

Highland Adult Support and Protection Committee

Learning Review -- Hugh, Roderick and David McCulloch

Section 1 Introduction

This review was commissioned by the Highland Adult Protection Committee (APC) in August 2021. The review was undertaken by David Crawford. David has worked in social work in Scotland for more than 40 years. He was Director of Social Work with Renfrewshire Council and Executive Director of Social Care Services with Glasgow City Council. In recent years he has led a number of case reviews for Adult Protection Committees.

1. The review relates to the care and protection arrangements for three brothers, Hugh, David and Roderick McCulloch. All three brothers are now deceased. The brothers granted Power of Attorney (POA) to Douglas Stewart and Ivan Warwick in 2013. Power of Attorney is defined as “a legal document which a person creates, while mentally able to do so, in order to grant, or mandate, to someone else the power to manage their affairs should they no longer have the mental capacity to do so themselves.” In Scotland two types of powers, financial and welfare, can be combined into one document, referred to as a combined POA”. (Sandra McDonald “Power of Attorney. The one stop guide” 2021).
2. This review focuses largely on the actions of the Highlands and Islands Division of the Police Service of Scotland and the Adult Care Social Work Service of NHS Highland in responding to complaints about the actions of Mr Stewart and Mr Warwick while discharging their duties as Power of Attorney. It also considers the implications of this case for the investigation of complaints about the abuse of Power of Attorney system and the role of the Office of the Public Guardian (OPG).

3. At the time when the decision was made to hold this review there were two outstanding civil court cases and the Adult Protection Committee took the view that the review should not proceed until these matters were concluded. The first civil court case was concluded in November 2021 and the second case was concluded in March 2023.

4. In the first case, which related to land and property previously owned by the brothers, a judgement has been published ([2022scinv31.pdf \(scotcourts.gov.uk\)](#)). This judgement names all the parties to the case and contains a large amount of detailed information about the brothers' circumstances all of which is therefore, already in the public domain. There has also been significant press coverage in both local and national newspapers which include the brothers' names and photographs. In the circumstances it seems appropriate therefore to use the brothers' names throughout the report.

While there are areas of the events and circumstances which are common to all three of the brothers there are also areas that are distinctive and unique to them as individuals and the review will highlight both common and individual circumstances as appropriate.

5. The review had access to all the relevant Health and Social Care records, the records held by Police Scotland, the Judgement in the first civil court case, the Decree issued in the second civil court case and a report prepared by a Forensic Accountants as a part of the court proceedings.

6. In conducting the review, a total of 17 people were interviewed including 2 family members, staff from Social Work, officers from Police Scotland, the Public Guardian for Scotland, a member of staff from Isleview Care Home, a member of staff from Advocacy

Highland, and 2 Solicitors from Ledingham Chalmers including the court appointed Financial Guardian. The first interviews were conducted in November/December 2022 and a number took place immediately after the conclusion of the second civil court case in March 2023. However, Police Scotland did not provide access to their records until October 2023. Given the passage of time many of the staff involved in 2017 and 2018 have changed roles, changed employers or retired.

7. The review has identified three major issues:

- The adult protection interventions in 2017 and 2018 and the role of social work. The details are set out in Section 3.
- The Police Scotland investigations and the decisions not to seek criminal prosecution. The details are set out in Section 4.
- The investigation of complaints about the abuse of Power of Attorney and the impact this had on the brother's welfare. The details are set out in section 5.

8. Given the scale and complexity of this case and the fact that it covers events going back more than a decade the amount of information available to the review was vast. This report will focus on those critical events and circumstances which had a fundamental impact on the brother's welfare. It is important to recognise that there have been major tensions between NHS Highland and Police Scotland over the handling of this case. This relates largely to the issue of whether there could or should have been criminal charges brought against the POAs. It is also important to acknowledge that family members have very different interpretations of some of events from the public agencies.

9. At the time of writing (February 2024) there is an outstanding complaint with the Scottish Legal Complaints Commission in relation to Alasdair Fraser, a solicitor who

represented both the POAs and the brothers. There is also an outstanding complaint with the Church of Scotland in relation to Ivan Warwick who is a Church of Scotland minister.

Section 2 Background

10. Hugh, Roderick and David McCulloch lived and worked together for almost the whole of their lives at Logie Farm, Muir of Ord. None of the brothers married and they had no children. Their nearest relatives were second cousins.

11. HUGH was born on 22nd January 1930 and is described in the records as “the boss”, who took the lead role in the business matters associated with the farm and in legal transactions on his brother's behalf. He did the shopping and banking for the household. As well as working on the farm he had other employment in the local area. He is described as the most outgoing of the three brothers. He was referred by his GP to the Old Age Psychiatry service in August 2013 and diagnosed as having Dementia in January 2014. By October 2014, he was deemed to have lost the capacity to manage his own affairs. He was admitted to Isleview Nursing in Aultbea in October 2017 and lived there until his death in December 2020. The circumstances of his admission to care are outlined in detail at Section 3.

12. RODERICK (Roddy) was born on 16th May 1932. He worked the farm and dealt with the cattle and the sheep. Roddy had trained as a cattleman in his younger years and worked on a dairy farm. After Hugh went to live in the nursing home in Aultbea in 2017 Roddy left the farm and lived alone at a property in Muir of Ord and then at a property in Poolewe. In September 2018 he was admitted to Wyvis House Nursing Home and subsequently moved to the same nursing home as his brother Hugh in Aultbea. The full circumstances of Roddy`s move to the care home are outlined in detail at Section 3. In 2019 Roddy was assessed both by his GP and by a psychiatrist as having the capacity to make some decisions for himself. Roddy died in Isleview Nursing Home in December 2022.

13. DAVID was born on 12 November 1934. He is described as reclusive and extremely shy. He managed the household and did the cooking. There are multiple references in the records suggesting that David may have had an unspecified learning disability. The GP records from April 2014 state “He appears to be unable to self-care, this is having an adverse effect on his health and it is due to cognitive impairment and frailty.” In February 2017 David was admitted to Raigmore Hospital and a CT scan indicated brain shrinkage consistent with Dementia. He was admitted to Ross Memorial Hospital in March 2017. He was deemed medically fit for discharge in May 2017 and was assessed as requiring nursing home care. His discharge from hospital was significantly delayed because of the failure of the Attorneys to assist in choosing and confirming a care home placement. (Further detail on this is contained in Section 3). He moved to Wyvis House in Dingwall in August 2017 and lived there until he died on 9th September 2019.

