



Fife Adult Protection Committee

Financial Harm: Prevention, Identification, Support and Protection

Guidance and Information



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1. Introduction

Fife Adult Protection Committee is a statutory body whose functions are:

- To keep under review procedures and practices of public bodies concerned with safeguarding of adults at risk: particularly those policies and procedures related to co-operation.
- To give information/advice or make proposals to public bodies about safeguarding of adults at risk
- To make and encourage the making of arrangements to improve the skills of employees with safeguarding responsibilities

The document outlines a set of role profiles from a range of agencies who have the opportunity and responsibility to prevent financial harm and /or to intervene in these situations. By clearly defining these roles we take the first steps towards our ongoing commitment to reduce opportunities for financial harm of adults at risk and to respond effectively when it is uncovered.

Fife APC has developed this Guidance to support agencies that come in contact with adults who may be subject to financial harm. It is recognised that many job roles have responsibilities that include support of adult's with their finances. There may also be opportunities to anticipate and prevent harm occurring through certain job roles.

It is clear, however, that the network of those who are in a position to contribute to addressing the issue of financial harm locally goes much wider than just those with statutory duties under the Adult Support and Protection (Scotland) Act 2007. Building and maintaining positive professional relationships with those wider networks may help with prevention and investigation of financial harm.

2. Fife APC Definition of Financial Harm

Financial harm is caused by the illegal or improper use of the individual's resources (both financial and property) by another person, without their informed consent or through the exercise of undue pressure.

3. Risk Factors

There are a number of potential risk factors which may make particular adults more at risk of financial harm than others. They may include:

- Lack of capacity to understand what is happening
- Dependency on others to manage care or finances
- Cognitive impairment impacting on decision-making
- Reduced or lowered level of financial capability (the ability to deal with financial products and services)
- Social isolation, bereavement and loneliness, providing an opportunity for exploitation
- Over-trusting nature
- Increased assets coupled with low cost lifestyle and a limited awareness of scams and other risks may make individuals more susceptible

4. Signs of Financial Harm

Financial harm may take some time to come to light. This means that the adult at risk may be exposed to its effects for long periods before it is identified. They may be unaware of the harm or be unwilling to accept it is happening. This means it may be less likely to come to light.

Possible indicators include:

- Unexplained or sudden inability to pay bills
- Unexplained or sudden withdrawal of money from accounts
- Disparity between assets and satisfactory living conditions
- The adult or their relative is resistant to spends which may provide items or resources to provide support, where there should be funds available. (The natural thriftiness of some people should be borne in mind, however).
- Extraordinary interest by family members and other people in the adult's assets.
- Expenditure of no benefit to the adult, by those with a responsibility to act on the adults behalf

5. Perpetrators of Financial Harm

Financial harm may be perpetrated by anyone. It can range from not acting in the adult's best interests to persuasion or coercion regarding gifts or loans, misappropriation of property or allowances, theft, rogue trading, or mass-marketing fraud.

A distinction should be drawn between those acting in a position of trust and others. Financial harm may be opportunistic; however those in a position of trust have greater opportunity to commit financial harm.

Some families may fail to recognise their behaviour as criminal. They may not consider taking money from their vulnerable relative as harmful believing it is acceptable, particularly if ultimate inheritance of the assets is anticipated or likely.

6. Prevalence and Impact of Financial Harm

It is common that individuals may experience more than one type of harm. Research indicates that financial harm is frequently found linked to physical and/or psychological harm and neglect. Evidence of any of these should alert professionals to the potential for financial harm.

7. Role Profiles:

Being familiar with the wide group who have different but overlapping roles connected to the recognition, identification, support and protection of those experiencing financial harm is essential. Once identified good information sharing and partnership working will provide appropriate and timely intervention.

7.1 Social Work Service Assessments

The Social Work Service may become aware that an adult is, or may be at risk of financial harm through assessment, care planning and scheduled reviews.

