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REPORTER: Fran Abrams

PRODUCER: Samantha Fenwick

EDITOR: David Ross

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THE ATTACHED TRANSCRIPT WAS TYPED FROM A RECORDING AND NOT COPIED FROM AN ORIGINAL SCRIPT. BECAUSE OF THE RISK OF MISHEARING AND THE DIFFICULTY IN SOME CASES OF IDENTIFYING INDIVIDUAL SPEAKERS, THE BBC CANNOT VOUCH FOR ITS COMPLETE ACCURACY.

“FILE ON 4”

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ABRAMS: Every year, thousands of people who lose their mental capacity come into contact with an obscure offshoot of the courts service. The Court of Protection is meant to safeguard the funds of people who can't manage their own affairs. And since it was reformed, three years ago, more than thirty thousand people have come under its wing. But there's disquiet about the way the Court's operating. We've spoken to one of the Court's clients, who is angry that his assets are dwindling in a Court-controlled account, because the interest rate it pays is so low.

BARKER: It's not being invested at all. I get half a percent interest. I've done careful calculations and the Court of Protection not paying interest has lost me a minimum of £50,000 so far. It makes me sick to my stomach that they can do that to some of the most vulnerable people in society.

ABRAMS: Some people say they're kept in the dark about how much money they're paying to solicitors who manage their affairs. And File on 4's learned there are fears the Court isn't proactive enough in protecting the vulnerable from financial abuse.

BLAKE: If there are crimes being committed that the Court of Protection is aware of, then there needs to be immediate action, because at the moment people are slipping through the net and falling through the cracks, and the end result is that people are being abused.

ABRAMS: With an ageing population and more people getting big personal injury payouts, the Court's in a growth market. As the Government prepares to publish a review - following a deluge of complaints about bureaucracy and delay - we ask: how protective is the Court of Protection?

SIGNATURE TUNE

ACTUALITY OF VIV DUNSTAN WITH BEN

DUNSTAN: Go on then, off you go then, if it's safe. Go on then, off you go. Good boy.

Ben has Downs Syndrome and severe learning difficulties. He has very little speech and communication, so he uses a lot of sign language. He loves mainly brass and military music, he loves drama and outdoor pursuits, like kayaking is his favourite activity

ABRAMS: Ben Dunstan's nineteen. According to the law, he's an adult. But his mum still needs to manage his finances. Until recently she claimed benefits for him, using a simple process called an appointeeship. But now she's been told that's not enough.

DUNSTAN: We had already signed this appointee two years previously. With that we were in charge of all his welfare. We were able to go to his bank to sort out all his finances. We had just assumed that that would carry through. Our social worker told us that wouldn't work and we had to go through the Court of Protection.

ABRAMS: So how did that make you feel as a parent?

DUNSTAN: As though we perhaps haven't got as much authority or power as you think you've got, because all this time, up till he was eighteen, we've always made his decisions for him – everything – but suddenly it's almost as if it's been taken out of your hands and that you're not capable.

ABRAMS: Under the Mental Capacity Act, which came in three years ago, Viv was told she'd have to apply to the Court to become something called a deputy. She needed formal acknowledgement that Ben couldn't always make decisions for himself and that he needed Viv to do it for him. But what really shocked her was the amount of work involved. The process has taken seven months so far, in four separate stages. Viv's had to fill in no fewer than eleven different forms.

DUNSTAN: The wording is not plain English, it's all absolutely gobbledegook. They talk about property and all bits that aren't relevant to our son. It would have been easier to have had a form perhaps specifically for a child with learning disabilities. But you fill that all in and you just go through it and repeat yourself so many times it's unbelievable. When we photocopied it, I think it was sixty pages. We started before Christmas. It's taken quite a few months. And they've actually asked us to make sure that our son knows all about the procedure. Well, he's not capable of doing that. He hasn't got the understanding to know. I mean, I can tell him all about it and he'll just look at me with glazed eyes and totally switch off. He won't understand.

ABRAMS: Can he read?

DUNSTAN: Not this sort of stuff. He can recognise words like car and dog and that sort of thing. He won't understand any of this at all.

