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Money and Mental Impairment

Any health issue is a pain in the wallet, but the spectre of mental health and age-related deterioration is especially confronting – and the financial implications are just as challenging.

According to the Black Dog Institute, one in five of us may have an issue with mental health in any year (https://www.blackdoginstitute.org.au/wp-content/uploads/2020/04/1-facts_figures.pdf). So, listen up; our mental health can, and does, seriously have an impact on our wealth. Obviously, there will be an impact should we be unable to work and earn a living, but some conditions may also result in inappropriate spending and poor decision making around money management.

As we can all appreciate, there is potential for the creation of a vicious cycle where poor mental health makes managing money harder – and bad money management skills makes mental health worse.

Added to this is the sad statistic that one in 10 of us over age 65 will be affected by dementia. This also has the potential to have serious financial implications, particularly during the 'twilight' phase, when a person may still be able to function in society, but their decision-making ability is impaired.

My friend Simon told me a story about his dad, then aged 85 and having been recently diagnosed with dementia, walking into an MLC office and investing $40,000 in cash. Six weeks after he died aged 89, the family found an additional $40,000 hidden in his sports shoes. Simon's dad had told no one… the shoes could easily have been passed on to a very lucky St Vincent de Paul client – and the family were similarly shocked to get a statement from MLC.

Mental health deterioration, tragically, can sometimes result in suicide. According to Lifeline, over 3,000 Australians took their own lives in 2018 (https://www.lifeline.org.au/resources/data-and-statistics/).

From a financial perspective, it is perhaps a little-known fact that most life insurance policies will pay out the sum insured in the event of suicide, if the policy has been held for more than 13 months – a curious length of time for the superstitious, but some small compensation to soften the financial burden when a life is lost in this way.

Because we are human, we are prone to the struggles of our species. Fortunately, we have laws designed to protect us in the event of mental incapacity. I've asked my friend and professional colleague, solicitor Tanya Ryan to help us understand, from a wealth generation and wealth protection perspective, some of the ways in which these legal protections can apply.

For the sake of this discussion, we will imagine that there is a couple called Gino and Maria aged 60, who own a house with a market value of $1m, with retirement investments of $2m. Their twin children, Peter and Mary are aged 30 and the family live in Adelaide, South Australia. It is important to note that different states have slightly different laws, but the general thrust is similar.

Tanya's comments are as follows:

It is wise for Gino and Maria at their age, to draw up documents not only for health and welfare (which give each other the ability to make decisions on the other's behalf) but also for financial decision-making should they become mentally incompetent. Depending on relationships, they might even give these responsibilities to Peter and Mary.

A **financial** Power of Attorney document requires the holder to act in good faith to ensure the mentally incompetent person's affairs are properly looked after. A separate document is required to make **medical** and **lifestyle** decisions for someone who is no longer able to do so for themselves. Depending on their health and capacity, Gino and Maria may choose to appoint their children to act in either or both roles, either jointly with the other spouse, or as alternatives if a spouse dies or becomes mentally incompetent.

Both the financial and medical documents would help protect the family if, for example, Gino started to demonstrate signs of dementia – or indeed, serious mental health issues.

In some cases, it may be important to get a tribunal or court order to take control of a loved one's financial affairs. This may evoke distrust from both the individual and, potentially, other family members who may suspect that you may be trying to enrich yourself – so I would always suggest that if the children take this action, they do so together, with the wholehearted support of the spouse, and that they openly discuss with the wider family why they are taking such action.

Similarly, another option would be to request that a trustee body be appointed, which will independently, and for a fee, manage the affairs of the mentally incompetent person both in life, and after death.

Now, given their $2m retirement fund, should Gino rashly decide he has 'too much money', and decide, uncharacteristically, to give it, or the house, away to 'friends' – the implications for Maria are also significant. He may be tossing away her housing security as well as her future entitlement to Centrelink support, as gifted cash and/or assets are generally considered still part of your asset base for five years from the date of the gift. Therefore, Maria may not only lose her family home, but also be ineligible for a Centrelink Age Pension. The family may need to act in good faith and take steps to ensure that these or similar actions do not occur.

Whilst it is possible to go to the courts and ask a judge to restrain a person's spending on grounds of mental impairment, this is very unlikely to be successful without significant evidence – not to mention substantial legal fees and emotional stress for all involved. A lot of damage can be done before inappropriate spending can be curtailed.

In an ideal world, if Gino suffers from dementia or poor mental health, the family would work cohesively in his best interests – and he would recognise that. However, bitter experience says this is rarely the case. Personal and legal conflicts are likely to arise, which will be very painful for all. Sadly, legal remedies are often poor remedies.

If you are concerned about the impact of mental health decline on a loved one, it is prudent to seek legal advice to carefully consider **all** options and their ramifications to ensure the best financial, medical and lifestyle decisions are made for them when they are at their most vulnerable.

And a final word from Theo:

There is a lot you can do to limit damage, while still allowing your loved one to still have some financial agency.

In complex situations, a history of rational and documented plans for the future can help to remind a person what they wanted to achieve – and form a basis for discussing with them why things have changed. This is the benefit of a long-term relationship with a financial adviser.

Where there is mutual respect and trust, I also advocate family engagement in wealth creation and wealth protection strategies. Bringing the next generation into planning for your latter years is both good training and puts a moral 'cuff' on them to abide by your reasonable plans (as agreed in the presence of an independent party).

Bear in mind too, that people who do not enjoy the best mental health or who suffer from dementia may be vulnerable to scams. It may be worth unsubscribing them from mailing lists and even considering redirecting their mail to a post office box, so that you can triage what printed matter is in front of your loved one.

Where possible, automate bill paying – and help to create a budget so that they can see in black and white how much money is coming in and going out, and hopefully, less likely to feel that you or others are 'ripping them off'.

Replace credit cards with debit cards with a small, say $500, balance to limit losses.

Where payments from superannuation are involved, perhaps the safest way to manage monthly drawdowns is to ensure payment from the fund to a joint account. Speak to your financial adviser about getting this organised.

The crossroads of mental impairment and financial planning is certainly challenging, but it is not insurmountable. In the case study above, if everybody works to protect Gino and Maria from the potential to make irrational decisions, that is clearly in their (and their children's) long-term interests.

The challenge will always lie in determining what is reasonable, given the prevailing personal circumstances.

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