Section 3 Adult Protection Interventions and the role of Social Work

14. There were three significant Adult Support and Protection (ASP) interventions with the brothers. These commenced in July 2017, August/September 2017 and September 2018. The details of each of these interventions are outlined below.

15. **JULY 2017** - In July 2017 an Adult Protection Initial Case Conference was held. The minute of the meeting states “The purpose of today’s meeting is to consider the risks identified, decide if there was a need to produce a protection plan and decide if David, Hugh and Roddy should continue to be reviewed under the ASP Legislation.” The minute goes on to say that “David was admitted to Raigmore Hospital on March 9th, 2017, and has been medically fit for discharge since May 2017. Social Work have made various attempts to work with the POAs to facilitate David’s discharge but this has not been successful and he remains in hospital”. The meeting was attended by both POAs and by a solicitor, Alasdair Fraser. The professional assessment was that David required 24-hour care and that this was best provided in a nursing home.

16. The POAs wished to pursue the option of 24-hour care at home. They agreed to complete the financial assessment within 2 weeks of the meeting and “to identify long term care options i.e. either a nursing home placement or 24/7 care at home” within 4 weeks.

17. There was clearly a concern that the POAs were not cooperating with the financial assessment process in an attempt to avoid having to pay care home fees. This was reinforced by an attempt by the POAs to remove David’s name from the title deeds of a property jointly owned by the brothers. If it is assumed that David owned approximately

one third of the brother`s total assets, then he would have been a “self-funder” and required to meet the costs of his nursing home care.

18. The meeting also considered the care arrangements in place for Roddy and Hugh at that time. There was clearly confusion over who was providing care to the brothers, over the tasks being undertaken, over the frequency of the care and over whether the care was provided voluntarily or as part of a paid arrangement. The key decision from the meeting was that “David should continue to be reviewed under Adult Support and Protection and a further meeting will be arranged in four weeks” and that “Hugh and Roddy do not meet the criteria to continue to be reviewed under the ASP legislation and are to be removed from the process”. The review meeting was held on 30th August 2017 by which time David had moved to Wyvis House Nursing Home in Dingwall and given this outcome it was agreed that “David can be removed from the ASP framework”.

19. By the time of the meeting on 30th August 2017 a new Adult Support and Protection Investigation had begun. However, this is not mentioned in the minute of the meeting, and it is of concern that the decisions made at that meeting do not appear to have taken into consideration the new concerns.

20. It is unusual for a delayed discharge to become so protracted as to require the use Adult Support and Protection procedures however the July 2017 investigation ultimately resulted in David`s discharge from hospital and his admission to Wyvis House. This was in his best interests and to that extent the ASP intervention was successful. It raised questions about the activities and motivations of the POAs but did not trigger any wider investigation into their actions. The ASP process appears to have been concluded without reference to the new set of concerns which had by then emerged.

21. **AUGUST / SEPTEMBER 2017** - On 23rd August 2017 two relatives, Helen Fraser and Phylis Hay, visited Hugh and Roddy at the farm. David was by then living in Wyvis House Nursing Home in Dingwall. The relatives found the brothers distressed and the farmhouse was bare. The relatives were told by the brothers that they no longer owned the farm, that it was now owned by Ivan Warwick and Douglas Stewart, and that it was being sold. The brothers said they were frightened of the POAs and were being “ripped off”. Helen Fraser went to Dingwall Police Station to make a complaint about the actions of the POAs. She subsequently returned to the Police office with Roddy, and he was assisted to give a statement (a fuller account is given at Section 4). In line with the agreed Adult Support and Protection procedures, the Police notified the “Concern Hub”, and Social Work became involved. Visits were made to the farm by the Police, by Social Work and by community nursing staff. These visits and the other enquiries made at that time attempted to establish the brother’s current health and care needs. The Police took the lead in terms of the financial issues. The circumstances at the farm at this point in time were volatile. The relatives changed the locks (they say this was done at the brothers request in order to exclude the POAs from the farm), but they also restricted access to Police and Social Work staff. Police Scotland contacted the Office of the Public Guardian and confirmed that the Power of Attorney documents were valid. They do not appear to have had any concerns that the brothers may have been coerced into agreeing to grant Power of Attorney to Mr Warwick and Mr Stewart. With their legal authority having been confirmed, the POAs sought to assert their right to continue to manage the brother’s affairs and wanted the relatives removed from the farm.

The outcome of the investigation was that Social Work and the Police took the view that the POAs were behaving appropriately, had the legal right to manage the brother’s affairs

and that the relatives should leave the farm. At the conclusion of the enquiries, Police Scotland state “There is not enough evidence to put a case against the POA indeed it seems from the enquiries that the POAs have strived to do right by Hugh and his brothers”. A full account of the Police investigation is given in Section 4.

22. Although the Adult Support and Protection case conference had been convened only weeks earlier to deal with David’s discharge from hospital, no case conference was convened in response to Roddy’s complaints. Once the investigation had been closed there is no evidence that there was any attempt to continue to monitor the brothers’ circumstances and the Adult Support and Protection investigation concluded without any formal action being taken.

23. From a review of the available information, it is clear that the August/September 2017 investigation did not lead to measures being taken to protect the brothers from harm. Rather than focus on the welfare of Hugh and Roddy, the intervention became focused on adjudicating a dispute between the family members and the POAs. The investigation of welfare concerns and the investigation of the financial concerns appear to have been kept separate and, by doing this, the investigations did not achieve a complete picture of the risks which existed. In the published judgement in the first civil case the Sheriff states “I was not sure about depth to which any social work witness had accessed or investigated the full picture of the brother’s lives”. The investigation of Roddy’s complaints did not identify any financial mismanagement of the brother’s affairs nor did it properly consider the possibility that the relatives’ concerns about the activities of the POAs were actually justified. It did not take into consideration the negative view of the actions of the POAs which had prolonged David’s stay in hospital only a few weeks previously.

