Financial Abuse & Enduring Powers of Attorney

AN EXPLORATORY STUDY

Presentation by Dr Cassandra Cross &
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Background

- Listening to general advocates take multiple calls from many people who were distressed about the actions of their **attorney** (under an Enduring Power of Attorney), or a concerned third party ringing about their concerns of the actions of an attorney.
- Decided to do a “summer project” with University of Queensland law students from Pro Bono Centre, doing some basic analysis of calls coming in to us, where the primary concern was the actions of the attorney.
- This basic analysis led to further discussions and eventually to the development of a formal research partnership with Queensland University of Technology Health Law Research Centre.
- This exploratory study forms phase one of the project, due for completion mid 2017.
- In parallel, ADA Australia also received funding for an Enduring Power of Attorney Project to develop information to assist **front line agencies** to better assist callers with these issues.

Introduction to the Team

- Geoff Rowe – CEO ADA Australia
- Karen Williams – Manager Guardianship Team
- Chez Leggatt-Cook – Independent Research Consultant

- Dr Cassandra Cross
- Dr Kelly Purser
- A/Prof Tina Cockburn

- April Bajwa: Research Assistant

Case Studies - selected from larger sample

- Alice
  - Living in aged care "against her will"
  - House sold, ? Under value, but sufficient to cover aged care bond.
  - Complaining that solicitors coming and getting her to sign papers, without providing her copies.
  - All possessions sold or given away.
  - All bank information removed from her.
  - Alice complained that she "lost all her powers", as attorneys were not giving her any information.
    - Unclear about relationship of attorneys to Alice.

- Mick
  - Living in aged care
  - Wife was his attorney
  - Wife refusing him access to bank accounts, stating "if you keep going on like this, I won't come to visit you anymore"
  - Having difficulties living on $25 per week (allowance from wife/attorney).
    - He had previously run a successful business.
  - Concerned about house being sold, or equity being used for reverse mortgage.

Alice

- Could remember name of her bank and requested a new key card, and was then able to trace her finances from the sale of the house.
- EPOA document clarified that attorneys could only act when she had lost capacity and she was not aware that that had occurred or been determined.
- Was referred to Adult Guardian (as it was then). They explained they could only act if Alice no longer had capacity, this was currently unclear.
- Had a few active friends, who could take her to appointments , in particular to her GP, even though aged care facility did not approve.
  - Advocacy intervention to remind facility Alice could leave to visit a doctor.
- Attorneys resigned their roles, before capacity questioned clarified.

Alice cont’d

- Alice was advised that attorneys never paid the bond, nor did they give Alice a copy of the contract with the Aged Care Facility.
  - Facility kept referring Alice to her contract for clarification on her rights & obligations, which was not helpful.
- Alice’s GP confirmed Alice’s suspicions that she had “capacity”. She immediately revoked her attorneys.
- She got independent financial advice about the amount of interest on the bond for her stay.
  - As bond was unpaid she realised all she needed to pay was outstanding interest for the few months she was there.
- She managed to find an independent living unit at the Sunshine Coast, close to friends, which suited her needs.

Alice’s issues:

- Alice was able to problem solve her re-location, with a core group of friends.
- Alice had a supportive GP, who was happy to endorse her capacity.
- Aged Care Facility was not assisting Alice with requests for information regarding copies of EPOA document, bond contract, restricting visits in and out.
- No investigation by Adult Guardian, as ultimately she did not meet their criteria (Alice had capacity).
- No Tribunal hearing as Alice’s revocation of attorneys followed their resignation, and no application for guardianship or administration followed by any third party.
- No formal assessment of financial abuse occurred, as her focus was on leaving the more restrictive facility and moving into independent unit.
- Follow-up call Alice was doing well.

Mick

- Assessed by GP as capable, stating “I do believe the patient at this time does have capacity to make his own decisions and would be hard pressed to support his forced containment”.
- Assessed by Geriatrician who was also supportive of Mick’s capacity, though noted some cognitive deficits, and made recommendations for further testing.
- Wanted a house key,
- Birth & Marriage certificates,
- Bank account statements and
- An opportunity to jointly manage their finances.
- Was seeking relationship counselling but was ineligible for services as he lived in aged care.
- Did not want to make an application to the Tribunal.

Mick cont’d

- After 3-6 months received further assessments, which he was happy with.
- Many calls made to see what services could support some type of mediation session & none were forthcoming (being in aged care precluded some services).   He could not afford the $35 fee for a well known mediation agency.
- After several phone calls to the facility, still no current reports were received.
  - As Mick was in high care he was reliant on the Aged Care Facility to send us the information via fax and wrong reports were sent.
- Mick died a few months later

Mick’s issues:

- Mick essentially wanted to be involved in discussions with his wife/attorney about their finances.
- He wanted basic information.
- He was happy for this discussion to be facilitated or mediated.
- Medical evidence appeared to support the fact that he was capable, but this, of itself did not change anything. (We find the presumption of capacity is often rebutted upon receipt of aged care services - ageism).
- We were unable to find a service or professional to assist with these discussions.
- He did not want to initiate a formal Tribunal process.
- Without access to financial information it was not possible to assess for financial abuse.