

Submission to Royal Commission on Family Violence

A personal story of financial elder abuse

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1 Introduction

This submission provides a first hand account of family violence. It describes the financial abuse of my mother. It also describes my efforts to prevent this abuse, and how only one sibling supported me.

Financial elder abuse involves taking or misusing an older person's money, property or assets. Studies confirm that financial abuse is the most common, and fastest-growing, type of abuse of older people. The most vulnerable include older people with diminished capacity due to dementia and depression, and older people who rely on others to manage their finances.

There is little reliable data on the extent of financial elder abuse. State Trustees Victoria found that women over the age of 80 are most at risk of financial elder abuse (King et al., 2011). They found that adult sons were the most common perpetrators of financial elder abuse.

Some children assume that an older woman, particularly a woman who has not been the family's breadwinner, is unable to manage her own finances after her husband dies. These children encourage their mother to appoint a financial power of attorney, often a son. In some cases, the mother is declared legally incapable and an enduring power of attorney, both financial and medical, is appointed.

There are no definitive, scientific tests for assessing whether a person meets a particular capacity standard. GPs often make the assessment of legal capacity. However, it is best practice for the GP to provide a referral to an appropriate specialist for an assessment of capacity.

According to the Office of the Public Advocate (2011), older women are more likely to be declared legally incapable than older men. Once an older woman has been declared legally incapable, some adult children may feel a sense of entitlement to their mothers' assets though their mother is alive and well. However, declaring an older woman (or man) legally incapable does not give her children any entitlement to her assets while she is alive.

Financial elder abuse may begin with the best intentions - with a child acting as their mother's financial power of attorney thereby managing her finances. This can quickly progress to a sense of entitlement, particularly when adult children have mortgages or debts.

In some families, children are not willing to wait for their inheritance until after their mother dies. They assume what was once 'Mum and Dad's money' is now their money, not their mothers' money. They actively seek ways for their mothers to 'gift' them money. The children may justify their actions by saying: "Mum doesn't need money now, and it's going to be mine anyway."

Some children keep a close eye on their mother's assets to protect what they see as their entitlement. They may curtail their mother's expenses, such as money she spends on outings, hairdressers, holidays, birthday parties and carers. Limiting the amount a mother spends of her own money may constitute financial elder abuse.

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2 A personal story of financial elder abuse

This personal story of financial elder abuse is an anonymous submission because I do not want to embarrass my mother. My mother recently celebrated her 91st birthday. She is physically frail and lives in an aged care facility. After my mother dies, this story will be made public.

2.1 My family

This section provides personal information about my family. I have included this section to provide the Commission with a social and economic context for the financial abuse.

In my family, the financial abuse began soon after my father died. My father was a successful businessman; my mother a gregarious, popular and generous homemaker. They were married for ■ years. When Dad died in ■, at the age of ■, he left mum a substantial sum of money, two properties (including a beach house) and other investments (e.g. shares).

Mum and Dad had five children – four boys and a girl. I am the youngest. My two eldest brothers are both ■ – Brother 1, ■ years old, is a ■ (retired), Brother 2, ■ years old, is a ■. Brother 3, ■ years old, is a ■ (retired). Brother 4, ■ years old, worked with my father as a ■. He recently retrained as a ■.

My brothers and I had a privileged upbringing. We were educated at elite private schools. After school, we all went to university.

After my father's death, I stopped working full time. I spend as much time as possible with my mother. Brother 1 told me "Caring for elderly people is women's work".

2.1 Main points

1. A privileged upbringing may contribute to a sense of entitlement.
2. It is sexist to suggest caring work is "women's work".

2.2 Declaring Mum legally incapable

The process of having Mum declared legally incapable was straightforward. A few days after my father's death, a brother asked his colleague, Mum's GP, to declare my then ■-year-old mother legally incapable. The GP did not refer Mum to a specialist for a neurological or mental health assessment. He completed the required paperwork himself.

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I disagreed with the GP and my brothers' opinion that Mum was legally incapable. Although Mum was depressed after the death of her husband, she was still capable of making legal, medical, financial and personal decisions.