24. There is no evidence that the investigation ever properly considered the possibility that the POAs might have been “grooming” the brothers over a long period of time, that the brothers may have been subject to “coercive control” or that the concerns of the relatives may have been justified. There was no clear assessment of the care needs of Roddy or Hugh and the plan that the POAs would continue to organise care at home was vague and unspecified. It is clear that the outcome of the August 2017 Social Work investigations was very substantially influenced by the conclusions of the Police investigation that there was no evidence of financial wrongdoing (a full outline of the Police investigation is contained in Section 4).
25. The Police were clearly suspicious of the intentions and motivations of the family members who made the August 2017 complaints. This is explained in greater detail in Section 4 of this report. An entry made by Police Scotland in the inter-agency timeline on 19/9/17 states “indeed, it seems from enquiries that the POA’s have strived to do right by RM and his brothers”. Their view that right was on the side of the POAs heavily influenced the view taken by Social Work.
26. The outcome of the adult protection intervention was essentially a reinforcing of the authority of the POAs and the exclusion of the family members from any role in the brothers’ care. If anything, the exclusion of the family members left the brothers more vulnerable to the actions of the POAs than they were before the complaints were made. The exclusion of the family members and the ending of the Police and Social Work enquiries had direct and immediate consequences for both Hugh and Roddy.
27. By October 2017 Hugh had been admitted to Isleview Nursing Home in Aultbea. No Social Work assessment was completed, and the admission was made on a privately

funded basis and arranged by the POAs. It is repeatedly stated in the records that the brothers wished to stay together and stay on the farm. Although it is clear that Hugh had dementia, it is not clear why he moved to Isleview when he did. All of the discussions relating to his care during the adult support and protection investigations were focused on improving the home care service for Hugh and it was not identified that he needed 24-hour nursing home care. Ordinarily, even where there is a Social Work assessment, there would be some form of assessment of the suitability of the placement made by the care home prior to admission. It is not clear whether this happened, and the care homes records cannot be found. Even if it is assumed that Hugh needed nursing home care it is not clear whether consideration was given to him being placed in the same care home as David. This would have been in line with the brothers wishes to be together as much as possible. NHS Highland was aware of Hugh`s status as a care home resident because of an application for Free Personal Care but there is no record of any review of Hugh`s care need in the immediate period after his admission. Although there is correspondence about attempting to set up reviews these were all cancelled because of staff sickness and the only review on file was held in February 2020.

28. At about the time when Hugh went into the care home Roddy moved from the farm to a house in Muir of Ord and subsequently to a house in Poolewe. This second move was apparently to make it easier for him to visit Hugh, but the records indicate that there was a dispute between the care home and the POAs over the amount of time Roddy spent in the care home. While the care home was happy for Roddy to visit, he was spending all day at Isleview and the care home had to point out to the POAs that they were not a day care facility and that the frequency and duration of his visits were inappropriate. Subsequent events would confirm that Roddy was isolated, and that little meaningful support or assistance was being provided to him.

29. In July 2018, a GP in Aultbea contacted Social Work and subsequently submitted an “Adult Concern” form because of concerns about Douglas Stewart being difficult and obstructive in his role as POA for Roddy. The records indicate concerns about Roddy’s isolation and in a phone call on 16th August Mr Stewart is described as having been rude and obstructive, and “not acting in Roddy’s best interests by sending him to Poolewe to live”. Despite the concerns of the GP there is no record of any attempt by Social Work to contact either Roddy or Douglas Stewart. There is nothing in the records to suggest that these concerns were followed up in any way. This intervention by the GP is the only record of any contact with Roddy between September 2017 and September 2018. Hugh appears to have settled well in the care home and as his dementia progressed it is clear that Isleview was an appropriate placement which met his needs.

30. **SEPTEMBER 2018** - In September 2018 Roddy went to Wyvis House in Dingwall to visit David. He presented as being frail and hungry and the care home contacted Social Work. The inter-agency timeline contains the following record:

26/09/2018: Nominated officer (SM) and Council officer (CS) informally visit RM (Roddy) at Wyvis House while he is visiting his brother.

RM had 2 black eyes, he said he walked into a door when trying to find a light switch.

RM said he was unhappy living up west and felt Douglas Stewart had put him up there to get him out of the way.

RM had no access to money, had £5 and an out of date bank card.

RM wanted to know what had happened to his land RM said he was hungry and had no money to buy food.

CS asked RM where he wanted to stay and he said Wyvis house, CS arranged this, however RM was anxious the POA’s would find out. RM appeared to be terrified of DS.

Roddy was admitted to Wyvis House as a “place of safety”. His location was not made known to the POAs and when it was accidentally disclosed to them, he was moved from Wyvis House to Isleview. Roddy’s admission to a nursing home ensured that his immediate health and care needs were met. It also set in motion a complex chain of events which sought to protect the welfare and finances of all three brothers.

31. The circumstances of Roddy’s admission to care and the history of previous concerns resulted in a renewed consideration of his circumstances under Adult Support and Protection Procedures. The standard ASP procedures are generally designed for the management of individual cases but on this occasion the Large Scale Investigation (LSI) procedures were used. These procedures are most often used where there are concerns about multiple clients (e.g. where there are concerns about a provider of care affecting some or all of their clients). On this occasion it was used for two reasons; firstly because of the complexity of dealing with the different needs and circumstances of the three brothers and, secondly, because of concerns that the POAs may have been involved in the financial affairs of other vulnerable clients.

32. It was during these investigations that it was identified for the first time that the ownership of the farm had been transferred to the POAs and their spouses for nothing and that the same solicitor had acted for the brothers and for the POAs in this transaction. This issue was identified by a solicitor from Highland Council who was supporting the adult protection investigation. It was not a part of the complaints that Roddy made in 2017 and was not identified as an issue in the investigations undertaken by Social Work or Police Scotland at that time.

33. A social worker accompanied Roddy on visits to two banks where he held accounts. Arrangements were put in place to freeze the accounts, cancel bank cards, arrange new cards and change the addresses on the accounts. Crucially a request was made for backdated bank statements. In total there were 12 separate bank accounts, so understanding and tracing transactions was highly complex. Scrutiny of the statements identified a significant number of transactions which could not be linked in any way to the brothers' needs and circumstances. The work done by the social worker at this stage was commendable in beginning to establish an understanding of the full extent to which the brother's resources had been misused.
34. Roddy was seen by both his GP and by a psychiatrist and was deemed to have the capacity to make some decisions for himself. He was assisted and encouraged to express his views and the involvement of Advocacy Highland further supported the efforts to make sure Roddy's voice was heard.
35. Given that the capacity assessment confirmed that Roddy was able to make some of his own decisions, his social worker accompanied him to a meeting with a new firm of solicitors and Roddy was able to initiate the process to revoke the Power of Attorney and remove Mr Warwick and Mr Stewart from any involvement in his affairs.
36. Following an Adult Support and Protection Large Scale Investigation meeting in December 2018 the decision was made to initiate consideration of Guardianship for all three brothers. Application was subsequently made to the Sheriff Court and sought the appointment of Highland Council as Welfare Guardian and an independent solicitor as Financial Guardian. A mental health officer undertook the preparation of the application and met with all three brothers. They also met with Mr Warwick but not with Mr Stewart.

