home.

Contact with social services

There was evidence that social services knew of 58% of these clients and in 40% of cases there was evidence of a care manager being in place. However, correspondence with social services was noted in just 33% of cases. In 60% of these, the correspondence was about nursing home fees – most usually a request being made to the PGO for fees to be paid when either the attorney or the receiver had allowed payments to fall into arrears. In 12% of all the cases, it was social services that brought the concerns about financial abuse to the PGO’s attention.

Adult Protection procedures had been followed in four of these cases, and Child Protection procedures in one case. In most cases, it was not possible to conclude whether or not Adult Protection procedures had been triggered, although it seems likely that they were not. The PGO do not get routinely involved in adult protection case conferences or planning meetings, and did not therefore record this information in their files.

Characteristics of the abuse and alleged perpetrator

Where it was possible to do so, cases were evaluated according to the classification of abuse described in Brown (this volume), which defines abuse along two perpendicular axes: the extent to which the vulnerable adult’s needs are met and how much their ‘representative’ gains from the relationship. Most (but not all) cases fitted into this “greed and need” matrix and those that did not were assigned to other categories; the outcome of this analysis can be seen in Table 3, and Figure 2 below.

TABLE 3: TYPE OF ABUSE INVOLVED IN THE CASES

Quadrant	Type of abuse	Frequency	
		No.	%
Fraud	The vulnerable person’s needs were <i>not</i> met and their representative gained excessively	20	42
Fraud	Target and groom – the relationship was established by the suspect purely in order to gain financially	11	23
Fraud	Forgery – cases involving forged signatures or fake documents which were used to obtain the vulnerable person’s money	2	4
Hoard	The vulnerable person’s needs were not met because beneficiaries or others were keeping money back for themselves	6	13
Reward	The vulnerable person’s needs were met, but their representative also gained excessively	3	6
Ignored	There was no gain for the representative,	2	4

	but the vulnerable adult was being neglected		
Unclassified	Family conflict – arguments may have made it unclear whether or not abuse was taking place	2	4
Unclassified	Abuse was unlikely or unsubstantiated	2	4
	Total	48	100

Of concern is the fact that most of these cases fell into the worst quarter in which the vulnerable person's needs were not being met *at the same time* as the person suspected of abuse gained excessively from the relationship.

The percentage of cases involving a malevolent perpetrator of financial abuse who had targeted and groomed their victims was high, but it may be that these cases had been over-represented in our sample because they were more memorable and more likely to have involved serial abuse and/or complex court hearings.

Property

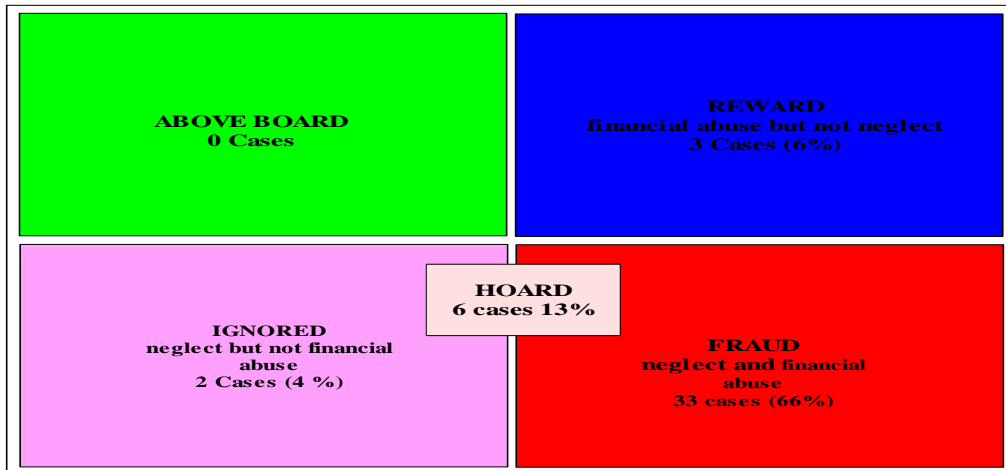
Property transactions played a part in 27% of these cases, usually involving the donor/client's house when they had moved out into a nursing home:- the attorney gifted the donor's property to themselves or another family member in 3 cases; 3 attorneys sold the donor's property and kept the money; and 2 attorneys re-mortgaged the donor's property and kept the additional capital released. There were family disputes in 3 cases where the attorney or receiver had moved into the donor/client's house and other family members found this an unfair or unsatisfactory arrangement.

Who was responsible for the financial abuse?

It must be noted that it is not necessarily the receiver or attorney who is most likely to financially abuse the vulnerable client, and not every vulnerable person concerned had a receivership or EPA in place: often these measures are instituted as a response to prior abuse by someone else, and as a solution not a means to defraud. In the cases with concerns, 56% of those responsible were attorneys under an EPA, 12% were receivers and in the remaining 32% of cases, the person responsible for putting the client at risk did not have an official means of taking charge of the client's finances.

Where an individual was identified as having some responsibility for putting the client at risk of abuse, or as financially abusing the client, their relationship with the client was recorded and has been summarised in Table 4 below. Adult children were most frequently implicated, and a large proportion of these cases were where the adult child held an EPA for their parent. In receivership

Figure 2: Types of abuse found in 48 cases (4 cases unclear)



cases, it was more likely to be a friend or neighbour who put the client at risk – and these friends or neighbours were *not* the receivers in most cases (in 5 out of the 7). In many of these cases, the receivership had been put in place as a direct consequence of the financial abuse.