The Single Shared Assessment (SSA) provides opportunities for the adult, family, carers either paid or informal and other professionals to contribute information which may indicate financial harm. Section 21 of the SSA allows direct inquiries into the level and management of an adult's finances, where appropriate, as part of assessment and care planning.

Establishing the existence of a proxy is essential as their views must be sought as part of the assessment and information gathering, e.g. continuing financial attorney, financial guardian or benefits appointee.

Access to funds

The *Access to Funds Scheme*, under Part 3 of the Adults with Incapacity (Scotland) Act 2000, will provide information where financial assessment of an adult who lacks capacity is required. The information supplied under this scheme may assist in determining protective measures necessary for the adult and also whether irregular activities indicate possible financial harm.

Adults with Incapacity (Scotland) Act 2000-

Fife Council has a duty under the *Adults with Incapacity (Scotland) Act 2000*, section 12 to co-operate with the Office of the Public Guardian (OPG) investigating whether the property and financial affairs of an adult who lacks capacity requires safeguarding.

Withdrawers appointed by the Access to Funds Scheme are subject to regulation by the OPG. Any concerns in relation to the exercise of their powers should therefore be reported to them. The OPG may suspend or terminate any withdrawal certificate granted in response to such a report. Section 57 of the Adults with Incapacity (Scotland) Act 2000 requires the Council to apply for the appointment of a financial guardian when required, and where no-one else has applied, where an adult lacking capacity requires protection in relation to property and finance. While Social Work may make the guardianship application it cannot be appointed as financial guardian.

Continuing (financial) attorneys

The primary responsibility in terms of the oversight of continuing attorneys (i.e. attorneys with powers in relation to the management of an adult's finances which continue after the adult has lost capacity) lies with the Office of the Public Guardian. Where there are concerns in relation to the actions of such an attorney, these should therefore be reported to the OPG in the first instance. Nonetheless, these attorneys' actions will usually have implications for the adult's welfare and the council does have a duty to investigate situations where an adult's welfare is at risk.

For this reason, the indication from the Mental Welfare Commission's report on Mr. and Mrs. D¹ is that, even with continuing attorneys, the council should consider whether it is appropriate for it to make an application to have the attorney removed, to be made subject to the supervision by the OPG or to be given directions in the use of their powers by the Sherriff. In some circumstances, it may also be worthwhile considering the appointment of a Financial Guardian. This appointment would have the effect of removing the attorney's power, insofar as they are granted to the Guardian.

Financial guardianship/intervention orders

Financial guardians and interveners with financial powers are also subject to the oversight of the OPG and concerns should therefore be addressed to

¹ Mental Welfare Commission 2012

them, in the first instance. The Local Authority can make an application for the removal of a guardian or intervener, either altogether, where the Order is no longer required, or to be replaced by another, more suitable individual.

Mental Health (Care and Treatment) (Scotland) Act 2003-

Under section 33 the Council has a duty to inquire where an adult living alone or without care, in the community appears to have a mental disorder, impacting on their property or financial affairs, and may be subject to ill-treatment, neglect or some other deficiency in care. Co-operation by the Mental Welfare Commission, the Office of The Public Guardian, Care Inspectorate and NHS Fife can be requested when conducting a duty to inquire under section 33 where this would assist the inquiry.

The Adult Support and Protection (Scotland) Act 2007 –

Section 4 requires the Council to inquire where it knows or believes that a person's well being, property, rights or other interests are at risk and that protective measures may be necessary.

A council officer can require access to financial records, under section 10. Such a request must be in writing if made outwith a formal visit under section 7. This can be a useful way to obtain financial information from a local bank, although anecdotal evidence suggests that some banks are more willing to comply with these requests than others. The law is clear that to fail to comply with a valid s.10 request is a criminal offence, so this can be stressed where difficulty is encountered. Raising concerns with banks can provide a quick, short-term means of preserving such funds as are left in an account in some circumstances. Some banks will agree to freeze accounts where there appears to be abuse of a joint account holder's funds by another, but there is no strict legal basis for such action, so this cannot be insisted upon. Where the security of a PIN card has been compromised banks are generally willing to suspend its validity, even where PIN information has been shared on purpose, but this will depend on the bank in question.