Interim Guardianship was granted in March 2019 and approval of the full Guardianship Orders was granted in August 2019. The powers granted reflected the fact that Roddy retained some capacity to make his own decisions and the granting of the Guardianship Orders had the effect of nullifying the Power of Attorney for Hugh and David. It is of note that the Guardianship applications were opposed by the POAs up to the point of final approval.

37. The Guardianship Order appointed Fiona Thompson, a solicitor from Ledingham Chalmers Solicitors as Financial Guardian for the 3 brothers. As a part of her role in overseeing the brother`s finances she commissioned a Forensic Accountant to fully review the brother`s financial affairs. The report was produced in November 2021 and identified £829,112 of unexplained transactions from the brother's accounts.
38. The Financial Guardian initiated civil legal action against the POAs and their spouses for recovery of the assets which had been taken from the brothers. The first case related to the loss of land and property and was contested by the POAs. The case resulted in a judgement in favour of the brothers for £390,000. The second civil case related to the recovery of the monies taken from the brother`s accounts. Ultimately this case was not contested by the POAs and resulted in an order from the court for Douglas Stewart to repay £691,000 and Ivan Warwick to repay £66,359.
39. The civil court actions were successful in obtaining orders from the court for the return of funds taken from the brothers however this review was told that, given the legal costs of such cases, the civil actions were only viable because of the size of the brother`s estate. Had the amounts involved been significantly smaller, civil legal action would not have been a financially viable option. The financial risk of the civil actions lay with the legal firm

involved and had the actions been unsuccessful they would have been unable to recover their costs.

40. From the outset of this review senior managers of the Social Work Service have acknowledged that the August 2017 investigation was not of an acceptable standard, did not properly follow procedures and did not result in the proper steps being taken to protect the brothers and promote their welfare. It is legitimate to ask whether there were similar failings in other cases being dealt by NHS Highland with at that time.

41. From the information made available to the review it is clear that the concerns about the standards in the Social Work Service went much further than just the case under review. In the period after 2019 substantial changes were made to the management and leadership structure, to the operational structures for delivering local Social Work Services, and to the staffing resources available to the service.

42. A report to the Highland Health and Social Care Committee comments on the background to these changes by saying “At a local level concerns about lack of visibility, dilution of the social work profession and consequent impact on professional standards and practise were drivers which led to the strengthening of the Adult Social Care Leadership Team”.

43. It may therefore be fair to see the shortcomings of the August 2017 investigation as a symptom of wider failings in the operation of the Social Work Service at that time. It is to the credit of the current senior managers that these issues were identified, and steps taken to address them. It is not possible for an individual Learning Review to assess the impact of the changes made in recent years. The adult protection arrangements in

Highland have not been subject to external inspection since 2017 (report published in 2018), however an inspection is now scheduled for early 2024 and the outcomes of this will provide a clear assessment of the current quality of Adult Protection arrangements in the Highland area.

Section 4 The involvement of Police Scotland

44. Police Scotland prepared a report summarising of the information held by them and their report was provided to this review along with other relevant reports and documents. While the substantive involvement of Police Scotland began in August 2017 when Helen Fraser and Roddy made complaints about the actions of the POA's, there was an incident immediately before this which had an important bearing on subsequent events. On 30th July 2017 Roddy contacted the police and told them that two unidentified women had come to the farm and had stolen £800. When Police attended the farm Roddy said that £70 (not £800) had been stolen and asked the Police to speak to POA Douglas Stewart. Mr Stewart told the police he knew nothing of the incident and the Police then spoke to the carer who was going into the house who told them that he was not aware of Roddy having either £800 or £70 and that nothing appeared to be missing from the house. The carer advised that Roddy was showing the early signs of dementia and the Police concluded that no evidence of criminality could be found. Police Scotland clearly took Roddy's complaint seriously and used all available safeguards to support him in providing a statement of complaint. They thereafter undertook to investigate the complaint made. However, during the enquiry the information gathered appeared to be entirely at odds with Roddy's account. It was therefore felt that he would have difficulty in presenting as a witness in any formal court proceedings.

45. **AUGUST 2017 POLICE INVESTIGATION AND OUTCOME.** As briefly outlined in the previous section a complaint was received by Police Scotland on August 23rd 2017, when a relative, Helen Fraser attended Dingwall police office to make specific allegations, on behalf of Roddy McCulloch, of criminal activity by Power of Attorneys. In line with the Adult Protection procedures, Police Scotland notified social work of the allegations. The following day the relative returned with Roddy. The police officer involved was concerned

about Roddy's understanding of the process and concerned that he was being prompted by the relative. In light of this an arrangement was made for him to return to the police office the following day and the officer made arrangements for the interview to be undertaken in the presence a designated "Appropriate Adult" (Appropriate Adults support people to understand what is happening, and to be understood, during police investigations. They provide support to people aged 16 years and over with communication support needs.)

46. The following summary of the content of the interview was provided by Police Scotland:

Witness statement noted from Roderik McCulloch in presence of appropriate adult:

Roderick McCulloch stated that his brother Hugh sold land to Douglas Stewart for £100, 4-5 years previously. At current process, Roderick though the land should have been worth £75,000. He stated High did not have dementia at the time of sale. He further stated that when High was diagnosed with dementia in January 2014, the decision was made by the brothers to give up the farm.

He also stated that some 3 months prior to attending Dingwall Police Station cattle kept at the farm had been sold at Dingwall Mart. He stated that the money from the sale had gone directly to Stewart and Warwick and not the brothers. He also stated that Ivan Warwick's wife had taken over management of the farm accounts and paperwork in respect of the livestock and had managed both aspects poorly.

He provided that he could not recall signing paperwork relating to financial transactions and allowing Stewart and Warwick control of finances as Powers of Attorney.

He also spoke of a shortage of money in his bank account. He believed that the account should contain around £75,000 however on attending the local branch of the TSB that day he was informed that the balance was £1,434.28. He could not account for where they money had gone but believed Douglas Stewart to be responsible.

He stated that mail had not been received at the farm for 6 years and he believed this was being diverted to Douglas Stewart as Power of Attorney. Roderick McCulloch also confirmed that he attended the solicitor firm of Middleton, Ross and Arnott and had spoken with solicitor George Muirden regarding revocation of Power of Attorney.