ABRAMS: In addition to all this form-filling, Viv Dunstan has also had to pay £500 in court fees, and there'll be ongoing payments of up to £900 a year. The Mental Capacity Act's administered by the Court of Protection in England and Wales and it's supposed to make life easier for people who can't make their own decisions. It's meant to make sure they aren't left open to personal or financial abuse.

ACTUALITY AT BRIDPORT CAB

ABRAMS: In the Bridport Citizens Advice Bureau, John Lay Flurrie's been helping the Dunstans - along with several other local families. He says the main purpose of the Act was to protect the elderly. Parents like these were never meant to have got caught up in its labyrinthine processes. Provided they acted in their children's best interests, they should have been able to continue as normal.

FLURRIE: I think it was designed to give safety to people who either did not or do not have the capacity to make their own decisions, so to make sure that they were not in the position where people could abuse them. Unfortunately the principal group that it was focusing on were the elderly, who lose that capacity, rather than thinking about the needs of young people with severe learning difficulties, who have never had that capacity.

ABRAMS: You've obviously helped a lot of parents who do have young people with learning disabilities. Do you think the system is appropriate for their needs?

FLURRIE: I don't think it considered the needs of the parents and through them the young people. Based on the experience of the parents who come to us, they have found that they have not been able to carry on in the spirit of the Act. They've been told that they cannot open bank accounts, that they cannot receive benefits and they cannot maintain their interests as a parent and their role as a parent once the young person reaches the age of eighteen. They feel that the system wasn't based on their needs. They certainly feel that the system was based around the needs of professionals that set it up and the professionals, such as solicitors, who very often might administer it for parents.

ABRAMS: If there's no objection to the Dunstans' application, a Court of Protection judge will approve it and Viv'll be installed as Ben's deputy. Once that's done, the Office of the Public Guardian will step in. Its five hundred staff are meant to implement the decisions of the Court. Some experts think young people like Ben Dunstan were never meant to have been subject to its jurisdiction. But its Chief Executive, Martin John, disagrees.

JOHN: Broadly speaking, once a child becomes an adult then their affairs and their decisions are as an adult. And so, if they have assets, if they have income that needs to be managed, then the parents may well need to apply to become deputies.

ABRAMS: But none of these young people have assets. They're all going to be dependent on benefits, and all of these parents in different circumstances, by social workers, by banks, are being told, 'You've got to go through this process and become a deputy.'

JOHN: It can never be a generalisation, it will always be individual circumstances, but as a rule of thumb it wouldn't have been inappropriate for them to have been advised, 'Look, your child is now an adult in this transitional phase, you need to think about becoming deputies.'

ABRAMS: But once you're in the process, it is just far too complicated, isn't it?

JOHN: I'm aware the Court of Protection Rules Committee has been looking at some of these issues and I know a key theme on that has been the forms and how they might be improved, but the sets of forms that will be necessary will vary from circumstance to circumstance. And the process that the Court takes and the reason for the stages is about ensuring protection and ensuring actually that there is awareness that people are served and notified appropriately.

ABRAMS: Hopefully Viv Dunstan will be able to manage Ben's slender funds for him. But there's another, fast-growing group of people who come under the court – people who have big compensation pay-outs.

ACTUALITY OF NEIL AND HIS MUM

MUM: Would you like a cup of tea?

NEIL: Oh, yes please.

MUM: Okay, have you got a cup?

NEIL: Yes, this one's mine.

MUM: Oh yes.

ABRAMS: For Neil Barker, making tea and chatting to his mother at home in West London is actually quite an achievement. Eight years ago, Neil suffered serious brain injuries in a motorbike accident.

NEIL: I woke up about 35 days later or something, thinking, oh, maybe I had the accident a couple of days earlier, and didn't realise exactly what had happened. I had pins going across the top of my head, sort of from one ear to the other ear, and I still have a scar to this day, and that was because they'd had to remove my face to reconstruct my eye socket.

ABRAMS: What was the sort of extent of your loss of function?

NEIL: My sleep wake cycle was messed up and I was generally sleeping a lot, and this I think sort of helped my brain recover and my body recover. My sort of self awareness, my ability to eat healthy food, just generally look after myself and just a slight loss of everything that made me the person that I'd been.