TABLE 4: RELATIONSHIP TO THE CLIENT OF THE PERSON ALLEGED RESPONSIBLE

Relationship to client	Total cases	Receivership cases	EPA cases	Other or not known	Total
Adult child – son or daughter	16	4	10	2	16
“Friend” or neighbour	13	7	5	1	13
Professional – accountant, solicitor	6	4	2		6
Parents	3	3	0		3
Nephew or niece	3	0	3		3
Professional carer – nurse or nursing home proprietor	3	1	2		3
Spouse	1		1		1
Community representative – vicar or priest	1		1		1
Other or not noted	2			2	2
Total	48	19	24	5	48

A gender bias did emerge from this sample of those suspected of financially abusing the vulnerable client, with 61% being male, 13% being female and the remaining 26% of cases involving more than one suspect, which was usually a male-female partnership.

How many cases involve serial financial abuse and/or multiple victims?
In approximately half of these cases, there seemed to be little risk of serial financial abuse, in that the perpetrator would be unlikely to

financially abuse more than one vulnerable person. These were typically cases where a relative or carer arranged the receivership or EPA by the book but then abused their position. This pattern of abuse is described in the literature as as “opportunistic” (Tueth, 2000) and we have characterised it as a series of boundary violations. A high risk of serial financial abuse was identified in 30% of the cases, where there were circumstances such as a “friend” or recent acquaintance acting as attorney, or when it was clear that a vulnerable person had been ‘targeted’ and ‘groomed’ for exploitation. In 6% of these cases, concerns about serial abuse were made explicit at some point in the case but were never substantiated, and in 13% of cases, serial financial abuse was substantiated in court. Taken together serial abuse could be seen to be a possibility in almost half the cases (23/48). See Table 5.

TABLE 5: NUMBER OF CASES INVOLVING SERIAL FINANCIAL ABUSE

Did the case involve serial financial abuse?	Number of cases
Yes – it was proven in court	6
Concerns were raised but not substantiated	3
No evidence of serial abuse, but indicators of high risk were identified	14
Risk of serial abuse low	24
Not known	1
Total	48

Actions and outcomes

In many of the cases in this review, it was not possible to determine exactly what actions, if any, were taken when financial abuse was discovered. This was partly due to incomplete records and partly due to the fact that many of these cases had only recently come to light, so the response was still being formulated. It is reassuring that so many of these cases involved a police investigation, given the concern that financial abuse is often downgraded and not viewed as a ‘real’ crime. Again, these findings must be interpreted in the light of the sampling methodology, which relied on the cases being memorable to PGO staff or the Master of the Court (see Table 6).

TABLE 6: ACTION TAKEN IN RESPONSE TO FINANCIAL ABUSE

Action	Number of cases
Police investigation	15

Prosecution	13
EPA revoked	8
Local Authority appointed as receiver	7
Court hearing	5
Unsuccessful attempts to call in the accounts	4
Panel receiver appointed	3
Investigation order from the court	3
Court order for accounts or evidence to be brought in	2
Accounts were produced and the case dropped	2
Chancery proceedings	2
Lord Chancellor's Visitor sent out to client	2
An alternative family member was appointed as receiver	1
The signature on an EPA was sent to a handwriting expert and it was confirmed that the signature had been faked	1
A new EPA was created without restrictions	1
Other family members produced evidence of the attorney making unauthorised gifts to themselves	1
Freezing order by the Court until the matter could be settled	1
Solicitor appointed as receiver	1
A previous EPA in favour of the daughter was upheld	1
Will in favour of the perpetrator was revoked	1
Police referred the case to the Court for further action	1
The house was returned to the possession of the EPA donor	1
The attorney submitted an official complaint against the solicitor	1

As Table 7 shows, in a third of these cases, it was either impossible to retrieve the money that had been misappropriated, or it seems that no attempt had been made to recover the client's money. A third of the cases with concerns were ongoing or had yet to be resolved. However, retrospective action on behalf of the person whose assets had been misappropriated was generally unsatisfactory lending increased weight to the case for preventative measures.

TABLE 7: OUTCOME OF CASES WITH CONCERNS

Outcome	Number of cases
Unable to retrieve the misappropriated money	16 (33%)
On-going cases/cases that have not been resolved	16 (33%)
The matter was settled amongst the family	4 (8%)
The arrangements continued without the family's	2 (4%)

involvement	
The solicitor's professional insurance paid the money back	2 (4%)
The money was retrieved from the perpetrator	1 (2%)
There was no evidence of theft, but the EPA had been fraudulently created	1 (2%)
The perpetrator received a custodial sentence	1 (2%)
The EPA donor is deceased – there is nothing left in the estate because the family had spent it all	1 (2%)

Individual case examples

Some individual cases have been written up to illustrate the problems in identifying and taking action in cases of suspected financial abuse. The largest group of abuse cases in PGO cases involve disputes or disagreements between family members regarding EPA or receivership arrangements,- often when an EPA has been created in favour of one of the client's children. Adult children. Three different patterns of abuse were identified in these cases:

1. Attorneys who *ignore the donor* and fail to fulfil their duties;
2. Those who are *unable to cope* with fulfilling their duties as attorney;
3. And those who *deliberately misappropriate* the client's assets for their own use.

The EPA is only discovered by their siblings when the attorney applies to register it and is required to inform the rest of the family.

These cases illustrates the complex nature of abuse and highlights the benefit of a multi-agency approach in both referral and managing the situation after it has come to light. Social Services also often have a stake as creditors in those cases where payment of care home fees is disrupted or disputed (see Penhale this volume) as a result of fraud or theft.

The circumstances:

A widowed man in his eighties took out an EPA in favour of his son. He changed his will to disinherit his daughter in favour of his son at around the same time. A psychiatrist certified that he had both testamentary capacity and the capacity to create an EPA at this time. The psychiatrist also certified that the donor was incapable of managing his own financial affairs three months later when the EPA was registered.

