

# Transfers of property ownership: A symptom of financial abuse of the elderly?

**Sarah Young** of Ridley & Hall and **Elizabeth Darlington** of Parklane Plowden Chambers discuss the recent case of a dispute between a mother and son

As the population ages, an increasing proportion of the nation's capital is tied up in capital assets owned by the baby boomer generation. A 2018 study in the *Lancet Public Health Journal* analysed the projected health needs of the elderly in England between 2015 and 2035. The fastest growing demographic in the UK is elderly people over 85 whose numbers are projected to more than double by 2035, increasing by 1.5 million. There is as a result, in the authors' experience, an increase in the number of properties being transferred by parents into the names of adult children.

This can be for a number of reasons. Older people may believe that doing so will help to mitigate the payment of care home fees; some may have in mind reducing Inheritance Tax liability. Some may want to assist their children and to see them benefit during their lifetime, especially when it is so difficult in the current economic climate for younger people to get a foothold on the property ladder.

Whatever the reason, before taking the significant decision to transfer a property, which may represent a lifetime's work, into the name of an adult son or daughter, appropriate legal and/or financial advice should be obtained. The law provides only very limited assistance to those who transfer property to an adult child but then subsequently change their mind.

Problems typically arise when other siblings discover that the inheritance that they had reasonably anticipated coming to them is not; or when the adult child separates from their spouse or partner who seeks a share of it; or simply if the adult child and parents fall out, as in a case in which the authors were recently involved. A son had persuaded his parents to transfer their home, bought with their life savings, into his name. He promised them that they would still have a home for life and would be cared for. His father passed away and he and his family fell out with his mother. Despite his promises, he sought to evict his mother. It was found, however, that she was entitled to remain there for the rest of her life, although the transfer itself was not set aside.

In such cases, often the only legal cause of action available to the court is the equitable doctrine of undue influence. This is difficult to establish, however. Certain limited categories of relationship give rise to a presumption of undue influence, which can be of assistance. However, these do not include the relationship between an adult child and their parents, and it is necessary to establish that such a relationship exists.

In the case of *Paul v Paul* [2018] EWHC 2520 (Ch), a decision of Master Bowles, Neville, a vulnerable man in his 60s, transferred his property into the name of his son, Bradley, in his 40s. Neville was able to establish that there was a relationship



of trust and confidence between them. He had delegated a significant amount of financial control to Bradley. The transfer called for an explanation and none was forthcoming. The burden was therefore shifted on to Bradley to

demonstrate on the evidence that the decision was made by his father free from undue influence. Importantly here, although Neville was advised by the conveyancing solicitor against the transfer and to obtain independent legal advice, it was found that this was not sufficient to discharge the burden on Bradley, as Neville was not advised that he might lose his home. The transfer was set aside.

In the case where the authors were instructed, the claimant was elderly, lived on her own and had very little grasp of English. Two of her adult children supported her claim and it was clear from the outset that they were outraged by their brother's conduct. As a result, it was important to ensure that instructions were obtained from the claimant directly, with the benefit of an independent translator, who was able to build a relationship of trust with her over a period of time.

In terms of managing the case, an obvious point but one that bears repeating is that in a family dispute, feelings often will run very high and facts can fall victim to wishful thinking. It is important to gather the documentary evidence as quickly as possible, to analyse it carefully and check for 'fit' with the witness evidence. Preparing a chronology at an early point in the case can be helpful.

Family members who give witness statements may be keen to settle old scores, but efforts at character assassination are rarely relevant and will simply irritate the judge.

There was an interesting overlap in this case between the family law elements of applications for a non-molestation injunction and an occupation order along with the undue influence claim.

It is suggested that the law on undue influence is one which is capable of being developed further to recognise the increasing number of cases where adult parents, who are often vulnerable, should be protected. Similarly, the charity Surviving Economic Abuse is interested in exploring whether it would be capable of addressing economic abuse within intimate partner relationships. Indeed, on this point, practitioners should remember that family law remedies may also be available. Further, there is increased understanding of the prevalence of psychological and economic abuse, including coercive control and behaviour such as 'gaslighting' by the criminal and family courts. There is scope for these and similar types of behaviour to be recognised in the Business and Property (formerly the Chancery) Courts to prevent predatory behaviour.