47. After consideration of the allegations a decision was made by Police Scotland that the case should be allocated to Criminal Investigation Department (CID) for investigation.

Four areas for enquiry were identified:

- The sale of livestock at Dingwall Auction Mart and the destination of the proceeds of sale
- The circumstances surrounding the appointment of Power of Attorney
- The theft of money reported by Roderick
- The sale of land for £100

48. During the period when the Police investigation was being conducted, one of the relatives took Roddy to a solicitor to get advice on terminating the POA. A letter was written by a relative and signed by Roddy which indicated Roddy's wish to terminate the POA. However, when he was questioned by the Police, he did not appear to understand what was proposed and the Police became concerned that in getting Roddy to sign a document that he didn't understand, the family members were engaged in exactly the kind of action they were complaining about. Police Scotland contacted the Office of the Public Guardian to express their concerns about this incident.

49. The report from Police Scotland's internal summary of the case states "Following the completion of enquiries the detective involved made the assessment that there was no evidence to suggest that the crimes of fraud and/or embezzlement had been committed by the POA. Nor was there sufficient evidence to suggest any other crime had been committed by the POA". The investigation was closed at this point.

50. The Police Scotland records contain the following “rationale” for the decision not to pursue the criminal investigation of the complaints made by Roddy and his relative. (The files contain several versions of this document. The version used below is described by Police Scotland as the “verbatim” version.)

- *Land sales prior to POA have been conducted by all three brothers whilst they had capacity, therefore deemed to be in control of their own affairs.*
- *Land sales following POA have been conducted by all three brothers whilst they had capacity, therefore deemed to be in control of their own affairs*
- *Several solicitor firms have been utilised who have not highlighted any issues at the time.*
- *Legal documentation re transactions show the Mcculloch gifting land to others (before Stewart) for no financial cost.*
- *Legal documentation review for the initial plot sale to Stewart. Sellers solicitor has acted extremely professionally, documenting all procedures to ensure the Mcculloch’s were happy with the nominal sale.*
- *Independent financial advice was carried out by Hugh Mcculloch prior to any POA.*
- *The POA documentation has been reviewed and is also correct. Once again it has been signed by all 3 brothers at a point where they were not incapax and deemed to be in control of their own affairs.*
- *The Wills have been reviewed and are as above.*
- *There are 2 x attorneys appointed which is a mechanism to ensure transparency.*
- *Mart sale documentation has been reviewed and shows the estimate providing initial complaint has been grossly inflated.*
- *PSOS have also reinterviewed Roderick Mcculloch raising capacity concerns. When asked by PSOS, Roderick was shown concerning paperwork he had signed and he had absolutely no idea. He couldn't even read the content. When pressed he stated ("the man [2nd cousin husband] said I could change it back at any time")*
- *Independent persons and professionals have witnessed manipulator behaviour of Roderick Mcculloch by Helen Fraser and others.*
- *The financial accounts were forwarded to OPG. There were no evidenced transactions of concern until after the attorneys were removed (£3000 removed by Roderick Mcculloch and Helen Fraser).*
- *The Attorneys are aware they must record and receipt all expenditure.*
- *All financial movements by the attorneys have explanation and several are shrewd business planning.*
- *Video evidence of the house and brothers reaction after renovation has been viewed.*
- *The financial accounts were forwarded by PSOs to OPG along with referrals in relation to Fraser and Hay*

51. It is clear that Police Scotland did a substantial investigation into the allegations made by Roddy and his relative. Their judgement at the time was that there was no evidence of criminality and no basis for criminal charges against the POA's. The bank statements obtained by Police Scotland in 2017 were made available to the review. These statements were obtained from the banks under a mandate signed by Roddy and the POAs allowing the police to obtain information relating to the accounts. The banks provided information in accordance with Data Protection legislation and consistent with their own internal governance.
52. It is acknowledged by Police Scotland that these records are partial, and that the quantity of information obtained in 2017 was substantially less than that obtained in 2018 when Roddy accompanied the social worker to the banks.
53. Within the records obtained in 2017 are bank statements for an account in the name of Hugh McCulloch which shows more than 50 transactions with Amazon over a 5-month period. In 2017 Hugh would have been 87 years old and significantly affected by dementia. Given that the whole investigation arose from an allegation that the POA's were abusing the brothers accounts it is hard to understand how these were not viewed by Police Scotland as "transactions of concern". It may have been that there was an acceptable explanation, but it should have been obvious to ask the POA's what the 50 items were and how they related to Hugh's needs and circumstances. Other similar examples are easily identified in the 2017 accounts. The decision to allow the police to pursue the financial aspects of the enquiry, and to allow social work to pursue the care and health aspects, with no subsequent inter agency discussion meant that there was no inter-agency scrutiny or challenge. The police did remind the POAs of their responsibilities in terms of accounting for expenditure (keeping receipts etc) but neither the police nor

social work challenged the validity of the purchases as being necessary or appropriate to the brother's circumstances.

54. Because the information obtained from the banks in 2017 was partial, significant transactions which may have been viewed as "transactions of concern" were missed, e.g. a payment of £30,000 from the brother's accounts to Ivan Warwick occurred in January 2014, immediately prior to the period covered by the information gathered in the 2017 investigation. The statement in the rationale that "There were no evidenced transactions of concern until after the attorneys were removed (£3,000 removed by Roderick McCulloch and Helen Fraser)" refers to the period of time when the 2 relatives were staying at the farm and the attorneys were excluded. It clearly conveys that Police Scotland saw no risk to the brothers from the actions of the POAs but did see a risk from the actions of the relative.

55. In interview Helen Fraser stated that she and Roddy were asked about the £3,000 by the Police. Her account is that she went to the bank with Roddy because he was concerned about money which he believed was missing from his account. The bank confirmed a balance much lower than Roddy expected. This confirmed to Roddy that the POAs were taking money from his Account. In order to protect his money, they asked what the maximum cash withdrawal was that they could make and were allowed to take the £3,000. By taking the money out in cash the POAs no longer had access to it and Roddy felt he had protected at last some of his money.

56. The financial information obtained from the banks in 2017 was partial and the investigation did not identify the scale of the financial harm to the brothers. The information which was later to be the basis for the Forensic Accountants report was

clearly available but as the investigation was concluding in 2017 neither the Police nor Social Work had any idea that there was over £800,000 of funds which had been taken by the POAs or that the farm had been transferred to the POAs for nothing.