The PGO arrangements and how they were set in place:

The donor's daughter objected to her brother being given power of attorney when she was notified of the registration of the EPA and requested an independent receiver instead. This request was overruled by the Court of Protection and the brother was registered as attorney.

What led to concerns? The local social services department referred the case in to the PGO when the donor was admitted to residential care some months later. There were problems with nursing home fees not being paid on time and suspicions that the son was not acting in the best interests of

his father in the overall management of his financial affairs.

Investigations and findings: It came to light that the son had re-mortgaged his father's property twice in order to get himself out of a difficult financial situation. It was alleged that the son was taking a regular "payment" out of his father's capital as a reward for dealing with his affairs, although it could not be established how much or how often this was. The removal of the daughter from the will complicated the picture. It was done on the grounds that she had been given large sums of money in the past and had abused her father's trust by using his cash card.

What actions were taken? Following the referral from social services, the EPA was suspended and later cancelled. The cancellation took place two years after creation of the EPA and 20 months after registration. The referral letter was taken by the PGO as an application for cancellation of the EPA. The Court and PGO then invited the Local Authority to apply to act as receiver but no action was taken to restore the misappropriated funds to the donor of the EPA.

The circumstances: A widowed woman with her own house and a small income was no longer able to manage her own affairs and moved into a residential home.

The PGO arrangements and how they were set in place: The woman created an Enduring Power of Attorney in favour of her son, which was registered within a month of its creation. There was no evidence about her capacity, either on creation of the EPA or on its registration.

What led to concerns? Payments to the Social Services finance department were in arrears and the attorney failed to fill in Financial Assessment forms on behalf of his mother. The social services department wrote to the EPA team at the PGO to voice their concerns quite soon after registration of the EPA. The attorney was using his mother's weekly income of £192, which he claimed was to pay off her debts, yet he was unable to provide any evidence for this.

Investigations and findings: One year after registration of the son's EPA, the local authority was appointed as attorney: "for the purpose of collecting Social Security benefits and any other income. The order will include the power to investigate and report prior dealings." It was discovered that the son had sold his mother's house and put £40,000 into his girlfriend's name. The police got involved in the investigation and it was discovered that the son had taken a large sum of money out of his mother's account, which he claimed to police he had lost while on holiday.

What actions were taken? The police were planning to prosecute the woman's son for theft – this is still in progress. (Case 11)

In some of the cases reviewed, a vulnerable adult had been financially abused by a professional in a position of trust, either as a result of deliberate targeting and grooming of the victim, or more opportunistic abusing (Tueth, 2000). Characteristically in these cases the PGO did not get involved until long after the abuse had been discovered because the

perpetrator did not have use, or put in place any formal mechanism to misappropriate the victim's funds, other than a relationship of power or influence. The following example illustrates this problem:

The circumstances: The 'victims' in this case were an elderly couple who were both incapacitated and lived in a nursing home together.

The PGO arrangements and how they were set in place: A solicitor was due to be appointed as receiver in 1998, but the husband objected, insisting that he was still capable of managing his own affairs. The client was given 21 days to get fresh medical evidence to support his claim that he should continue to manage the finances of himself and his wife and it seems that he managed to do so, as the receivership was not set up at that time.

What led to concerns? It is unclear how, but it later came to light that between 1998 and 2000, the proprietor of the nursing home received gifts worth up to £1million. In hindsight, it is possible to infer that the nursing home proprietor had perhaps been the influence behind the man's insistence that he still had capacity.

What actions were taken? The police were involved and attempts to prosecute the proprietor of the nursing home are in progress. The solicitors acting on behalf of this couple have been to the Chancery Division of the High Court and gained a 'freezing injunction', which prevents removal of any assets. They have also received permission to take legal action for recovery of any assets lost. Money from forged cheques may be recovered from the bank, which should not have cashed them. A relative has since been appointed as receiver.

In other cases the perpetrator posed as a genuine friend or concerned neighbour in order to gain a position of trust and it was difficult to clarify whether this relationship was bona fide and /or whether the victim genuinely wished to reward them for their work.

The Circumstances: This case involved a very elderly man whose mental capacity had deteriorated considerably and as a result, he was admitted to residential care.

The PGO arrangements and how they were set in place: There were no official arrangements around this man's finances before he moved into the residential care home.

What led to concerns? Social Services, supported by the Community Psychiatric Nurse and others, grew increasingly concerned over the months about the management of his finances by a family friend. She was doing this on a voluntary basis (without an EPA) and there were concerns that she may have been abusing her position. This was suspected on the basis of inference rather than evidence, as £3000 had been taken out of the man's account with relatively little to see for it in terms of his care and living arrangements.

Investigation and findings: The police were informed about the situation. Their initial response was that it would be difficult to clarify whether or not the man had given permission for the expenditure by the friend.

What actions were taken? Social Services applied for a 'Freezing Order'

to block any further access to the client's accounts and prevent additional losses.

In other cases, it was much clearer that the suspected person did not have a long-standing friendship, that they were abusing their position, and that in fact the victim did not have the capacity to choose to gift their assets to the supposed 'friend'. Such cases typify those presenting a high risk of serial abuse. A problem outside bodies face regularly is discriminating between genuine friends, who believe themselves to be acting in the best interests of the client, and those who deliberately set out to defraud vulnerable members of society. When there are questions about the vulnerable person's capacity the default position should be to assume that s/he is incapable of making a choice about 'gifts' especially when large gifts are being made to someone in a position of power or authority, which includes all receivers and attorneys; anyone who presents as intimidating when challenged or anyone whose relationship with the client can be dated to the time when their capacity began to falter.