ABRAMS: Neil's family agreed that because he couldn't manage his own money, a solicitor should act as deputy. Last year Neil was awarded £1.7 million in compensation. Normal practice in these cases is for the money to go into in a Court bank account. Soon afterwards, during a visit to a Halifax branch, Neil noticed they were offering 4.1% on a savings account. He decided to find out what he was getting on his money – and he was shocked by the answer.

NEIL: It's not being invested at all. I get half a per cent interest. It makes me sick to my stomach that they can do that to some of the most vulnerable people in society.

ABRAMS: If you'd have been able to take your one and a half million pounds out of the Court of Protection and put it in that Halifax account, how much could you have made on it?

NEIL: I've done careful calculations on this, and the Court of Protection not paying interest has lost me a minimum of £50,000 so far.

ABRAMS: Just in the last eighteen months?

NEIL: Yes.

ABRAMS: In interest payments alone you've lost £50,000?

NEIL: Yes, and also, this is not taking into consideration what the Court of Protection's paid themselves.

ABRAMS: The Court holds a total of £3 billion. Until last year, it used to pay interest at 6%, but that was slashed after the Bank of England rate fell. According to the Financial Services Authority, a standard savings account can currently attract five times the rate Neil's getting. We wanted to interview the Court's senior judge about why its clients get so little interest, but he was unavailable. In a statement, the Court said:

READER IN STUDIO: The role of the Court Funds Office is to provide a safe place for funds. All interest rates carry a trade-off between risk and potential benefits. To offer a slightly higher interest rate that competes with the higher interest rate paying accounts on the High Streets would be making our clients' money more vulnerable to market forces.

ABRAMS: Even three or four years after the accident, Neil could still be frozen with indecision in a supermarket because they didn't have his usual brand of beans. He's come a long way since then. He's renovated a house and sold it for a profit, and now he's bought another. In the next couple of weeks he'll be moving in. And he wants to take control of his finances. But in order to convince the Court, he'd have to get medical reports. And in order to do that, he'd need to persuade his deputy to pay for them.

NEIL: Well, I've asked my deputy last August for a review and he told me, oh no, basically the Court wouldn't give me the money as I would have to go and see probably a consultant neurologist or psychologist. The impression I get is they're just not interested in me.

ABRAMS: Surely you would accept though that when you first went under the Court of Protection you did need it, you were vulnerable, and people with brain injuries often do think that they're capable when they're not, don't they? I mean, you might be deluding yourself, they might say that.

NEIL: I always accepted the Court of Protection and could see why it was there, and because so many people had told me, oh, you've had a bang on the head, you're not capable of this, that and the other, I was happy to go along with it and I was quite happy to have this protection. I saw it as a positive thing. I thought actually this is really good, because I thought it would be more like a bank account with added security. I didn't believe for a minute it would be like the system it is. The Court of Protection doesn't provide protection to these people, as far as I can see. It merely charges them a lot of money for a really quite poor service.

ABRAMS: Neil's solicitor told him he didn't think it would be appropriate to pay for the reports, because he'd recently been medically assessed for his personal injury case. In an email, he said:

READER IN STUDIO: A reasonable time will have to elapse before the Court would be likely to consider an application to discharge you from its jurisdiction and this would not realistically be seriously considered in under eighteen months, and could well be longer.

ABRAMS: The Mental Capacity Act's meant to make sure that just because people may have had an accident - or have learning difficulties or dementia - their wishes aren't ignored. It's all about empowerment, and it's quite clear that if someone who's lost their mental capacity gets it back again, they should be allowed to manage their own affairs. The Act spells it out, in a statement of principle:

READER IN STUDIO: Every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise.

ABRAMS: Campaigners on mental health issues spent years pressing for this Act. And they were delighted when it was passed. Toby Williamson, Head of Development in Later Life at the Mental Health Foundation, was among them. In 2007, he was seconded to the Ministry of Justice to help implement it. He says if someone believes they can make a decision, they should always be listened to.