I reminded my brothers that Dad was not declared legally incapable despite his significant cognitive decline towards the end of his life. When Dad's cognitive abilities declined, Brother 4 assisted Dad to manage his financial affairs. This was done respectfully so that Dad felt empowered and retained his dignity. I wanted Mum to feel similarly empowered to make her own financial decisions.

I took Mum to see a grief counsellor. After several sessions with the grief counsellor, Mum remained depressed. I then took Mum to see a psychogeriatrician. His diagnosis was 'Major Depressive Disorder' and 'Mild Cognitive Impairment'. He prescribed an antidepressant that improved Mum's mood and memory loss.

2.2 Main points:

1. There should be a period of time after a spouse's death before a widow or widower can be declared legally incapable.
2. A rigorous assessment of an older person's cognitive status and mental health should be undertaken before an older person is declared legally incapable.
3. If an older person is depressed, the depression should be treated before their legal capacity is assessed.
4. Psychogeriatricians and neuropsychologists are better qualified than GPs to competently assess a patient's legal capacity.

2.3 Appointing a financial power of attorney

After Mum was declared legally incapable, Brother 4 became Mum's financial power of attorney. As Mum's financial power of attorney, Brother 4 is required to act in Mum's best interest. On several occasions, however, Brother 4 acted in his and his siblings' interests. He actively sought ways for Mum to give money to her children, tried to curtail her expenses and refused to pay some of her accounts.

2.3 Main points

1. Financial powers of attorney require education and guidelines.
2. Older people's financial power of attorneys should focus on the older person's interest rather than their or others' interest.

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2.4 Mum's financial independence

Mum has no purchasing power in her daily life because Brother 4 refuses to give her any cash. Brother 4 is concerned cash will be stolen from Mum's handbag at the aged care facility. Brother 4 asked management of the aged care facility to manage Mum's petty cash, but they are unable to manage residents' money.

Without any cash, Mum is unable to:

- Purchase items such as shoes and clothes when 'pop up stalls' come to the aged care facility.
- Make independent decisions about accessing services at the aged care facility (e.g. hairdressing).
- Participate in excursions with other residents such as bus trips to a café.

Mum is often embarrassed that she has no money, particularly when going out for lunch and coffee with friends, her carers or me. She often asks why she does not have a purse or credit card.

Given Mum's financial power of attorney refuses to give Mum cash, I put cash in Mum's purse. At no stage has this cash gone missing.

2.4 Main points

1. Having access to spending money empowers older people to make choices about their social life and to continue to enjoy it.
2. Elderly people without purchasing power are disempowered.
3. Assessment of risk should be balanced with an elderly person's self respect and dignity.

2.5 Mum gifting money to her children

On [REDACTED], Brother 4 sent his four siblings an email to inform us that Mum "has over \$1 million in a term deposit". Brother 4 asked his siblings to consider "Mum gifting some of this money to her children in the near future".

Brother 4 was in favour of Mum giving money to her children. "Mum having large reserves of money does not necessarily improve Mum's quality of life and the money generates income that can mean higher taxes and accommodation fees [in the aged care facility]. On the other hand, if part of this money was gifted to the ultimate beneficiaries to Mum's will (us), depending on the beneficiaries personal circumstances, this money could reduce loans and thus after tax payments of interest on loans. In the long run Mum is no worse off, and the children are better off" (email, [REDACTED]).

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I objected to the suggestion that Mum should give money to her children while she is alive and well. "It is my view that it is morally unjustifiable for middle aged people like us, who all have professional jobs with decent salaries, to rely on inherited money to help us manage our current finances. Of course all parents want to help children who are in trouble - and I would support Mum helping one of us if one of us was in financial trouble. But I cannot fathom why middle-aged people expect Mum to help them out with loans that they chose to take out to support their lifestyle" (email, [REDACTED]).

I asked Brother 4 whether he had discussed with Mum the idea of 'gifting' her children money. He replied: "Mum finds talking about financial matters stressful".

2.5 Main points

1. Older people should be consulted about any proposal to give away their money, even if the older person has been declared legally incapable.
2. Banks need to provide mechanisms to safeguard an older person's deposits, particularly those older people who have been declared legally incapable.