Protection at different stages

Vulnerable adults are entitled to a broad range of safeguards: designed to:

**prevent abuse from occurring if at all possible (primary prevention)
identify it promptly if it does occur (secondary prevention)
seek redress on their behalf and mitigate the negative impact of any abuses which have occurred (tertiary prevention).**

The PGO can be involved at any of these stages. Robust financial mechanisms and adequate scrutiny of the arrangements in place, clear guidance about the roles and duties of receivers and support to them may avert any abuse, especially inadvertent infringements or opportunistic abusing. Monitoring of accounts and queries of any abnormal payments or arrangements may make it possible to identify cases in which abuse is occurring and to take prompt action stopping further depletion of the client's assets and ensure that the individual is not in a position to take more money. Where abuse has occurred the PGO has a responsibility to take appropriate action to recover property and assets and to make sure that the person's needs are met in future even if this is done through onward referral to another agency. Previously noted abuse might also be the trigger for a referral into the PGO so that their mechanisms become part of the resolution phase of an investigation and an outcome of interventions led by another agency which has acted upon indicators of financial, and often other forms of, abuse and abusing.

It is likely that primary prevention will focus on:

screening out anyone unfit to hold a registered EPA or a receivership

identifying particularly vulnerable clients and setting up an appropriate level of monitoring
setting clear guidelines and standards to act as a reference point against which financial impropriety can be judged
regular and robust monitoring of accounts and transactions.

Secondary prevention will involve responding promptly to cues that a client's assets are being mismanaged, spent unwisely or not spent at a level which meets their needs and that the situation is then carefully and sensitively investigated before decisions can be made, often in association with other agencies about how best to proceed. This is the stage which is most clearly set out in relation to all abuse of vulnerable adults in the Department of Health's "No Secrets" which sets up clear expectations of multi-agency strategy meetings to coordinate inquiries and formal case conferencing to make decisions about the client's future protection and welfare and about appropriate action to be taken against any perpetrator or mismanaged service.

Tertiary prevention is concerned with ameliorating any deleterious effects of the abuse for example through recovery of assets and/or new living arrangements which meet the person's needs and seem to guarantee their future security. Redress in this kind of case might be limited to a restitution of funds or it might involve action to promote the person's welfare and make good any neglect they have suffered as a result of financial loss. It might also include restoring assets to heirs of the person after their death.

Another important issue at this stage is the prevention of future abuse by this perpetrator as well as to this victim. Sanctions available will depend on the standing and position of the perpetrator as well as the nature of the abuse which has occurred,- they may be prosecuted, removed from their professional register, screened out of the social care workforce, barred by the National Care Standards Commission from owning or managing a residential home and/or placed on the Prevention of Abuse against Vulnerable Adults list held by the Department of Health to prevent them coming into contact with vulnerable adults in any formal role in future. Social care agencies, banks or financial institutions may all have acted improperly or negligently requiring improvements in practice or training initiatives. But for these sanctions to take effect information must be shared and action coordinated so that each agency is clear who is taking which action and in what order. Prevention is therefore cyclical: failure to take action which pre-empts a perpetrator from abusing other vulnerable people may lead to further abuses.

The protection status index

Analysis of the cases examined within the research programme suggested that a more proactive system of risk management could be developed drawing criteria to alert staff to three interacting risk domains are identified as sources of indicators:

The person's vulnerability. This includes frailty, isolation, old age, neglect over which the financial representative has some influence, high

level of dependence, history of other kinds of abuse including physical, psychological or sexual abuse or exploitation, inadequate resources to meet their basic needs, proof of capacity in other areas such as capacity to enter relationships (marriage) and testamentary capacity (making a new will), fluctuating capacity such as people who have bi-polar disorders, secondary impairments which compound the person's incapacity, degree of mental incapacity, gullibility, extreme and/or visible wealth, membership of a minority ethnic group,

The character, capability and/or intentions of the person's representative/abuser. This includes criminal record, judgments in the county court, past involvement in other cases of abuse, family dispute, non-relatives who have been financial representatives before and/or who seem to seek out this role, a very recent acquaintance acting as representative, professional irregularities, debt, bankruptcy, business problems, bad credit rating, reluctance to pay care fees, alcoholism, mental health problems, the representative lives very far away from the client and/or takes little interest in their welfare,

The financial arrangements in place. This includes a police investigation, failure to return the accounts, irregularities in the accounts, short-time lapse between making and registering an EPA, questionable capacity at the time the EPA was created, failure to register the EPA when there is evidence of lost capacity, irregular withdrawals, discrepancies between money released and money spent, failure to pay nursing home fees and other bills, sudden large and/or unexplained withdrawals, failure to pay the bond premium, use of the client's assets for the representative's benefit, large gifts paid out of the client's money, property transactions, the client's failure to receive an inheritance, the client's failure to receive benefits entitlement, carers or representatives charging excessive fees for their services, representatives moving into the client's home, changes to the will following receivership or EPA registration, multiple changes of receiver or attorney, control of the client's assets is passed over to someone other than the receiver/attorney.

In the cases reviewed which had been identified as abusive a cluster of these indicators could be seen. The most frequently observed indicators are not necessarily the most serious - for example, non-payment of nursing home fees is very common but may arise for a number of reasons, not all of which are indicative of abuse. Other less-frequent indicators should give rise to more concern, for example, evidence that an individual has acted as a representative before and may therefore be a serial perpetrator of abuse. Any one of these indicators or concerns in any one domain might be sufficient to raise significant concerns, but taken together, they should consistently result in a higher level of scrutiny. In the cases reviewed in which financial abuse was suspected

(2 from the review of ordinary cases, 24 from the cases with concerns²) the mean number of indicators in each of these sections was as follows

Indicator group	Mean number of indicators present
Vulnerability of the client	2.6
Integrity of the representative	3
Integrity of the financial arrangements	3.1

Clearly the PGO has a major role to play in preventing financial abuse of its clients but also in stepping in to situations where abuse has already occurred in order to regularise the situation and provide mechanisms which fill the vacuum which the perpetrator has created or exploited. Most receivers do not want to be burdened with complex bureaucratic monitoring but in some cases a heightened level of alertness is called for and the agencies will need to work together to find the right balance.