WILLIAMSON: The Act makes it very clear that the assessment of capacity should be done on a decision specific basis and a time specific basis and therefore the decision maker should be saying to themselves, 'Hang on a sec, I need to reassess this person's capacity, because they appear to believe they have capacity to make the decision for themselves.'

ABRAMS: Would there ever be a justification for a delay?

WILLIAMSON: I find it difficult to think of a situation where there should be a delay, where someone is able to articulate their belief they have capacity to make a decision. But where someone is articulating a belief they can make a decision, then they are the most important person within the legislation, as it were, and that's who the legislation should be protecting, so it would suggest that certainly consideration should be given to reassessing their capacity.

ABRAMS: We wanted to ask Neil's deputy if he felt he'd acted in the spirit of the Act. He told us he'd have to take instructions from Neil before he could talk to us. Neil confirmed he wanted his solicitor to do an interview. But the solicitor still wasn't willing. He set out his reasons in an email to Neil.

READER IN STUDIO: The difficulty I have, which I am sure you will appreciate, is that the deputyship order has been made due to the Court being of the opinion that you do not have the necessary capacity to administer your own affairs. Following from this, therefore, although you may be quite happy to allow me to discuss your case with the BBC, I do not feel that, as your deputy, I am able to accept your reply as sufficient authority to enable me to speak to the BBC.

ABRAMS: Neil's concerned about the way his money's been invested - and also about the fact that he can't make investment decisions for himself. But many people who find themselves under the Court of Protection are also concerned about the fees their professional deputies are charging.

ACTUALITY OF KAY AND HER CARER, STELLA

KAY: Is my bottom in the right position? Am I standing properly?

STELLA: Yes, pull your bottom down ...

ABRAMS: Kay Jary and her carer, Stella, do these exercises every day. They're to help her get walking again, after a car accident ten years ago. She skidded off the road and broke both legs, and she suffered a terrible head injury – it left her in a coma for three months.

KAY: Now stand up and look up and twist my bum

STELLA: Bum in, boobs out

KAY: Oh my God, bum in, boobs out.
I can sit on the side of my bed, but I can't get my legs up myself. But to stand up and walk into the bathroom and have my shower, not enough on my own. I just can't do it.

STELLA: All right, go up to it, that's it.

ABRAMS: Kay received a large compensation payout.

KAY: I believe it was £1.5 million, but that was three years ago. It did seem a lot, but I knew that I would need help for the rest of my life, and they had to appoint somebody who was called a deputy, and that person controlled the money, and I wasn't allowed to open a bank account.

ABRAMS: The firm of solicitors which acts as Kay's deputy does a lot of work for her. They've helped her buy a bungalow and renovate it. They even pay her electricity bills. But in the last few months she's been left wondering how much her deputy's total charges are. Earlier this year she received a letter. It said the firm was charging a range of fees up to £200 an hour. She asked for a breakdown of how many hours she'd paid for.

KAY: I have actually asked earlier this year, I think it was April if I remember correctly, but I haven't had a proper answer.

ABRAMS: So you asked them in April, a good three months ago?

KAY: Yes.

ABRAMS: You had a personal injury payout of well over £1 million, you're quite a rich woman. Do you know how much of that you still have?

KAY: Haven't got a clue, haven't got a clue. I'm sorry, I'm so cynical, I've become totally cynical now about how much they're charging me.

ABRAMS: Kay's solicitors, an East Anglian firm called Kester Cunningham John, have apologised for the delay and they've promised to come and see her soon with a breakdown of their charges. Their fees range from £111 an hour for an administrator to over £200 for her deputy. Tom Cook, one of the partners with the firm, told us he couldn't discuss the specifics of her case - but he said the charges were fair.

COOK: The way in which costs or charges are dealt with in deputyship cases is that they are assessed by the Court. Detailed bills are prepared which follow or reflect local guidance concerning rates of pay for Court work, and then they are assessed by the Court as to whether they're appropriate.

ABRAMS: She's been asking since April for a statement of her financial affairs. Why hasn't she had one?

COOK: Well, what's been happening is that, as I understand it from my colleague, an endeavour has been made to arrange a meeting with her to run through the entirety of her financial affairs. There are other people that are going to be involved in that meeting that are concerned with the care provision and other support, so these things take a bit of time. As it happens, just the preparation and assessment of the bills that are assessed by the Court is something that's an annual event and that will be available when they meet as well.