2.5.1 Family meeting to discuss Mum gifting money to her children

Brother 4 arranged a family meeting to discuss the proposal that Mum give her children money from her fixed term deposit. After my brothers had confirmed a date/time, Brother 4 emailed to say: "I am happy to meet at my house - I am also happy to cook [REDACTED] if you want to stay for dinner - probably two [REDACTED] as Mum often had to cook!!" (email, [REDACTED]). It became apparent to me that no arrangements had been made for Mum to attend the family meeting.

I sent an email to remind my brothers that Mum should attend a meeting to discuss the proposal to give money to her children. "It would perhaps be easier for mum if the meeting to discuss her income and assets was held at [the aged care facility]" (email, [REDACTED]).

The meeting was relocated to the aged care facility so that Mum could attend. Brothers 1, 2 and 4 attended the meeting in person; Brother 3 and I attended via skype.

During the meeting, there was a long discussion about Mum giving her children some money. Brother 3 and I strongly objected. I presented a moral argument about why it was decent to wait for any inheritance until after a parent dies. Brother 3 offered a financial argument. He said that Mum might need the money. Mum did not speak. After a heated discussion among her children, Mum's financial power of attorney reluctantly agreed that Mum would not give her children money from her fixed term deposit.

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2.5.1 Main points

1. According to the Office of Public Advocate, Council of The Ageing (COTA) and Senior Rights Victoria, the interests of an older person should be represented at all family meetings.
2. Older people should attend family meetings themselves or an independent advocate whose sole responsibility is to act in their best interest should attend on their behalf.

2.5.1.1 Mum's reaction to family meeting

During the meeting to discuss giving her children money, Mum appeared frightened and worried. The heated discussion about Mum giving her children money made her feel financially insecure. The differing views of her children also confused her.

After the meeting, Mum told staff and residents at the aged care facility: "My sons have asked me to sign something to give away my money". In addition, staff overheard Brother 2 discussing Mum's will outside the lift.

Our family became the subject of gossip among staff, residents and relatives at the aged care facility. Brother 1 blamed me for this gossip, even though I had not attended the meeting in person. The gossip caused Mum further distress.

2.5.2.1 Main points

1. Financial power of attorneys should not act in ways that cause an older person distress.
2. Financial power of attorneys should ensure that older people feel financially secure.
3. Older people are entitled to keep the content of their wills private.

2.6 Ongoing family meetings to discuss Mum's finances

After the initial meeting to discuss Mum giving her children money, Brother 1 organised regular family meetings. Neither Mum nor I have attended any of these subsequent meetings. I told my brothers that I would not attend any meeting to discuss mum's financial affairs without her or an advocate being present.

The primary objective of these family meetings is to discuss Mum's finances, particularly her "outgoings". Prior to each family meeting, Brother 1 sets an agenda for the meeting. In an email on [REDACTED] I asked Brother 1 whether he had "ever asked dad to provide an update on our parents' finances prior to Dad's death". I also asked him "If the tables had been reversed, and mum had died before dad, do you think you would have asked dad for spreadsheets about his finances?"

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2.6 Main points

1. Older people or an advocate should be present at all meetings in which their financial position is discussed.
2. The financial power of attorney should manage an older person's accounts privately with the assistance of an accountant.

2.7 Monitoring Mum's financial position

After Dad's death, Brother 1 asked Brother 4 to provide regular updates of Mum's "financial position" and her "outgoings". He said he was planning his own retirement, and needed to know his financial position. He had not requested regular spreadsheets when Dad was alive.

Brother 4 regularly emails spreadsheets to his siblings. These spreadsheets contain lists of Mum's financial inputs and outputs.

When I spoke with Brother 2's wife about the monitoring of Mum's finances, she told me: "Your brothers are worried about their inheritance. What's wrong with that?" (email, [REDACTED]).

2.7 Main points

1. Children are not entitled to receive regular updates about their parents' expenses.
2. An accountant should monitor an elderly person's financial position.
3. Information about an older person's expenses is private and should not be shared with all family members unless the older person requests it to be shared.