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² This does not include the cases identified by Master Lush through court hearings.

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Links between the Public Guardianship Office and Social Services Departments

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Abstract

This paper explored the links between the PGO and social services in relation to abuse and to local authority management of the finances of vulnerable people. The paper also reports a small-scale study of adult protection coordinators in social services departments conducted as part of this overall project which explored the nature and level of contact and collaboration between the two agencies in the context of adult protection inquiries.

Background

Links between the PGO and social services departments occur at a number of levels, at policy level, and practice both in the context of managing the finances of vulnerable adults and the charging practices of the local authority (Penhale this volume), and in the more specific context of adult protection concerns. The study explored, through interviews and visits, the operation of local authority receivership units and data was garnered from a small survey of adult protection coordinators and from three multi-agency focus groups.

Shared policy goals

Although changes in the PGO and the development of adult protection policies within social services have developed independently it is clear that both strands of reform address the protection of vulnerable adults from financial abuse. Moreover both are concerned with the need to find the right balance between protection and autonomy,- avoiding a “paternalistic or interventionist” approach while at the same time protecting vulnerable people and their assets. The two processes culminated in two important but separate documents: the Quinquennial Review (Chant 1999) of the Public Trust Office which has set in train a series of major changes including the closure of the PTO and the setting up of a new agency, the Public Guardianship Office (PGO) in April 2001.

“No Secrets”: the government’s recent guidance (DOH 2000) issued under Section 7 of the Local Authority Social Services Act 1970, which sets out the commitment to a unified multi-agency approach towards the prevention, recognition and response to abuse and exploitation of vulnerable adults. A similar document “In safe hands” was issued by the Welsh Assembly (2000) to address the situation in Wales.

Many of the recommendations made in the Quinquennial Review touched on issues of increased safeguards but at the same time the document articulated a tension between this and the imperative to

remove restrictions and maintain a “lighter touch” when scrutinising receivers. Key recommendations include the commitment to review EPA’s (recommendation 7), to make links with the Local Government Association to facilitate the appointment of Local Authority finance departments as receiver (recommendation 13) and clarification of the role of visitors.

Meanwhile the “No Secrets” document lays a responsibility on local authority Social Services departments to coordinate local arrangements for addressing allegations of abuse and conducting appropriate multi-agency investigations and assessments. This document also recognises tension between autonomy and intervention but mandates Social Services to act on behalf of vulnerable adults, especially those who lack capacity, if they have been, or are at risk of being, abused. Currently there is a risk that these two structures work in isolation from each other in seeking to protect some very vulnerable individuals. In some cases these overlapping responsibilities might provide additional protection but there is also the potential for gaps to appear where roles are unclear.

“No Secrets” relates to a broad group - a *vulnerable adult* is defined as a person (over 18)

“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”

whereas to come within the jurisdiction of the PGO a person must be deemed to have lost capacity to manage their own financial affairs. Hence all the PGO’s clients fall within the remit of “No secrets” . The non-involvement of the PGO in the policy consultation process represented a significant omission since “No secrets” aimed to create a coherent multi-agency framework for the prevention of, and response to, different kinds of abuse, including financial abuse. Despite this there are three grounds for arguing that the PGO’s activities should be closely linked with this initiative:

1. Any financial abuse discovered in relation to PGO clients falls clearly within the remit of “No Secrets” and “In safe hands”.

Financial abuse is listed as one of the categories of abuse that should trigger action within local guidelines and is defined as

financial or material abuse, including theft, fraud, exploitation, and pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits. (DoH 2000 para 2.7)

2. Research has shown that financial abuse is unlikely to occur in the absence of other forms of abuse: for example in reports of all types of abuse against vulnerable adults logged under adult protection policies in Kent and East Sussex (Brown and Stein, 1998) at least one fifth noted more than one type of abuse. In other words it is highly likely that a vulnerable person who is financially abused might also be being physically or sexually abused, threatened, intimidated or otherwise psychologically abused and vice versa.

3. The mechanisms of the PGO do not only detect and address *financial* abuse since they are concerned with whether money is properly spent on the vulnerable person to meet their needs (see Brown this volume). The PGO may therefore uncover situations of neglect and negligence which also fall within the remit of “No Secrets”- defined as

Neglect and acts of omission, including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating...

In the event that a client of the PGO was being neglected they would require an assessment under the Health and Community Care Act 1990 to explore their need for social care services. This falls within the remit of the care management arm of Social Services although it might currently also, or alternatively be addressed through the involvement of the Lord Chancellor’s Visitors who visit to ascertain whether the person’s welfare needs are being met. The potential for confusion between the roles of Lord Chancellor’s Visitor and care managers is evident. Visitors should be clear that, in common with other professional staff they should pass on concerns using channels set out in local adult protection procedures but, (subject to confidentiality protocols), they can also access initiate the involvement of care managers to address serious welfare issues arising out of their own inquiries.

The PGO therefore needs to work closely with Social Services and other agencies, (including the police) because they *share the responsibility for protecting vulnerable people from financial and other forms of abuse*. The PGO’s internal structures will increasingly develop to reflect this and to facilitate appropriate cross referral both

- *inwards* when other agencies uncover or suspect financial abuse but also
- *outwards* when the PGO uncovers significant neglect or concerns about other forms of abuse and exploitation.

