

Series: Problem solved

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## Problem solved

Mum has dementia - my brother and I think our sister has stolen thousands of pounds from her account. How can we make her repay the money?



**Annalisa Barbieri**  
The Guardian, Saturday 16 June 2012  
Comments (24)

We discovered recently that my sister has been taking money from our mother's account over many years but more so since Mum was diagnosed with vascular dementia in 2009.

My mother, who is 87, never went to school and cannot read or write. When she retired, aged 65, my sister managed her financial affairs as her agent, for example withdrawing her weekly pension from the Post Office on her behalf.

I have seen copies of Mum's Post Office account statements from 2008 until the end of September 2011 when my brother, who looks after Mum at home, applied to stop my sister being her agent. The statements show that money was withdrawn from Mum's account nearly every day for years.

The result is that my mum has no savings because my sister seems to have helped herself to Mum's money as her mental health deteriorated. My sister denies taking the money but cannot account for what is missing. She had sole control of Mum's account.

Since my brother took over control of Mum's financial affairs, her account showed a surplus of £3,000 at the end of December 2011. I believe she may have taken over £10,000 in total.

I have asked my sister to pay back some of the money, but she has ignored my letter. I want to pursue this because I don't think it is right to take advantage of a person who is mentally incapable of running their own affairs. We trusted our sister to look after Mum's money but she has let us down. *J, via email*

The short answer is that if your sister won't reply to your communications you'll have to sue her, through the county court, on behalf of your mother, to get the money back. This supposes that a) you or your brother are now your mother's deputy or have power of attorney and b) your sister has assets to claim from.

However, there are key details missing from your letter: most importantly, what do you mean when you say your sister was your mother's "agent", but now your brother is?

As this isn't clear, I'm going to run through various possibilities to make sure you have things covered now.

I spoke to [Alison Regan](#), a partner at Russell-Cooke, and a specialist in trust and estate disputes, about your letter. She advises that the Court of Protection (CoP), an arm of the high court, deals with the property and welfare of those people who cannot make their own decisions, and explains that your mother "may have entered into either an Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA)" with your sister.

If so (and we noted that your mother couldn't read or write) then these orders will need to be stopped by you/your brother, applying to the CoP and showing that your sister has not acted in your mother's best interests. Is this what you've done? If not, and such an order was in place, you need to get it set aside.

EPAs and LPAs (note: LPAs replaced EPAs in October 2007) "are formal documents by which a person [the donor, in this case your mother] nominates someone [the attorney] to deal with their financial affairs should they lose the ability to do so themselves." In other words, not some unofficial arrangement that your mother had with your sister.

However, if your mother has now lost capacity, a power of attorney may no longer apply. So, your brother may have applied to the CoP to be her deputy. Is this what he has done?

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If so, he can apply to the CoP (see links below) to authorise action against your sister. He doesn't have to do this, but if he gets CoP authority, he can also reimburse himself from your mother's funds for the costs of the action, should he need to. If he hasn't applied to be deputy, he (or you) needs to now apply so you can take action against your sister.

The CoP can tell you if there is an order in place (you need form OPG100, write to: Office of the Public Guardian, PO Box 16185, Birmingham, B2 2WH).

If all of this has been done, then you can sue your sister, on your mother's behalf, through the county court to recover the money, if she has assets.

[Direct.gov.uk/en/Government/citizensandrights/Mentalcapacityandthelaw/Makingdecisionsforsomeoneelse/](http://Direct.gov.uk/en/Government/citizensandrights/Mentalcapacityandthelaw/Makingdecisionsforsomeoneelse/)

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### Your problems solved

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