Case studies

(Names have been changed)

Joan

Joan is a wealthy widow in her 90s, who regularly attended her local branch to do her banking. One day her son Len brought in an Enduring Power of Attorney (EPOA), giving him an immediate power for financial matters. Bank staff were concerned and suspicious, as Joan had always been adamant that she didn't want Len having third party authority on her account. However there had been a recent pattern of Len accompanying her to the bank, verbally abusing staff and saying he wanted to break one of Joan's term deposits, and on these occasions Joan would appear confused and distressed.

Bank staff told Len they needed to check the validity of the EPOA with the legal team, then immediately contacted the Office of the Public Guardian (OPG) to report their suspicions. OPG staff were able to determine from conversations with Joan's social worker and detailed notes from bank staff that Joan may have been subject to influence from her son, so were able to initiate an investigation on the basis of Joan not being able to make decisions freely and voluntarily.

The OPG was able to suspend the financial power of the EPOA while they investigated, with the Public Trustee of Queensland stepping in as financial attorney for Joan during this time. The OPG's investigation discovered that rental money from Joan's four properties had been received by Len for at least the previous five years. As a result of the investigation QCAT formally appointed the Public Trustee as administrator for Joan.

The investigator also recommended that the personal and health power of the EPOA be suspended which resulted in the Public Guardian stepping into the role of personal and health attorney for Joan. The Public Guardian was later appointed as Guardian for Joan and was able to implement strategies, including seeking an application for a Protection Order under the *Domestic and Family Violence Protection Act 2012*, to limit Len's ability to continue to commit acts of domestic violence on Joan.

Renata

Renata was living in an aged care facility, and her financial affairs were handled by her daughter Anna under an EPOA. The aged care facility contacted the OPG to report that they felt Renata's affairs were being mishandled as her fees were in arrears.

An investigation by the OPG discovered that $260,000 from the sale of Renata's house wasn't in Renata's account, which was almost empty. The sale of the property had been handled by Anna in her role as attorney for Renata, and the EPOA had been lodged with the bank at that time. However a review of bank statements showed that the funds were transferred from Renata's account to Anna's in a series of small transfers of $1,000 to $5,000. The bank did not pick up on the suspicious nature of these transactions.

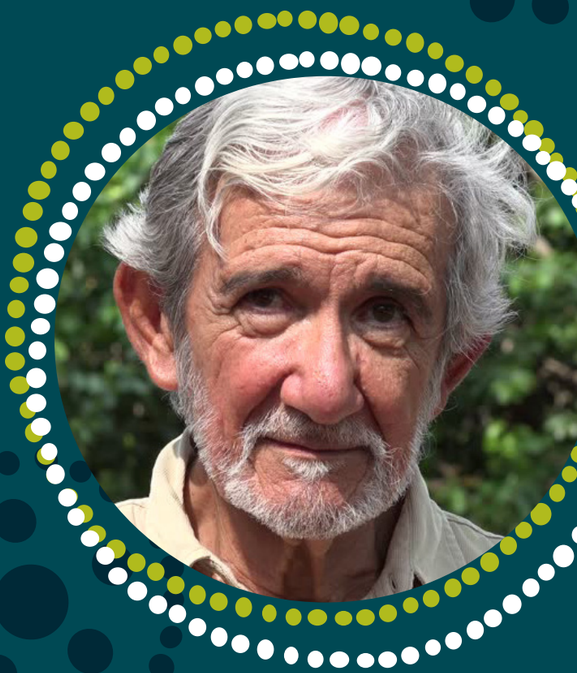
Anna, in her role as attorney for Renata, had committed multiple breaches of the P*owers of Attorney Act 1998.*

As a result of the investigation, the Public Trustee of Queensland was appointed as administrator for Renata, and Anna is now under a police investigation for fraud. However, had the bank had better systems in place to detect suspicious or out of character activity and reported it to the OPG, Renata may not have been left almost penniless.