Mechanisms for the sharing of information in such cases will need to be clarified. These will be particularly important in cases where serial abuse is a possibility.

Although the remit of the PGO is limited to protecting the *financial* affairs of vulnerable persons, in order to fulfil this role they must work closely with the other agencies concerned and play a reciprocal role in passing on referrals about other kinds of abuse which come to their attention. This shared working begins with alertness and sharing of concerns but extends to the shared responsibility for resolving cases by bringing to bear all the duties and powers available to each agency to secure the best outcomes for vulnerable people.

Shared arrangements for managing the finances of vulnerable adults

There is another interface between the two agencies,- alongside lay receivers (usually relatives) and panel receivers (usually solicitors), a number of authorities act as receivers for their clients. This is generally managed within the financial units of social services departments, interfacing with those responsible for assessing and charging for care services.

A substantial number, but by no means all English and Welsh Local Authorities act as receivers for at least one client. Figures provided by the PGO (December 2001) suggest that 155 local Authorities undertake this work. The PGO also provided figures on how many receivership cases each of these authorities hold summarised in Table 1. Most of these authorities administer a small number of cases, under 10 or between 10 and 50 cases. The more active authorities contacted in the process of this project indicated that the PGO figures supplied tended to underestimate the numbers they hold and suggested that some authorities who have developed expertise in this area may hold between 100 and 400 receiverships.

TABLE 1: DISTRIBUTION OF RECEIVERSHIP CASELOAD IN LOCAL AUTHORITIES UNDERTAKING THIS WORK

Number of receiverships held by the Local Authority	Number of Authorities with this caseload
1 – 10	75 (48%)
11 – 50	70 (45%)
50 – 100	6 (4%)
>100	2 (1%)

The involvement of local authorities in receivership and other Court of Protection responsibilities is a discretionary matter. There is no legal requirement determining involvement. Factors influencing the extent to which authorities seem willing to become involved include,

- whether the authority has a long-standing *history* of involvement

- if involvement in managing the financial affairs of vulnerable adults is viewed as part of the authority's *wider community care responsibilities*
- if the authority has someone in a *key position* who has a special interest in the financial situation of vulnerable adults
- if the authority seeks to use receivership as a way of taking *control* in relation to the financial affairs of people where collection of charges by the authority may otherwise pose a problem.

In authorities interviewed as part of the PGO consultation it appeared that involvement started as a result of one of these factors and increased incrementally until the workload had reached a point where significant resources and skills were needed but also a point at which further referrals were attracted because of the acknowledged expertise of the staff involved. This had led some units to accept referrals from the wider community using the service as a source of advice and intervention or even to set arrangements in place to act on behalf of clients of neighbouring authorities. As the units developed their ability to cope with more complex and problematic cases the volume of referrals tended to increase, making receivership seem a more attractive option for care managers.

Local Authorities generally appear to become involved with users with smaller estates (only a few cases of £100K and above were reported). The majority were around or just above the level allowing for a short order to be made. The following factors appear salient in determining whether a Local Authority will apply to become a receiver, or agree to act if requested by the Court,

- past or current abuse
- refusal of relatives to act as receiver or disagreement between relatives on who should act
- inability on the part of relatives to act as the receiver.

In most cases Local Authority receivership staff shared responsibility for cases with a care manager/social worker, although where users were in a supposedly stable and protected situation (usually a residential or nursing home) fieldwork staff may disengage leaving the receivership unit in sole contact. Benefits Agency appointeeships, of the other hand, tended to remain with local staff rather than becoming the responsibility of receivership team members.

Local Authorities who have receivership units tended to have well-developed systems in place in terms of management of users' funds. Normally this would include individual accounts, two signatures on all cheques and use of high interest banking arrangements. Some had been successful in negotiating low or no-cost bank charges, and most, but not all, described strong oversight arrangements in respect of LA audit procedures.

On the whole the representatives of Local Authorities interviewed reported good relations with the PGO,- there is a specific team within the PGO which deals with Local Authority cases and this facilitates good communication and provides a strong champion for Local Authorities within the PGO.

Those authorities with fairly large receivership units did not appear to have any major issues with understanding and completing the role of receiver, and where they did have questions they felt they had easy access to the PGO for clarification or action. A number did acknowledge, however, that there were potential conflicts of interest in their role linked to the duties and responsibilities of the Local Authorities in providing services and collecting payments. Most significant was the question of whether Local Authorities should use their own resources to pay for a service or item as opposed to those of the client. Examples given of this dilemma related to situations such as provision of additional care time (e.g. to allow the client to have regular/frequent holidays), the purchase of special items (beds, wheelchairs etc) and the use of potentially expensive public services (residential care) in comparison to independent provision. Most Local Authorities were broadly aware of such dilemmas, but felt that the conflicts were resolvable and in effect "small beer" in comparison with the scale of potential abuse by external parties.

Local Authority receivers appeared to be active in relation to the protection of clients' rights and resources. Their wider role seemed to give a number of those interviewed the confidence to "go after" abusers to seek redress and recovery. Most admitted that this was often a forlorn activity, but all could cite examples where they had managed to retrieve some assets or had resolved difficult situations. Most also quoted examples of involving the Police in carrying out inquiries. Despite the emphasis on early consultation with the police set out in "No Secrets" they are still often reluctant to become involved and/or found it difficult to obtain evidence and otherwise make progress.

Local authorities felt that more should be done through closer working with the Police and the development of more sophisticated investigation techniques in the field of financial and material abuse of clients with reduced capacity.

