

## Current payment provider holding you back?

With Blink Payment you can streamline payments with embedded links and simple recurring payments.

Speak to a payment expert >



Jane Bennett

Managing Partner, JE  
Bennett Law

# Safeguarding adults in vulnerable circumstances: the evolving balance between autonomy and protection

5 Nov 2024 | OPINION

Share



The strategies employed by deputies and legal professionals to safeguard vulnerable adults must adapt to reflect the increase in financial exploitation and abuse, argues Jane Bennett, founder and Managing Partner of JE Bennett Law, an independent, leading specialist Court of Protection law firm

In adult safeguarding, legal professionals face a significant challenge: finding the right balance between respecting an individual's autonomy and ensuring their protection from harm. This tension is central to the Mental Capacity Act 2005 and shapes the work of the Court of Protection.

Representing over 300 clients in vulnerable circumstances, our team is witnessing increasingly sophisticated and complex exploitation and abuse across the range of people needing protection, from elderly individuals with dementia to younger adults and children who have lost capacity due to illness or injury.

While each case presents unique challenges, an analysis of recent case studies highlights the evolving complexities of both safeguarding considerations and the role of professional deputies in protecting those who cannot fully protect themselves.

### **The central question of capacity**

The Mental Capacity Act 2005 emphasises supporting individuals in making their own decisions whenever possible. However, the case of Client 1, an elderly gentleman with dementia living alone, demonstrates the need for strong safeguarding measures when capacity is in question.

Two men claiming to be builders approached Client 1, saying they could see that work was needed on his home. They gained his trust, leading him to execute a Lasting Power of Attorney (LPA) which he lacked legal capacity to make. The men then produced several "invoices" for work they claimed to have completed on his home and paid themselves from his bank account. They also convinced Client 1 to sell them a plot of land at a serious undervalue. Unsurprisingly, the work was never carried out, and while the land was transferred into their names, Client 1 never received the funds from the sale.

The men then took Client 1 halfway across the country to live in a caravan with them, far from his support network, while continuing to spend his money. The local authority was alerted to what was essentially a kidnapping and made an urgent application to the Court of Protection.

The urgency often associated with safeguarding cases is evident in Client 1's situation. The swift action required by the local authority and the legal system underscores the importance of having mechanisms in place to respond quickly to safeguarding concerns, while also ensuring due process is followed to uphold an individual's autonomy wherever possible.

### **The increasing complexities of financial abuse**

Financial abuse is a recurring theme in many safeguarding cases. We are currently representing Client 2, whose attorney used her funds to invest in what turned out to be a scam, putting the attorney in breach of her fiduciary duty.



A partner in JE Bennett Law was appointed as Deputy to see what funds could be recouped – both from the attorney and the banks – under the new APP compensation scheme. We gathered the remaining funds from Client 2 and are using them to pay off her significant debt, which the attorney had neglected, while also ensuring she receives adequate care.

The case of Client 3 shows how financial abuse intersects with benefits fraud and complex family dynamics. Client 3 is a young man who lost capacity due to a brain tumour. His wife became his attorney and, while acting in this role, she allowed his mother to live rent-free in his home while they fraudulently claimed Housing Benefit and Universal Credit. Client 3's wife also used a substantial proportion of his remaining funds to finance a family member's online casino business.

As deputies, the partners in JE Bennett Law faced the unenviable task of untangling this complex situation, including dealing with joint benefits claims, significant mortgage arrears, and potential homelessness for both Client 3 and his elderly mother.

These cases reveal the challenges deputies face in balancing the need to protect the financial interests of individuals in vulnerable situations, with maintaining family relationships and respecting choices made before losing capacity. This requires careful navigation of legal, ethical, and emotional considerations.

Additionally, these cases highlight the need for effective coordination among various agencies. Safeguarding adults in vulnerable situations often requires collaboration between local authorities, social services, the Court of Protection, and law enforcement.

## **Navigating an evolving landscape**

These recent examples illustrate that as financial exploitation becomes more sophisticated and vulnerabilities become more complex, the tension between autonomy and protection becomes ever more crucial within legal and ethical considerations of adult safeguarding.

Safeguarding adults in vulnerable situations requires continued vigilance, adaptability, and a commitment to upholding the principles of the Mental Capacity Act 2005. Professional deputies, legal professionals, and safeguarding teams must work together to steer this effectively, ensuring that adults who find themselves in vulnerable situations are protected, while their right to autonomy is upheld as much as possible. In this evolving context, specialist firms like JE Bennett Law play a crucial role in safeguarding the rights and interests of those who are most vulnerable in our society.

### **MEET THE EXPERT**

Jane Bennett is a leader in the Court of Protection field. Jane is in the top 23 lawyers nationally to make Chambers rankings for Court of Protection: Property & Affairs (UK-wide). She is one of only six lawyers nationally to make the Legal 500 Hall of Fame for her Court of Protection expertise. Jane acts as an expert witness in high-value catastrophic personal injury litigation claims, and in criminal injuries compensation authority claims. Formerly a partner at two law firms in London, Jane has grown [JE Bennett Law](#) organically through word-of-mouth referrals since founding it in 2012, attracting a team of trusted professionals who share her values and commitment to excellent, personal service. JE Bennett Law is recognised as a leader in its field, ranked as a Leading Firm in the Legal 500 for Court of Protection for seven years in a row, with individual rankings for four of the team, and recognised in the Chambers and Partners UK Legal Guide 2025 for Court of Protection: Property & Affairs (UK-wide).