



**5 Stone
Buildings**

**Dodgy Attorneys &
Deputies**

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Fundamentals: does P have capacity?

- **If P has capacity, can control the Attorney / Deputy**
 - **Deputy's authority limited to making decision P lacks capacity to make: s.20(1)**
 - **Attorney is P's agent so must act on P's instructions**
 - **Any cause of action against Attorney vested in P**
 - **Ultimately can revoke EPA/LPA**

Fundamentals: does P have capacity?

- If P lacks capacity, must look to others to control
 - OPG can investigate (and refer to COP)
 - COP can revoke EPA/LPA or terminate deputyship
 - P retains cause of action but will need litigation friend
 - Can be by Certificate of Suitability but must undertake to pay costs P ordered to pay: CPR, r.21.4(3)
 - If obtain COP authorisation, then protected on costs

Report to OPG

- **OPG functions include**
 - **Supervising Deputies: s.58(1)(c)**
 - **Dealing with complaints about conduct of LPA Attorneys & Deputies: s.58(1)(h)**
 - **Dealing with complaints about conduct of EPA Attorneys: LPA, EPA and Public Guardian Regs 2007/1253, regs.47 & 48**
 - **OPG requires evidence in support & info about P's capacity**

Report to OPG

- **Pros**
 - Powers to request information & documents
 - No costs risk: OPG meets cost of investigation & any COP app

- **Cons**
 - No control over investigation
 - In particular, can be slow

Terminate authority

- If P has capacity, can revoke
 - LPA any time: s.13(2)
 - Just requires notice to Attorney
 - Then must give notice to OPG, who must cancel: reg.21
 - No express provision for cancelling EPA but
 - COP can confirm & direct OPG to cancel: Sch.4, para.16
 - OPG required to cancel if COP does so: Sch.4, para.17

Terminate authority

- If P lacks capacity, only COP can revoke
 - LPA: COP may revoke if
 - Attorney acting or proposes to act in way contrary to authority or not in P's best interests: s.22(4)(b)
 - EPA: COP may revoke / direct OPG to cancel registration if
 - Attorney unsuitable in all circumstances: Sch.4, paras.2(g)(b) and 16(4)(b)&(g)

Terminate authority

- **Only COP has power to terminate Deputy's authority**
 - **May vary or discharge order appointing Deputy: s.16(7)**
 - **May revoke appointment if Deputy acting or proposes to act in way contrary to authority or not in P's best interests: s.16(8)**
- **Major step: COP will need to be convinced**
 - **Requires fact-finding**

Suspend authority

- Any final order COP can make can be made on interim basis
 - ss.15 & 47(1): power to make declarations & all powers of High Court
 - s.48: can make interim order if satisfied
 - Reason to believe P lacks capacity
 - In P's best interests to make order without delay
 - CoPR, r.10.10: powers include interim injunctions

Suspend authority

- Procedure in COP
 - Urgent application governed by PD10B
 - Must be 'clear & coherent' evidence of urgency
 - Genuinely urgent out of hours apps well catered for: RCJ number
 - Urgent in-hours apps less so: can be difficulty in getting through to Court then finding judge

Suspend authority

- Procedure in High Court
 - All High Court Judges are judges of COP
 - In practice, Ch D tends to hear property & affairs, Fam D tends to hear health & welfare
 - So can bring urgent or without notice app in the Judges' Application List in Chancery Division (see *Chancery Guide*, Ch.15)

Suspend authority

- What about management of P's property & affairs during suspension?
 - May not be necessary
 - No big decisions
 - May be able to 'tick over': standing orders & direct debits
 - If is necessary
 - Court can confer bespoke authority: s.16(2)(b)

Dealing with undue influence

- Clearly a ground for removal if P lacks capacity
- What if P has capacity to authorise Attorney or Deputy and to revoke / pursue claims against them but is / is not because under their influence?
 - COP has no jurisdiction
 - Only P can bring a claim

Dealing with undue influence

- **High Court (usually Fam D) has inherent jurisdiction over capacitous but vulnerable adults**
 - **Subject to coercion or undue influence**
 - **For some other reason deprived of or disabled from making free choice**

Dealing with undue influence

- High Court needs to be satisfied is necessary & proportionate to intervene. If so:
 - Initially, will facilitate decision being retaken freely
 - Some 'time away'
 - But powers not so limited
 - Can grant longer term injunctive relief

Conclusions

- **'Toolbox' of options**
 - **Many do not require COP (First Avenue House) involvement**
 - **Can act out of court or in High Court**
- **Key question will be extent to which P has capacity**
 - **More capacity, more options (but potentially more difficulties)**

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Thank you,
any Questions?

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