57. **SEPTEMBER 2018 INVESTIGATIONS AND SUBSEQUENT EVENTS.** Police Scotland were notified of the circumstances of Roddy's presentation at Wyvis House and were subsequently involved in the inter-agency discussions convened from late 2018 onwards under the Large Scale Investigation procedures. The minutes of the December 2018 meeting confirm that Police Scotland had commenced a further investigation, but the minutes of the January 2019 and March 2019 meetings indicate that Police Scotland "can't find a criminal element" in their investigations. During this period there was increasing scrutiny of the financial information by Social Work and by Roddy's solicitor. This scrutiny highlighted a large number of transactions which could not be matched in any way to the needs of the brothers, and these were highlighted to the Police. As more and more detail of the brothers' finances was being unearthed this was assessed by Police Scotland as being "not new information". In fact, it is now clear that it was new information, not least because the quantity of financial information available by late 2018 was very considerably greater than that obtained by the Police in 2017. Despite this the Police view was that there should be no further investigation by them and that the investigative responsibility lay with the Office of the Public Guardian. They continued to consider examples of concerns as being nothing new. A report written in 2019 contains the following:

The local authority are insistent that this is a criminal matter despite the original findings.

One of the key points identified revolves around Ivan Warwick purchasing hearing aids using the account of Roderick McCulloch.

As none of the brothers require hearing aids (to be confirmed), then this must be fraudulently obtained.

It was explained that part of the Continuing Power of Attorney would actually give the right to reimburse any reasonable outlay which the hearing aid could be argued to be a necessity in ensuring the care of the brothers"

58. Despite the completely flawed logic of this argument there is no evidence that it was ever challenged within Police Scotland. Instead, Police Scotland stood by the “rationale” behind the original decisions and strongly asserted the view that the case should be dealt with as a civil matter using the investigative powers of the local authority (in this case discharged by NHS Highland), the Office of the Public Guardian and the Mental Welfare Commission (MWC) and that rather than attempting to use the criminal law, the interests of the brothers were best protected by the use of Adults with Incapacity (Scotland Act).

The Police Scotland report states:

Due to the case still relating to financial concerns following the POA (not new information), this is the reason PSOS stated that the OPG should be the lead (see above).

Nonetheless the organisations named should be sharing info between themselves (it would be the responsibility of the Local Authority to highlight to the others in writing their concerns re the attorneys).

An application can thereafter be made to the Sheriff (by the above) that can result in revocation of the POA, freezing of accounts etc. The Sheriff can even order the Attorneys to repay sums unaccounted for.

This is not a Police function and this is a very specific Act.

We have no Police powers in relation to the POA.

59. The position taken by Police Scotland that this was not a matter that they should investigate and that the Office of the Public Guardian had the legal duty to investigate became the cause of a major dispute between Social Work and the Police. The involvement of the OPG is discussed fully in Section 5 of this report but, in short, they began an investigation, suspended the investigation when they became aware of the Interim Guardianship applications, and then terminated their investigation once the full

Guardianship was approved. The full circumstances of the OPG's involvement is laid out in Section 5 but the consequence of the positions taken by Police Scotland and the OPG is that during the period when the full extent of the financial abuse of the brothers was beginning to be revealed neither organisation was actively investigating the case.

60. In July of 2019 Police Scotland sought advice from the Procurator Fiscal. From this point there was no further Police involvement in the case until after the publication of the court judgement in the first civil case in November 2021. Police Scotland considered the civil judgement in their review report.

61. In response to the publication of the civil court judgement in November 2021 Police Scotland took two actions. They sought specialist advice from a specialist unit within Police Scotland and had a further exchange with the COPFS and considered their advice following this.

62. In discussion with Police Scotland the following question was posed to them, "Is it possible to take over £1million of assets from 3 vulnerable men while you are acting as a Power of Attorney and not commit a criminal offence?" Their response has been that, depending on the circumstances, there may be a criminal offence but that does not mean that there would be sufficient evidence against any individual to press charges, or that the evidence would be sufficient to establish guilt "beyond a reasonable" doubt in a criminal court.

63. Other Cases of Criminal Conviction for Abuse of Power of Attorney - since concerns about the financial exploitation of the McCulloch brothers were first raised in 2017 there

have been other cases in Scotland where abuse of Power of Attorney has resulted in criminal Conviction.

A case heard in Edinburgh Sheriff Court resulted in a conviction for embezzlement of £170,000 by a financial advisor who had Power of Attorney for a 91year old woman with dementia. The conviction resulted in a 3year prison sentence.

A case heard in Stornoway Sheriff Court resulted in the conviction for embezzlement of £13,000 by a woman who had Power of Attorney for her father who had dementia.

A case heard in Selkirk Sheriff Court resulted in a conviction for a woman who embezzled £15,999 while acting as Power of Attorney for a 78-year-old woman with Alzheimer's.

64. This issue was raised in discussions with Police Scotland in terms of trying to understand how it might be possible to achieve a criminal conviction in other cases where there was abuse of Power of Attorney but in this case it was not even possible to achieve the threshold to press charges. Police Scotland indicated that as a local policing division they would not have access to the details of cases in other parts of Scotland and were not therefore able to provide a comparative analysis of the circumstances of the McCulloch brothers' case against other POA cases where conviction was achieved.

65. It is clear that Police Scotland have devoted significant resources to this case. Their internal review report is a substantial piece of work and provided considerable detail which was not available elsewhere in the files. It is acknowledged that the level and nature of the information available after the production of the Forensic Accountants report, and after the publication of the judgement in the first civil case, is entirely different from the information which was available at the time of the investigation in August/September 2017. It is important to bear in mind the different standards of proof which applies to civil and criminal cases. The distinction between civil and criminal

definitions of fraud would not be commonly understood, and it cannot be assumed that had they viewed the financial information that they had in 2017 as concerning in terms of potential financial of the brothers, that it would have led directly to criminal charges or prosecutions of the POAs.

Section 5 Power of Attorney and the Office of the Public Guardian

66. *A Power of Attorney is a legal document which a person creates, while mentally able to do so, in order to grant, or mandate, to someone else the power to manage their affairs should they no longer have the mental capacity to do so themselves.... A power of Attorney can offer powers relating to finance, property, health and welfare matters. (Sandra McDonald "Power of Attorney: The One Stop Guide").*

Power of Attorney was established for all three brothers in 2013 and named Douglas Stewart and Ivan Warwick as their attorneys. The appropriate documentation was issued by the Office of the Public Guardian.