2.8 Proposal to sell Mum's beach house

Soon after Dad's death, my four brothers indicated their intention to sell their share of the family beach house after Mum's death. I proposed that I would buy their shares. My brothers all agreed.

Mum is pleased that my brothers are all in agreement that I will own [REDACTED] after she dies. She feels reassured knowing that I will own her beloved beach house after she dies.

At a family meeting on [REDACTED] Brother 2 suggested that I buy the beach house now, *while Mum is alive*. He had not discussed this idea with Mum.

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I discussed Brother 2's suggestion with Mum. She told me that she wants to remain the owner of her beach house and to continue to pay the expenses (gas, electricity, repairs etc). Mum reiterated that she wants me to own the beach house after she dies.

In [REDACTED] Brothers 1, 2 and 4 proposed that the agreement that I buy the beach house after Mum's death be rescinded. They suggested the beach house should be sold to the highest bidder. They do not want to honour Mum's wishes.

2.8 Main points

1. Older people should be consulted prior to the sale of their properties, even if the older person is declared legally incapable.
2. Older people's wishes about ownership of their property should be honoured.

2.9 Mum's access to her beach house

Brother 1 claims that Mum's holidays at *her* beach house are "too expensive". Brother 4 and his wife have also objected to Mum visiting her beach house. They do not want Mum to visit her beach house when they are using it.

The first conflict over Mum's access to her house occurred in [REDACTED] after Mum said she wanted to stay at her beach house during Xmas-New Year period. Brother 4 and his wife replied that Mum could not use the house because their daughter had booked it. I insisted on Mum's right to use her beach house whenever she wants. Brother 4's wife emailed me to say she was "extremely disappointed" that her daughter's booking of the beach house "is not being honoured" (email, [REDACTED]).

Brother 1 emailed me: "Surely it can be organised that the day trips with Mum occur in January when it is unoccupied...[I am sure that Mum] would not want to cause any inconvenience so close to Christmas" ([REDACTED]). I replied that Xmas is a special time of year, even for an elderly woman who lives in an aged care facility.

I reminded my siblings and their wives that it was Mum's beach house. Brother 1 sent me a series of abusive emails and texts, even after I requested no further correspondence about this issue.

There have been ongoing disputes about Mum's access to her beach house. Most recently, Brother 4's wife complained when Mum's booking clashed with hers. Rather than discuss her concerns with Mum or me, Brother 4's wife sent me an email with the subject heading "No respect for google booking" ([REDACTED]). The body of the email was blank.

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2.9 Main points

1. Older people are entitled to use their beach houses whenever they like.
2. It is a privilege, not an entitlement, to have access to a beach house.

2.10 Cost of Mum's 90th birthday party

I invited 100 people to attend Mum's 90th birthday party. Mum wanted to pay the costs of her party. These costs were modest. Brother 1, however, complained about the cost of Mum's party. He did not complain about the costs of Dad's 90th birthday party.

Everyone accepted the invitation to Mum's party except Brothers 1, 2 and 4, and their wives. Brother 1 sent me abusive texts because he mistakenly thought I had not invited his sons to speak at Mum's birthday party.

Brother 3 encouraged his brothers to attend their mother's 90th birthday party. Brothers 1 and 4 subsequently changed their minds and attended the party.

2.10 Main points

1. Older people can spend *their money* on whatever they like, irrespective of whether or not their children approve.

2.11 Concerns that Mum's expenses are excessive

Soon after Mum's 90th birthday party, Brother 1 called a special meeting with Brothers 2 and 4 and their wives to discuss Mum's finances. Brother 1 was concerned that Mum's outgoings had increased. He was concerned specifically about the costs incurred when Mum had holidays at her beach house.

Brothers 1, 2 and 4, and their wives, all agreed that Mum's expenses were "excessive". They wanted me to curtail Mum's expenses. They also expressed concern that I was "angling to have Mum declared legally capable so she could change her will".

Brother 3 was asked to get an assurance from me that Mum would not change her will. After speaking with me, Brother 3 wrote the following email to his siblings on

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I refer to my email to you dated [REDACTED] in relation to the issues you have asked me to raise with [REDACTED]

[REDACTED] and I have had several discussions in relation to these matters. We have discussed the substance of her proposed response. You already have the assurance you have sought in relation to Mum's will.