ABRAMS: One of her fears is that her money is being drained away by your fees and she doesn't actually know what she's paying you.

COOK: That will be addressed, and the question of our fees, we're very much a demand-led service. By the very nature of the patient or client, the work can be or is stressful, relentless and ... commonplace, costs are likely to be more significant than is the case in circumstances where the work is far more mundane and routine.

ABRAMS: The Court of Protection lays down fixed fees for solicitors. It says they can charge up to £1,100 a year for managing someone's finances. If they want to charge more, the bills have to be approved by something called the Senior Courts Costs Office.

ACTUALITY ON COMPUTER

ABRAMS: What I've got here is a spreadsheet with some Court statistics – and they show the Court's allowing solicitors to charge far more than the fixed fee. They suggest that on average deputies could be charging about five times that – about £100 a week. In total, this group of five thousand really vulnerable people were paying their solicitors more than £27 million annually. That had doubled in four years. And a lot of the work's quite routine, like organising care packages or paying gas bills.

Daniel Blake's the policy development officer for Action on Elder Abuse. He says he's not surprised so many solicitors are charging so much, because the charity gets a lot of calls to its helpline about this issue. And he says it's a matter of grave concern.

BLAKE: Certainly the cost of legal advice and legal support is raised. There's a worrying percentage of it which is about solicitors' fees, unnecessary work and duplication that needs to be looked at as a matter of urgency. I would be asking those solicitors how explicit they made it to the person as to what they were likely to be charged, because this will eat into what people have. People may want to provide for their families, people are concerned about providing for themselves. There is a political consensus that older people will need to pay for their own care now and this money may well have gone towards that, so it's extremely concerning to hear those kind of figures when it's so out of step with what the Court of Protection is saying it should cost.

ABRAMS: We asked the Ministry of Justice whether the fees were justified. In a statement, they said:

READER IN STUDIO: Whilst senior fee earners may deal with the more complex elements of a case, much of the routine financial management is, or should be, delegated to more junior fee earners.

ABRAMS: Solicitors point out their bills are all carefully scrutinised by the Costs Office. And it does cut the amount of work they can charge if it thinks the bills are excessive. Caroline Bielanska's Chief Executive of Solicitors for the Elderly, the trade body for lawyers doing this work. She defends the fees that are being charged by solicitors.

BIELANSKA: We are deputies in last resort, usually because the person has no-one, the person has been involved in abuse or neglect or family disputes. There are unusual circumstances which often trigger why a professional is appointed over a layperson. The big growth in Court of Protection cases has actually been in the field of personal injuries and so larger sums are being awarded and therefore that's why professionals are being appointed. And of course, the whole financial structure, you know, if you win, I don't know, let's say £1 million, actually managing that can be quite complex, because you've got to make sure that that amount lasts the person, the client for the whole of their expected lifetime.

ABRAMS: The total amount that the Court of Protection has approved has almost doubled in the last four years from £15 million to £27 million. Is that because these cases have got more complicated or is it just a bit of a gravy train for solicitors?

BIELANSKA: No, definitely not that. The Mental Capacity Act imposes a much greater involvement with the client. We're expected, where it's appropriate, to consult with the client more regularly and involve them in decision making, so the more work you do then obviously the costs will increase, and I would certainly see that there's a strong correlation with the increase in charges being down to the implementation of the Mental Capacity Act.

ABRAMS: With the numbers of deputies continuing to grow, and the workload of those deputies increasing, there are bound to be more complaints about the size of the bills. There are now thirty thousand people who have a deputy looking after their money. But there are also real concerns about the fundamental issue the Court's meant to address – financial abuse.

ANN: She is the most wonderful, wonderful lady. She's full of joy. I've never heard her say anything bad about anyone; she's just sweet and caring and funny. She's a remarkably nice lady.

ABRAMS: Florence – which is not her real name – is in hospital at the moment. She's suffering from dementia. But until recently she was living independently in her own home. Ann's been her friend for thirty years. But when Florence was contacted by a niece who'd been living abroad, things began to go badly awry.