67. The involvement of a solicitor in the application process for a POA is intended to be a fundamental safeguard for vulnerable people. On this occasion the solicitor who assisted in the creation of the POA was not the solicitor who had known the brothers or previously done work on their behalf. A solicitor, Alpin Stewart, had acted for them from 1998 until 2013 but they were introduced to a new solicitor, Alasdair Fraser, by the Mr Stewart and Mr Warwick just prior to the creation of the POA. This solicitor went on to represent both the brothers and the POAs in land transactions including the transfer of the farm from the brothers to the POAs for "love, favour and affection" (i.e. for nothing). The judgement in the first civil case states that "the brothers had never expressed any prior dissatisfaction, about him or his services, to Alpin Stewart" and goes on to say "The brothers did not require a new solicitor in light of their relationship with Alpin Stewart". The judgement describes the conveyancing transaction in the transfer of ownership of the farm from the brothers to the POAs as "irregular" in eight respects.

68. A complaint about the conduct of Alasdair Fraser has been made to the Scottish Legal Complaints Commission. At the time of writing (February 2024) there is no outcome to this complaint. It seems clear that the brothers did not benefit from the independent legal advice to which they were entitled.
69. The first indication to the Office of the Public Guardian of any concerns about the brothers came in September 2017 at the time of the second Adult Support and Protection intervention. Police Scotland contacted the OPG in order to establish the validity of the POA documentation and for advice in relation to an attempt by Roddy, assisted by a family member, to terminate the POA. In February 2019 a formal request for investigation was submitted by NHS Highland. The correspondence from the OPG states “The Public Guardian has authority ... to investigate any circumstances in which the property or financial affairs of an adult appear to be at risk.” However, as Roddy had by then terminated the POA, the investigation was focused on Hugh and David. As outlined in Section 5, and in the context of the 2018 Adult Protection investigation, there were requests from Social Work to the Police to pursue a criminal investigation which the Police resisted in part because they considered that the case was best dealt with as a “civil matter” and should be investigated by the OPG.
70. The OPG became involved in an investigative role in 2019 when they received a complaint from Social Work. Although they commenced an investigation, they did not know about the planned Guardianship applications. When they became aware of the applications, they suspended their investigation pending the outcome of the court process. When the outcome was known, and the Guardianship applications approved, the OPG terminated their investigation on the basis that the POA had been nullified by the Guardianship Order.

The Office of the Public Guardian, Guide to Investigations contains the following;

Adults with Incapacity (Scotland) Act – A Guide to Investigations

Section 5(3) of the Adult Support and Protection (Scotland) Act 2007 requires the Public Guardian to report the facts and circumstances of a case to the local authority if we reasonably consider that the adult may be at risk.

We may also be required to report details of our findings to the Sheriff Court if action is deemed necessary or to the Police if there is evidence a criminal act has been committed.

71. If we consider how this guidance applied in this case, then the lack of cohesion in the current arrangements becomes clear. Since the referral came from the local authority (in this case NHS Highland) an OPG referral back to the local authority would have served no purpose. When the local authority (NHS Highland) initiated the Guardianship applications, which was the legal step which afforded the brothers the greatest level of protection and was a clear indicator of their levels of vulnerability, the OPG investigation is suspended. This seems unnecessarily rigid. The initiation of the Guardianship process was surely an indicator of the need to step up the level of investigation and coordination by the public agencies rather than withdraw one of the key players from actively assisting the attempts to safeguard the brothers.

72. In terms of the current procedures had the OPG continued with their investigation and identified matters of significant concern then they had 2 options; Initiate action in the Sheriff court to remove the POA's, who's role was already suspended by the interim Guardianship orders applications

Or

Refer the matter to the Police, who had already decided that there was nothing criminal to investigate.

73. The only thing which might have changed this would have been the identification of new evidence arising from an OPG investigation. In this instance the skills and expertise of the OPG would surely have assisted in the process of identifying the scale of financial exploitation which had taken place.

74. In this case what is clear is it that there was not a coordinated approach to the investigation of the brothers' circumstances. There are very substantial overlaps between the responsibilities of Police, Social Work and the OPG. The view was expressed that there is substantial "double handling" in complex investigations and that the investigative responsibilities of the key adult protection agencies are not aligned or synchronised in a way which results in a comprehensive and efficient investigative process.

75. The review was told that there are approximately 800,000 Powers of Attorney in place in Scotland and there are approximately 250 complaints each year dealt with by the OPG. Of these only about 125 result in a full investigation. Given the scale of the system this is a very small number of complaints and investigations. While it could be argued that the very low level of complaint is an indication of a system working well, it could equally be argued that given the scale of the system the number of complaints is too low and may reflect a lack of awareness of the complaints system.

In the circumstances of the McCulloch brothers the complaint to the OPG ultimately did not assist them in a situation where they were deprived of over a million pounds worth of their assets.

Section 6 Conclusions

- 1.** While the use of Adult Protection procedures in July 2017 was successful in facilitating David's discharge from hospital, the decision to conclude the investigations and remove the three brothers from the Adult Support and Protection framework was made a week after new allegations about the conduct of the POAs came to light. There is no reference to the new concerns in the case conference minutes despite both Social Work and the Police being at the meeting.

This should not have happened and had the effect of severing a connection between the earlier concerns and the new concerns.

- 2.** The August / September 2017 investigations did not lead to a proper assessment of Hugh and Roddy's care needs, did not identify the scale of the financial exploitation by the POAs, deprived the brothers of the support of family members who had tried to advocate for them, and left them more isolated and vulnerable than they were before the investigations commenced.

- 3.** The 2017 Police investigation failed to identify any evidence of the financial exploitation of the brothers. The statement from the Police in their rationale for closing the case that "all financial movements by the attorneys have explanations and several are shrewd business planning" provides clear evidence of the extent to which Police Scotland misjudged, and were deceived, by the POAs. The statement that "financial accounts reviewed and there are no evidenced transactions of concerns until after the attorneys were removed (£3,000 removed by Roderick and Helen Fraser)" confirms that the Police viewed the brothers as being at risk from the relatives rather than the POAs. There were subsequently shown to be £800,000 worth

of “transactions of concern” and yet the Police investigation failed to identify even a single concern.

The conclusion of the 2017 Police investigation that there was not a single “transaction of concern” led inevitably to the view that there was no basis to support criminal charges.