Surprisingly, the LA representatives interviewed indicated little, if any, knowledge of wider adult protection developments within their authorities. This suggested that their valuable work and skills had not

been incorporated into local multi-agency adult protection strategies or recent policy development. On the whole receivership units were located in, or strongly aligned to, departmental financial services than to the fieldwork arm of social services, (although often both departments were located managerially within adult services), or they reported that they operated as stand-alone units, unconnected to wider social services issues.

Links in the context of adult protection inquiries

To explore current links between the PGO and social services in referral and management of adult protection referrals, a small survey of adult protection coordinators was conducted. Ten adult protection coordinators agreed to complete a short questionnaire, and 7 replied within the deadline for analysis. Two kinds of data were collected and analysed: quantitative information about the overall prevalence and patterns of financial abuse drawn from each authority's adult protection monitoring system, and qualitative information about individual cases. Not all respondents were able to describe individual cases, but qualitative data on 33 cases was returned.

The number of cases involving financial abuse logged by the seven participating authorities in the previous six months ranged from 1 to 127, with a mean of 27 (SD = 49). There was little correlation between the size of the population and the number of cases of financial abuse coming to light (see table 1 below) suggesting greater alertness in some authorities. Other studies have also noted wide variation in levels of reporting and recording (Brown and Stein 2000). As with the other surveys carried out as part of this programme of work, the prevalence of abuse is likely to be much higher than that which comes to light and/or gets recorded by the different agencies involved.

TABLE 1: SIZE OF POPULATION AND PREVALENCE OF FINANCIAL ABUSE

Type of authority	Size of population	Number of cases of financial abuse logged in the past 6 months	Referrals recorded per 100.000 general population 6 months and (annual incidence)
County Council	285,000	10	3.5 (7)
City council	430,000	2	0.46 (0.9)
Joint county and city council	1,000,000	8	0.8 (1.6)
Joint county and city council	1,000,000	16	1.6 (3.2)
County council	1,500,000	127	8.4 (16.8)
County council	Unknown	1	
London borough	Unknown	Unknown	

Total		164	
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This compares with an overall annual rate of adult protection reports at 14-26 per 100,000 (Brown and Stein 2000). Given that Brown and Stein's (1998) research found that adult protection referrals commonly involve multiple forms of abuse, the survey also asked for information about other abuse logged in cases where financial abuse was an issue. Again, one respondent was unable to provide this information. Of the six who could respond, two stated that none of the cases logged with them involved other forms of abuse. There was wide variation in the proportion of cases involving more than one form of abuse along with financial abuse, from none to sixty percent (see Table 2 below). This is likely to reflect recording and monitoring system issues as much as actual incidence.

TABLE 2 CASES OF FINANCIAL ABUSE INVOLVING OTHER FORMS OF ABUSE

Number of cases involving financial abuse logged in the past six months	Number of cases involving other forms of abuse/ multiple abuse	% of cases involving other forms of abuse/ multiple abuse
127	57	45
16	2	12
10	6	60
8	3	38
2	0	0
1	0	0
Unknown	Unknown	Unknown
Mean = 27 (SD = 49)	Mean = 11 (SD = 22)	Mean = 26 (SD=25)

Victims of financial abuse

The survey asked for an estimate of the number of cases involving each social services client group. Most respondents were able to use the categories provided on the forms, but noted many overlaps.

TABLE 3 PREVALENCE OF FINANCIAL ABUSE OF DIFFERENT SOCIAL SERVICES' CLIENT GROUPS

Client group	Total number of cases across all authorities	Mean number of cases in each authority (SD)
People with learning disabilities	51	8.5 (16)
People with mental health problems	5	0.8 (1.6)
People with mental impairments such as dementia	6	1 (2)

People with brain injuries	7	1.2 (2.9)
Older people	92	15.3 (27)
Other	3	0.7 (1.2)
Total	164	

The survey asked for respondents' opinions about which client groups are most disadvantaged in relation to financial abuse due to lack of access to social services and the PGO. People with learning disabilities were consistently rated as disadvantaged in accessing both services. One respondent commented:

“Many people with mild or moderate learning disabilities are, I am sure, exploited or vulnerable to exploitation.”

Another commented that clients with learning disabilities are not made aware of their right to take control of their own finances, and that their income from benefits and other sources becomes part of the household budget:

“If more learning disabled clients knew their rights, more would want some control of their money.”

Perpetrators of financial abuse³

Not unsurprisingly family members and professional carers emerged as the most frequent suspects in cases of financial abuse logged by social services departments. Respondents commented that the victims of financial abuse were often very dependent on the person abusing them for physical, social and/or emotional support. This is an important factor in determining social services' response to allegations of abuse, in that the perpetrator may be essential to the maintenance of the client's quality of life. Removing the perpetrator is often judged not to be in the best interests of the client because it would mean the removal of an important source of social contact and support.

Prior involvement of the PGO

The survey asked adult protection coordinators how many of the cases of financial abuse known to them had involved the PGO both at the outset and also how many were referred to the PGO as a result of an investigation or case conference. Most commented that they do not monitor the PGO's involvement, but that it was unlikely in most cases. In the aggregate data provided, only one respondent noted a case in which there had been a receivership prior to the adult protection referral. However, in the 33 cases outlined in the second part of the survey, three cases involved an EPA, two involved receiverships and one involved both an EPA and a receivership. 12% of the PGO's cases which were

³ Again, one respondent was unable to provide any data on the suspected perpetrators of financial abuse in their authority's area because this data is not recorded or collated.

thought to involve financial abuse (Brown et al this volume) were brought to the attention of the PGO by social services departments.