Office of the Public Guardian

Investigations function

How OPG and financial institutions can work together to protect vulnerable Queenslanders from financial abuse



public guardian

www.publicguardian.qld.gov.au

People with impaired decision making capacity – whether it be due to an accident, dementia, or some type of intellectual or psychiatric disability – are among some of society's most vulnerable citizens. They have significantly increased risk of being subject to neglect, exploitation and abuse, which can include financial abuse.

In Queensland, Financial Institutions can refer suspicions of financial abuse to an independent agency that will not just investigate the allegations, but has unique powers to intervene – the Office of the Public Guardian (OPG).

In the experience of the OPG, financial abuse is often a hallmark of other more insidious forms of abuse. This is why it is important for financial institutions to refer suspicions to us – and do so early. Doing so not only has the power to reduce harm to the victim, but also to mitigate your own losses.

OPG investigations function

An important function of the OPG is its ability to investigate allegations of abuse, neglect, exploitation or inappropriate decision making arrangements for adults with impaired decision making capacity and, where substantiated, to take action.

The OPG is the only government agency of its kind in Australia, and as far as we are aware the world, that can both investigate allegations made by anyone about abuse, exploitation or neglect of an adult with impaired decision making capacity and take quick, legislative action against those allegations.

Under Chapter 3, part 3 of the *Public Guardian Act 2014* the Public Guardian has the power to:

- access all information in connection with an adult with impaired capacity
- cross-examine the accused person
- execute a warrant to remove a person who is at immediate risk of harm
- suspend any current power of attorney while an investigation is underway
- insert the Public Guardian as attorney for personal and healthcare matters (and appoint the Public Trustee for financial affairs) for a period of up to three months
- refer the matter to the Queensland Civil and Administrative Tribunal for the revocation of an Enduring Power of Attorney and the appointment of a more appropriate administrator.

The Public Guardian doesn't, however, replace the important role the police fulfil in relation to domestic violence and criminal behaviour, and where appropriate investigations will be referred to the Queensland Police Service.

What does 'impaired decision making capacity' mean?

Capacity is defined as a person being capable of:

- understanding the nature and effect of decisions about the matter
- freely and voluntarily making decisions about the matter, and
- communicating the decision in some way.

If one or more of these elements is missing, the person does not have capacity for that matter.

The facts and figures

OPG opened over 200 investigations into abuse, neglect and exploitation in 2017-18, and the unfortunate reality is that this is only the tip of the iceberg.

Approximately 80 percent of the investigations we carry out relate to people aged 65 or over, and with an ever-aging population and a growing prevalence of dementia, instances of elder abuse are likely to keep increasing.

"Approximately 80% of OPG investigations relate to an adult aged 65 years or older"

Additionally, around three quarters of the investigations we conduct involve concerns around the conduct of a person acting in the role of financial decision maker. The perpetrator in these matters is almost always a family member, and most often is a son or daughter of the adult with impaired capacity.

It's also worth noting that financial abuse can be just the first sign of a much worse problem, and in too many cases a deeper investigation has uncovered horrific cases of physical abuse and neglect. This is why it's so important that institutions dealing with a person's finance are able to identify and report suspicious activity.

Role of financial institutions in identifying and reporting financial abuse

In cases of financial abuse, banks are often first-hand, early witnesses to suspicious and out of character transactions that are an indicator of financial abuse. That's why we encourage all financial institutions to put internal processes in place to firstly flag suspicious activity, and then to be able to report it to OPG where appropriate.

"Over 70% of investigations conducted by OPG relate to allegations of financial abuse"

Our experience shows us that front line staff are ideally placed to identify vulnerable customers and identify where something just doesn't seem right. We acknowledge though that as banking increasingly moves online, more sophisticated techniques to catch instances of financial abuse will need to be developed.

It is an investment worth making however. Some Queensland-based banks have already put processes in place to identify and report abuse to us, and this has resulted in a number of cases of elder abuse being identified and appropriate action being taken to protect the adult from further financial abuse.

The onus does not need to be on the financial institution to prove there is wrong doing before reporting to us. OPG is able to take on an investigation where there is reasonable grounds for suspicion.

Bank staff are able to report suspicions of financial abuse to OPG by calling 1300 653 187 or emailing investigations@publicguardian.qld.gov.au