4. The September 2018 investigations led to actions which safeguarded Roddy’s immediate welfare and set in train a series of actions which protected and promoted the welfare and the financial interests of all three brothers.

5. When the issues re-emerged in 2018, rather than look afresh at the emerging information, Police assessed the concerns as “not new information” when it was plain that there was new information. The 2017 investigation had not identified the £30,000 payment to Ivan Warwick, had not identified that the ownership of the farm had been transferred to the POAs for nothing or that money had been taken inappropriately from the brothers’ accounts. We now know that figure to be over £800,000. As this information was emerging, Police Scotland held to a view that the investigatory responsibility lay not with them but with the Office of the Public Guardian.

Despite having information available to them about other POA cases where convictions were achieved, and despite this issue being a major cause of the friction with their partners in social work, Police Scotland have not undertaken a comparative analysis which would allow other professionals, and indeed the family, to understand why convictions could be achieved for much lesser sums in other POA cases.

6. The involvement of the Office of the Public Guardian did not contribute to the investigation of the financial exploitation of the brothers in any meaningful way.

Section 7 Recommendations and Learning Points

As noted earlier in this report the adult protection arrangements in Highland are subject to external inspection in the early part of 2024. In terms of the consideration and publication of this report this inspection is well timed. It is clear that there was significant dispute between Social Work and the Police over the handling of this case. During the work of the review the view was expressed that the dispute was specific to this case and that the joint working arrangements around adult protection issues are generally considered to be very good. The inspection will provide an objective view on this issue and on whether the wider issues in the Social Work Service identified in 2019 have now been satisfactorily addressed.

A complaint to the Scottish Legal Complaints Commission about the conduct of the solicitor, Alasdair Fraser, is outstanding at this time and the Adult Protection Committee will want to consider the outcome of this issue when it is known.

Five specific recommendations are offered for the Adult Protection Committee to consider:

- 1.** Social work and Police Scotland should jointly offer an apology to the family of the McCulloch brothers for the failure of the August/September 2017 investigation to identify the risk of financial exploitation and for concluding the investigation in a way which left the brothers exposed to continuing harm.
- 2.** Informed by this report Police Scotland should review whether, even at this late date, criminal prosecution of the POA's is still possible.

3. The circumstances of this case would suggest that the current arrangements for the investigation of complex complaints about the potential abuse of Power of Attorney needs to be improved to ensure the proper integration and coordination of the investigatory duties of Social Work, the Police and the OPG and the creation of a single investigation plan which maximises the contribution of each of the agencies. (This issue has previously been highlighted in the Scottish Mental Health Law Review published in 2022).

4. The Office of the Public Guardian should continue with their investigations into the possible abuse of Power of Attorney in circumstances where other protective legal processes (e.g. Guardianship applications) are being pursued.

5. The Office of the Public Guardian should consider whether enough is being done to promote the use of their complaints system.

LEARNING POINTS

Learning points are not formal recommendations but are intended to assist in the improvement of practise. In their internal summary of this case Police Scotland identified their own learning points and Social Work has acknowledged the deficits in its practise in the 2017 investigation. If there is to be wider learning from this case which impacts on adult protection practise, then three points emerge.

Firstly, the existence of a Power of Attorney is a complicating factor in an adult protection investigation, but it does not change the fundamental responsibilities of the partner agencies. The need for thorough investigation, comprehensive assessment, inter-agency

discussion and managerial scrutiny are all unaffected by the existence of Power of Attorney. If anything, where an adult protection investigation relates to the actions of a POA the level of scrutiny should be enhanced not reduced. A Power of Attorney is in a uniquely powerful position and is ordinarily unsupervised in their role. Consideration of the potential for coercive control should be routine and where there are exceptionally complex financial issues (in this case multiple bank accounts and very substantial assets) early consideration should be given to the need for specialist financial advice. Not every case will need the services of a forensic accountant but those managing investigations should be mindful of the need for access to exceptional expertise in exceptional cases.

It is not unusual in complex investigations for one agency to take a lead on a specific aspect of the case (in this case the Police took the lead on the investigation of the financial issues in the August/September 2017 investigation). However, it is fundamental to any investigation that there is information sharing, scrutiny and challenge from partner agencies. In this case there is no evidence that there was any scrutiny of the Police findings in the 2017 investigation. Where a “division of labour” is agreed in an investigation, there needs to be a process in place for partners to understand, scrutinise and, where necessary, challenge the findings of their partners. Without this, key decisions will be made without a full understanding of the circumstances and the opportunity to identify errors or omissions will be missed.

Secondly, the exclusion of the family members who raised the complaints from any continuing role in the brothers' lives was a fundamental mistake. Attempting to maintain family involvement in circumstances where their complaints are not immediately being upheld is often extremely difficult. In this case the response to the family complaints could be characterised as “You are wrong. Please leave”. If the response had been “We have not yet found any evidence that you are right, but let's all focus on the care and

welfare of Hugh and Roddy” then the outcomes could have been quite different for both brothers. In the midst of a heated and fractious dispute it is not easy to continue to hear the dissenting voice. It may not be the case very often that the dissenting voice is later proved to be so overwhelmingly right as they were on this occasion, but finding a way to maintain the involvement of those who have raised concerns is likely to be significantly more beneficial than their exclusion.

Thirdly, in circumstances where organisations have identified their own shortcomings these should be conveyed to the family and to partner agencies as early as possible in the process. It is not easy for organisations to say “we got this wrong” but it is not always necessary to await the findings of a review such as this before making it clear that to families and partners that an adult protection agency is aware of their own failings. The Duty of Candour already applies across health and social care services and may soon apply to Police Scotland. Adult protection agencies need to be able to have open discussions both internally and with their partners. For there to be real learning from reviews such as this, each organisation must be capable of genuine critical analysis of their own performance and then have a culture which enables this to be shared with partners.

CONCLUDING REMARKS

This review centres on the adult protection response to the circumstances of three vulnerable elderly men. It is not a review of the Power of Attorney system or of the wider aspects of mental health law. Many previous reviews have used the language of “missed opportunities”. Although much of the financial harm to the brothers was done before the first adult protection involvement in 2017 there is no doubt that the August / September 2017 investigation missed the opportunity to identify the risks to the brothers and thereby missed the opportunity to protect them from further harm.

It is the ultimate sadness of this case that, with the assets they had available to them, their wish to stay together on the farm for as long as possible could have been achieved had the POAs acted in the brother's interest rather than their own and had the 2017 investigations been of a significantly better standard.