As I indicated in my earlier email, I had intended to reply after settling the letter with [REDACTED]

As you will see from the attached email, [REDACTED] would prefer to reply directly to you. As she indicates, for the reasons set out in her email, this will probably not be before [REDACTED].

... [REDACTED] refers to me being the messenger in these matters. Quite frankly, I do not like being put in the position of a messenger or mediator, but I have been prepared to do so in an attempt to help bring about agreement and hopefully to bring back some harmony to our family.

My intention on every issue that has arisen over the last several months has been to try to keep communication open and to achieve a result that is best for our mother. This includes the issues surrounding [Mum's beach house], Mum's birthday party and her Memoirs.

I have not agreed with my siblings on several of these matters because I think, on occasion, their proposals or behaviour have not been motivated by what is in Mum's best interest in this her twilight time.

On some occasions, some of you have not agreed with what I have proposed, but in every case my motivation has been to achieve the best outcome for our mother.

I risk fracturing relationships that are otherwise very healthy by taking on this role as messenger or mediator. This has recently occurred, to my great disappointment and sadness.

I am happy to have ongoing constructive discussions with all the family, including on the current issues, but I will not take part in any further destructive or aggressive correspondence or discussions with any member of the family.

Once [REDACTED] has replied, I would be happy to discuss any outstanding matters with you.

2.11.1 Main points

1. Women of all ages should be entitled to speak for themselves.
2. To expect a man to speak on behalf of a woman is sexist.

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2.11.1 My response to concerns about Mum's expenses

I considered carefully the complaints Brothers 1, 2 and 4 and their wives made about Mum's expenses. I also took seriously their allegation that I was "angling to have Mum declared legally capable so she could change her will". The following is a copy of the email I sent to my brothers on [REDACTED].

[Brother 3] and I had a Skype video call on [REDACTED]. [Brother 3] told me that you, [Brother 1] and [Brother 4], and [your wives], met together recently to discuss your concerns about Mum's financial position and the time that I currently spend with her.

As a result of this meeting, you asked [Brother 3] to speak to me about the following issues:

1. That I may be "angling to have Mum declared legally capable so she could change her will".
2. A new proposal for Mum's beach house
3. Concern that Mum's current expenses are excessive
4. The time I spend with Mum
5. Reducing the gift that I receive from Mum for the work I do as her primary carer from \$ [REDACTED] to \$ [REDACTED] per annum.

[Brother 2] also raised [Brother 1's] concerns about Mum's 90th Birthday Book [her memoir].

After careful consideration, I have outlined my response to each of these issues below. I also make the following comments.

I love our Mum, as all her children do. I have not worked full-time for the last two and a half years so that I could spend as much time with Mum as she needs. I love spending time with her. I want Mum's quality of life to be as good as it can be. I have made this my priority.

Mum has already lost her husband and most of her independence, and I want her to feel valued in her 'twilight years'. Our time together is precious for us both.

The current care at [the aged care facility] is satisfactory, however Mum is often bored, and she gets lonely and depressed without any company sitting in 'her chair'. She looks forward to my regular visits, our lunches and afternoon teas, our games and our outings. In particular, she loves our monthly trips to [REDACTED].

I believe it would not be in Mum's best interest if her current Financial Powers of Attorney made decisions that forced me to take on more paid work and spend less time with Mum, unless another sibling can make a similar commitment to care for Mum, including on-call availability.

My response to the issues that have been raised is:

1. I would oppose any attempt by Mum to change her current will.
2. The family's agreement that I will buy [REDACTED] after Mum's death, as documented in [Brother 3's] email on [REDACTED], should be honoured.

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3. Mum should have her own credit/debit card to pay for her own shopping and outings, and an EFT should be used to pay her carers directly from her bank account.
4. I currently spend around 10 hours per week at [aged care facility] and 5 days per month at [REDACTED]. I am also on-call (e.g. recent lockdown).
5. If my payments were to be reduced to \$ [REDACTED] per annum, I could not afford to continue my current arrangements caring for Mum. The \$ [REDACTED] per annum already makes it very tight.

