Vulnerable Clients- the view from the UK

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What’s our law?

Mental Capacity Act 2005

Start with the principles (s.1)

- Presumption of capacity
- Being helped to make a decision
- Unwise decisions
- Best Interests
- Least restrictive
Lacking capacity under MCA 2005

Two limbs to the test (s 2 MCA)
Cannot decide..
..as a result of an impairment to or a disturbance in the functioning of the mind or brain
What is inability to decide? ( s3 MCA)
Cannot...
Understand the information relevant to the decision
Retain that information
Use and weigh it as part of the process of deciding or
Cannot communicate the decision
Who decides when I can’t?
What’s in the tool box in England and Wales?

- Lasting Powers of Attorney (and Enduring Powers of Attorney)
- Court of Protection Deputyships
- Court of Protection single orders
- Section 5 MCA - informal decision making

All for welfare and/or finance

But **not**
- General powers of attorney
- ‘just sign here’ ‘what’s your pin number Granny?’ and other doubtful shortcuts
Putting it right

Powers of the Court

- Deputyship
- LPA’s
- What can’t the Court do?

..and stopping it going wrong-

Office of the Public Guardian

- supervision of deputies
- investigation of attorneys
Financial recompense-creative judicial thinking and other alternatives

- Calling in the bond
- Statutory will- Re JKS [2017] EWCOP 8
- Ratifying and/or paying back? Re MB [2017] EWCOP B 27
- Paying the costs Re MB

Fraud Act 2006 s 4
What if it’s international?

- LPAs worldwide?..
- Or foreign power used in England and Wales? Re JMK [2018] EWCOP5
- MCA schedule 3- enforcing foreign orders in England and Wales
- Using a deputyship order abroad?
- Cases mainly about welfare- Re M [2011] EWHC 3950 but see Re MN [2010] EWHC 1926