When Good Intentions Become a Regulatory Risk: The Hidden Dangers of Managing Residents' Money Without Legal Authority

It is not unheard of for care providers to sometimes gradually assume responsibility for a resident's finances when the resident lacks capacity and nobody else is available to help. What begins with buying toiletries or administering personal allowances can develop into holding cash, operating bank accounts and paying invoices.

Staff may act honestly, and in the resident's best interests, however, the critical question is whether they have legal authority. Without it, providers risk legal, regulatory and safeguarding scrutiny, even where every penny is accounted for.

A Best Interests Decision Is Not the Same as Legal Authority

The Mental Capacity Act 2005 provides a framework for decisions concerning people who lack capacity. Providers are generally familiar with making best interests decisions regarding care, support and day-to-day welfare, but making best interests decisions about care does not itself authorise providers to manage someone's financial affairs.

That authority will usually come from:

- A Property and Financial Affairs Lasting Power of Attorney;
- A Court of Protection-appointed Property and Affairs Deputy; or
- A DWP Appointeeship (generally limited to the receipt and management of state benefits only).

A resident's lack of capacity, or the absence of anyone willing to help, does not itself entitle a provider to assume this role. This is frequently misunderstood and can lead providers into arrangements that have become longstanding practice but are difficult to justify legally.

"We've Always Done It This Way"

Many providers will recognise the scenario. A resident was admitted several years ago; there is no family involvement, nobody holds a Lasting Power of Attorney and no deputy exists.

The provider starts helping with small purchases because somebody has to. Over time, that develops into holding cash, operating accounts, managing income or paying invoices on the resident's behalf.

These informal arrangements can continue for years, particularly where relatives are grateful for assistance but unwilling to become deputies or appointees. The fact that these arrangements may have been in place for a long time and nobody has complained does not mean the arrangements are lawful.

Indeed, these practices frequently come to light only when something has happened (a safeguarding enquiry, a local authority audit or a CQC/CIW inspection).

At that stage, the key question is often not whether money is missing; it is whether the provider ever had authority to manage the money in the first place.

Safeguarding and regulatory risks

Accurate records and the absence of financial loss do not eliminate risk. Regulators and safeguarding teams consider governance, accountability, person-centred care and risk management, not simply whether money has been stolen.

The real question for CQC/CIW and safeguarding teams is not *"Has money been stolen?"* but *"Why was the provider managing this person's finances without legal authority?"* That issue alone is sufficient to trigger scrutiny, even where every penny is accounted for.

The regulators will view these issues through the lens of governance, safeguarding and person-centred care. Even where there is no financial loss, CQC/CIW may conclude that systems and processes were inadequate.

In serious cases, providers may find themselves defending allegations of financial abuse despite having no dishonest intent.

The Conflict of Interest Problem

A provider managing the resident's money is often the same organisation receiving payment from that money.

That creates obvious difficulties, for example:

- Who decides whether invoices should be paid?
- Who challenges disputed charges?
- Who determines whether expenditure is appropriate?
- Who safeguards the resident's financial interests if they differ from the provider's own commercial interests?

Even where staff act appropriately, the appearance of a conflict may concern courts, regulators and safeguarding teams.

What Should Providers Do?

Providers should undertake a review of all residents for whom they manage money and ask:

1. What are we actually doing?
2. What is the legal basis for our involvement?

3. Does anyone else have a legal basis to manage the individual's finances and, if so, do we possess documentary evidence of authority?
4. Does a deputyship application need to be considered?
5. Could this arrangement withstand scrutiny by CQC/CIW, the local authority or the Court of Protection?

If the answer to those questions is uncertain, obtaining specialist legal advice is likely to be far less costly than defending a safeguarding investigation or regulatory challenge later.

Conclusion

Many providers who manage residents' money do so with the best of intentions. They are trying to solve practical problems for vulnerable individuals who have nobody else to help them.

Good intentions cannot replace legal authority. Even without fraud, dishonesty or missing money, unauthorised financial management can trigger safeguarding investigations, regulatory scrutiny, disputes with families and allegations of financial abuse.

Providers should therefore ensure that any involvement in a resident's finances is supported by an appropriate legal framework, clear governance arrangements and robust record-keeping. Otherwise, a well-intentioned attempt to help may become a significant regulatory and legal liability.

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