ANN: I wasn't very keen on her right from the word go, because she was a very large lady who towered over Florence. She had a very bullying attitude towards Florence. She would say to Florence, anything that Florence might say, the niece would say, 'Now you know you're confused, you are confused,' and that was horrendous. She just was menacing. Florence did tell me a story about her beloved cat. That niece had been down the end of the garden with the cat and Florence had been at the back

ANN cont: door looking down the garden. The niece picked up a big block of stone and crashed it down on the cat's head. Florence described it so graphically that I honestly cannot think that it was anything but true.

ABRAMS: What was Florence's reaction to that?

ANN: Acute horror and terror. Because, you know, here is this big, big lady killing her cat, so I think Florence must have been in terror of her.

ABRAMS: Ann was horrified by the way her friend was being bullied. But what she didn't know was that Florence was being financially abused, too. The full extent of the crime began to emerge when a social worker found her in a state of distress – she'd had a disturbing letter from the Land Registry. Julia Newland, a solicitor who works with elderly clients, went to investigate.

NEWLAND: I explained to Florence that clearly the property was held in joint names with her niece and that was, frankly, news to Florence, she had no idea that the property wasn't in her sole name. I discussed with Florence who'd been helping her with her financial affairs, and she advised me that her niece had been helping her, and I asked Florence if she would allow me to have a look at some of her bank statements, and she did allow me to look, and instantly I saw that there were some large cash withdrawals which clearly a lady of her age would not be making, and alarm bells began to ring.

ABRAMS: What sort of withdrawals? For what kind of things?

NEWLAND: There was cash point withdrawals from another town quite a long way away from where Florence lives, and those were quite regular and clearly those were not being withdrawn by Florence. The amounts were so large that she would not have needed that amount of cash. Additionally, supermarket bills were extremely high and certainly shopping was excessive for a lady living alone.

ABRAMS: Julia Newland dug deeper. She soon discovered Florence had also paid the bills for a family holiday in Australia. The total amount that had gone missing was more than £300,000. She decided to apply to the Court of Protection to be

ABRAMS cont: Florence's deputy. And she told the court she had serious concerns about what was going on. There is a fast track procedure for such cases but it doesn't seem to have been applied. It took three months before the court cut off the niece's access to Florence's money.

NEWLAND: I pointed out that I had some suspicions that there might be financial abuse. The Court of Protection issued the application within approximately eight weeks. Once the application had been issued, I had to serve notices and then finally an order was made appointing me deputy, but it was only at that stage that then a court order was made for a hearing to in fact discuss the concerns that I had raised.

ABRAMS: In theory, at least, Florence's niece could carry on stealing the money.

NEWLAND: She did indeed have access to her bank accounts and certainly could have spent money during the time that I was trying to be appointed deputy, yes. I did actually feel that I had presented quite a lot of very persuasive evidence to the Court. They were extremely lenient upon the niece.

ABRAMS: What sanctions then take against her?

NEWLAND: They took no sanctions at all, as far as I'm aware. I haven't been notified that the Court of Protection have notified the police.

ABRAMS: After many more months, Julia Newland eventually recovered all the money which had been taken from Florence. But she wanted the niece brought to book for what she felt was a serious crime. We wanted to ask the Court of Protection why it took so long to deal with Florence's case and why it didn't issue an order that the police should be informed. In a statement it said:

READER IN STUDIO: We cannot comment on individual cases. The court can make interim orders at short notice, but the onus is on the applicant to persuade the court to do so. A court order is not needed to report an alleged crime to the police.

ABRAMS: Julia Newland was concerned the court hadn't taken action to notify the police. So she decided to approach the Office of the Public Guardian, which implements the court's decisions. A few weeks later she had a meeting with a representative of the office. Its guidelines say if it becomes aware of a crime, it'll either take action or call the police.

NEWLAND: I did have a meeting a few weeks later and I did discuss with him the litigation which ensued and he, in fact, wasn't aware that it had happened, and we did discuss whether it was appropriate for a deputy to report the matter to the police. And he went away and had discussions and then, in fact, did come back to me and said that I should, in fact, report the matter to the police.