Not a single case was reportedly referred on to the PGO as a result of an investigation or case conference, either in the aggregate data or the individual cases. This may have reflected reluctance to remove the perpetrator of financial abuse, given that the PGO is not generally party to the case conference/strategy meeting discussions about safeguarding the best interests of the victim.

The survey asked if respondents had concerns about particular groups being disadvantaged in relation to financial abuse through lack of access to social services or the PGO. People relying on benefits and other people on low incomes were consistently rated as being at a disadvantage in gaining access to a service from the PGO. One adult protection coordinator commented that the cases they deal with through the adult protection system tend to involve people who are on benefits, and would therefore be unlikely to involve sufficient assets to warrant a PGO referral. Another commented:

“It appears that the PGO are only interested when the client has substantial financial resources but many more people on limited income need to be protected from abuse (financial and as part of a multiple abuse situation)”

Suggestions from respondents about how the PGO might be more involved in protecting the under-served groups addressed ways of linking more successfully with the current procedures being implemented under “No Secrets”. These included: a representative of the PGO being available to attend planning meetings when financial abuse is an issue; promoting the existence and remit of the PGO to social services’ teams managing investigations into abuse; and early involvement in adult protection meetings. Social Services staff currently involved in adult protection investigations lack specific powers to inquire into financial assets or to block any further abuse through freezing bank accounts or assets, challenging wills and so on. The close link with the Court of Protection puts the PGO in a good position to be able to stop this gap:

“Given that social services lack the power to investigate their clients’ finances, it would be very helpful to have representation from the PGO at adult protection strategy meetings. We have had the same difficulty with the police in the past, who have been reluctant to get involved if it seems that there will not be a criminal investigation or conviction. The police now advise, help with investigations and provide background checks on suspected perpetrators of abuse. If the same help and information sharing was available from the PGO, it could have a very positive effect on decision making at strategy meetings.”

One respondent also suggested that it would be helpful if the PGO provided an advisory service for other professionals who suspect that

their clients may be vulnerable to financial abuse or that they are being financially abused.

The Court of Protection has been criticised (e.g. McGuinness, 1997) because applications can be slow to process. A survey of local authority and social services staff found that in reported cases of financial abuse, the Court of Protection procedures were “too slow and cumbersome” (Langan and Means, 1995, pp44) and that the time it takes to reverse a dubious receivership order allows for further embezzlement of funds by the perpetrator of abuse. If money is being taken, it may be more appropriate to appoint a manager for the interim period until a receiver can be appointed. The New South Wales Guardianship Tribunal (the Australian State’s equivalent of the Court of Protection) has an “intake” system, which is like a fast track for cases that need immediate attention, and a hearing can be called within one or two days of the referral being made. However it is clear that the PGO can expedite emergency hearings in the Court of Protection so that more consistent referring and clearer arrangements within the PGO could lead to more helpful outcomes. This work would have the additional advantage of preparing the way for any expansion of the role of the Court of Protection in the event of Mental Incapacity legislation broadening its remit to deal with health and social welfare issues.

Conclusions

Increased collaboration between the PGO and social services is clearly needed and would offers considerable benefits to vulnerable adults. Barriers to cases being referred *out* from the PGO to social services departments militate against the identification of neglect but in the same way that social services departments do not monitor the involvement of the PGO with their clients’ financial arrangements, the PGO do not routinely monitor the involvement of social services departments in *their* clients’ welfare.

Social services may be able to provide a greater depth of understanding about the individual’s welfare, as well as the situation in which they are living, than is available to the PGO through their own sources of information about their clients. Knowledge of the client’s living situation and welfare issues was identified in PGO cases where financial abuse was suspected (Brown et al this volume) as a critical factor in detecting and responding wrongdoing. For example, situations in which a non-family member was acting as financial representative and living in the client’s home were identified as a risk factor in both the review of PGO cases and the survey of adult protection coordinators. A smoother system of referring cases between social services departments and the PGO will allow better sharing of this kind of information about the level of risk.

There is clearly room for misunderstanding when work is jointly undertaken across these boundaries. Social services delegates at the focus groups were often under the impression that the PGO allowed abuse to continue and that they did not act quickly enough to stop irregularities. On the other hand a representative from a large legal practice undertaking recovery work on behalf of a vulnerable client who had been deliberately targeted by an exploitative couple was horrified that a psychiatric nurse had described the the elderly woman as “thriving” with them despite the fact that her assets, including several properties had been systematically transferred into their accounts. It is important that generalisations are not made on the basis of one-off occurrences. The fact is that attitudes to intervention vary *within* as well as *across* agencies and that individuals often hold idiosyncratic views in relation to the [legitimate] tensions between autonomy and intervention, continuity of care and financial propriety. This should not detract from the need to ensure that all avenues are opened when it comes to addressing abuse and that all sanctions are brought to bear on those who exploit vulnerable people.

Action at the Public Guardianship Office in response to research

The findings of this research provide the PGO with important and helpful information to develop policies to further protect our clients from abuse. We shall use the findings to inform projects which are already underway and others which are being planned. The two major areas in which this research plays a crucial part are the setting up of an Investigations Unit and a review of the Visitors service.

The PGO is currently working on setting up an Investigations Unit that will work closely with social services departments and others to address issues of the abuse of vulnerable people. The findings of the research will be helpful in making links with all interested parties and in settling the remit, work processes and mechanisms of the Investigations Unit.

In addition, a review of the Visitors service is also underway. Research findings in respect of improvements that can be made to the service will be fed into the review, which is due to be completed by end March 2004.

The research also highlights ways in which PGO systems can be developed to allow for easier identification of cases that are more at risk of abuse. Consideration is being given as to how the coding of cases in this manner can be incorporated into our electronic databases.

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