...I suggest that you discuss my response with [Brothers 1 and 4] and then we all meet to work out how best to progress these matters. I do not think it is appropriate for Mum's daughters-in-law to attend meetings pertaining to Mum's estate.

I will ask [Brother 3] to organise a time that suits us all. I will invite an experienced mediator and an advocate from [REDACTED] to be present at this meeting.

Brothers 1, 2 and 4 initially agreed to "independent medication (sic)". Although mediation was my idea, Brother 2 took control of organising the mediation. In his email, Brother 2 did not mention how Mum's interests would be represented during the mediation.

I responded with an outline of what I thought needed to be discussed at mediation.

I am pleased that you and my other brothers have agreed to independent medication. I hope we all take kindness pills.

I requested mediation so that we could all negotiate what is in Mum's best interest regarding her lifestyle and ongoing care. The main issue that needs to be resolved at the meeting is the amount of money spent by, or on behalf of, our mother to give her maximum enjoyment and the best of care for the rest of her days.

It is my understanding that what was once 'Mum and Dad's money' is now 'Mum's money' and not 'our money' (i.e not her children's money). I assume we are all in agreement about this.

The [REDACTED] is a free dispute resolution service funded by the Victorian Government. However if you prefer [Brother 3] to choose a mediator, I will of course pay my share of the costs. It is important for the mediator not have a personal relationship with anyone at the meeting, including [REDACTED]

Would you prefer Mum to attend the family meeting or an independent advocate whose sole responsibility is to act in Mum's best interest?

Mediation was initially delayed because Brothers 1 and 2 became unwell, then later cancelled because Brothers 1 and 2 were unwilling to attend.

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2.12 Cost of Mum's carer

Brother 4 and his wife do not support Mum employing a carer to spend time with her. Brother 4's wife asked me "Why does [your mother] need a private carer when the aged care facility is paid to look after her".

I explained that a carer helps to keep Mum engaged in the late afternoon with outings, games, movies and conversation. This is particularly important after Mum's dinner, a time at the aged care facility when there are no leisure co-ordinators employed and rarely any visitors. The carer also helps to decrease Mum's 'sundowners' (i.e. her anxiety in the evening).

Although Mum has told her financial power of attorney that she enjoys having carers visit her, Brother 4 refuses to pay the carers. "I have rung and explained to her (the carer) that I have never met her, did not employ her, and I will not be settling her account" ([REDACTED]).

Brother 4 continues to refuse to pay Mum's carers. In [REDACTED], I suggested he and I meet to sort out a mutually convenient way to pay Mum's carers. He refused to meet me.

Brother 4 insists that I pay the carers. He later reimburses me.

2.12 Main points

1. Older people are entitled to employ carers without the cost of this care being questioned by their children and their partners.
2. Financial power of attorneys should pay all expenses in a timely manner.

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3 Conclusion

My brothers' perspectives of power, entitlement and gender roles led them to financially abuse their mother. Their abusive behaviour is currently not a criminal offense. I believe it should be a criminal offense. The financial abuse of my mother is on a continuum of violence towards women.

Fifty years ago, intimate partner violence was a domestic, not public or criminal offense. Prior to 1980s, it was not possible for a man to be charged with, and prosecuted for, raping his wife. Similarly, in 2015, financial elder abuse is a private issue, often unreported and unacknowledged. For financial elder abuse to become a criminal offense, attitudes towards it need to change.

Currently, the opportunities for children to act inappropriately in regard to their parent's financial situation are enormous. In our family, it was easy for my mother to be declared legally incapable, thereby enabling her son, as her financial power of attorney, to take complete control of my mother's financial affairs. He had the power to give my siblings money from Mum's bank account, curtail her expenses and to refuse to pay her bills.

I am proud to have stood up Mum's right to spend her money as she chooses, to have the care she wants and to regularly visit her beach house, a place she has loved for over 80 years. I could not have made this stand against three brothers without the support of one brother.

There are currently no formal mechanisms to ensure that financial power of attorneys act in an older person's best interest. Legal mechanisms need to be implemented to ensure older people are not victims of financial elder abuse. Not every family has children who are prepared to advocate for their mother's rights.

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