ABRAMS: Did you suggest that the Office of the Public Guardian should report the matter to the police?

NEWLAND: He said that I would raise it as deputy on behalf of my client, yes.

ABRAMS: Were you surprised that the Office of the Public Guardian weren't more proactive in that, that they didn't want to raise it with the police?

NEWLAND: I was surprised it wasn't raised, yes.

ABRAMS: She reported it to the police, but no action was taken. It seemed the complaint would have been taken more seriously if it'd come from a judge or an official body. Martin John is the Public Guardian. He says his office does strive to be proactive about abuse. But Mr John says the action they'll take will depend on the circumstances.

Are you quick enough in responding to allegations of abuse?

JOHN: I believe so, absolutely. We have quite testing targets for ourselves in terms of how quickly we assess whether or not an allegation is within my jurisdiction, and that tends to be a first issue for me is whether or not an allegation of abuse is something I can act on or whether it's something that I need to refer to an appropriate authority, typically a local authority or to the police.

ABRAMS: We're looking at a case where the Court of Protection actually ruled that £300,000 had been stolen from an elderly lady. Whose job was it subsequently to make sure that the police were informed about that?

JOHN: The primary role and responsibility would be on the deputy.

ABRAMS: But your safeguarding adults guidance is very clear, isn't it, and it's quite unequivocal. It says, 'If you are aware of a crime, you will report it to the police or the local authorities.'

JOHN: Where the issues come to us in the first instance and we look at it, where we have jurisdiction, yes, but where a deputy's been appointed, that will normally be as a function of or as a result of some investigative activity.

ABRAMS: Julia Newland was left feeling no-one took the theft seriously. Daniel Blake of Action on Elder Abuse isn't surprised. He says the Court - and its sister agency, the Office of the Public Guardian - don't work hard enough to protect people like Florence. And it isn't the first time he's heard of them being slow to respond to allegations.

BLAKE: We've had a number of those kind of cases reported to our helpline. The key for us is if abuse is identified, it's addressed appropriately, robustly and in as quick a time as possible, and I think what there is is a need for the Office of Public Guardian to link up with other processes designed to protect people. If there are crimes being committed that the Office of Public Guardian, the Court of Protection is aware of, then there needs to be immediate action, because at the moment people are falling through the cracks and the end result is that people are being abused.

ABRAMS: Have you seen cases where the Public Guardian's Office has notified the police and where there has been a successful prosecution?

BLAKE: Cases of prosecution are extremely rare in this field. I am certainly aware of a couple of cases that the Office of Public Guardian have been involved in where it has led to prosecution, but we are talking very very small numbers and they don't match up with the numbers of calls that we receive to our helpline.

ABRAMS: The first three years of the Mental Capacity Act haven't been easy ones. The Master of the Court of Protection, Denzil Lush, has admitted it's overstretched. It's had to deal with more than forty thousand cases since 2007, sometimes with as few as three judges on its staff. And over at the Office of the Public Guardian, Martin John's team had more than four thousand complaints in their first two years. And they're still struggling to meet customer service targets.

JOHN: I'm never happy with the performance. There's always more that we can do. There's always more that we can do to get the message out about people thinking ahead and planning ahead, and there's always more that we can do in terms of dealing with allegations of abuse, working with local authorities and other agencies. The reality is that the Act is still young. OPG as an organisation is still relatively young. I'm hugely positive about the future, not least because of where we've come from and the difficulties we've experienced in the times that we've had where it has been hard, we've learned a lot from that.

ABRAMS: When we talk to professionals they say it's getting better. When we talk to members of the public, they're frustrated and angry and feeling that the process is just not working for them.

JOHN: There's still a lot that we can do to get people up to date and understanding the role of me as the Public Guardian, how I operate and how my office operates.

ABRAMS: Martin John thinks the issues are all about helping people to understand the new system. And the organisations who lobbied for the Mental Capacity Act continue to feel, that its focus on helping people make their own decisions is a good one. But until the people who have to use it begin to have greater confidence - in its transparency, its efficiency and its cost-effectiveness - they're bound to continue feeling little more than frustration, and disappointment.

SIGNATURE TUNE