Fife Council has a duty to prevent financial harm when applying for a removal order and must take reasonable steps to avoid loss or damage to the adult's property when the adult is unable to do so and no other arrangements are in place.

National Assistance (1948) Act, Section 48

The Social Work Service, as part of the Council, must secure and protect the property of an adult admitted to hospital either informally or under the Mental Health (Care and Treatment)(Scotland) Act 2003.

7.2 Police Service of Scotland

The Police must be notified promptly where adults at risk of harm are identified as victims of financial crime,

Police will be contacted by Social Work Services to participate in an Interagency-referral discussion (IRD), where assessment of the information and risks are jointly considered and plans about how to address the issue are agreed.

While the Social Work Service remains the lead agency throughout any adult protection investigation, the police will lead on any interview where there is a possibility of a crime having been committed. It is important that the adult is not subjected to unnecessary questioning prior to Police involvement as this

could have a negative impact on the investigation; evidence could be concealed or destroyed and the adult's statement may be compromised by repeated questioning.

The scale and complexity of the criminal aspect of the financial harm will determine which department leads the investigation. Local Divisional Officers predominantly deal with low level incidents and larger, more complex investigations are dealt with by the Criminal Investigation Department or Economic Crime Unit, depending on the geographic location of the incident. Police can obtain advice and guidance from the National Fraud Intelligence Bureau.

The Police role includes securing evidence, management of the investigation, the development of joint risk assessments regarding the victim's vulnerability and implementation of proactive measures which will mitigate risk, and consideration of the need for an Appropriate Adult.

Where appropriate, Investigating Police Officers will liaise with the Local Policing Division Adult Protection Co-ordinator for guidance and information sharing.

All investigations will be reported to the Procurator Fiscal providing there is sufficient evidence to prove criminality.

All incidents are recorded on the Scottish Intelligence Database for monitoring purposes and future dissemination to other Local Policing Divisions.

7.3 NHS Fife

NHS staff members are involved with a variety of vulnerable groups, through both in-patient and community based settings. NHS staff members are aware that due to the vulnerability of these groups, they must be vigilant to situations of potential or actual financial harm during the course of assessment and treatment and can have a key role in identifying financial harm.

Members of the Multi-disciplinary Health Team have a role in relation to assessing an individual's mental capacity, specifically around their ability to participate in financial decisions and actions/transactions.

Within an in-patient setting, NHS staff members must follow the current Financial Operating Procedures document to reduce the risk of financial harm to patients from staff members. The Care Inspectorate or Health Board will oversee the management of residents' finances. Any issues of financial harm arising in a care home or hospital setting would be investigated by the OPG. Where the placement is purchased by the Council, any remedies available in terms of the contract should also be explored and the concerns notified to Contracts Compliance.

If it has been disclosed or it is suspected that there is a situation of potential or actual financial harm, health professionals can instigate multi-agency involvement through completion of the Adult Protection Cause for Concern forms. Additionally, NHS staff members must also complete a web datix incident report form located on the intranet.

7.4. Contracts

Social Work Contracts carry out financial assessments for adults who have been assessed as requiring long term nursing or residential care. This is carried out in line with the National Assistance (Assessment of Resources) Act 1992 (as amended) and the supporting guidance Charging for Residential Accommodation (CRAG).

As part of the financial assessment process, Contract Officers request copies of bank and building society statements and/or passbooks, details of any capital held and details of any property ownership. The information provided determines the weekly contribution the adult will make towards their care costs.

In some instances the information provided can highlight withdrawals from the adult's accounts (both large and small), systematic withdrawal of their income (perhaps whilst the adult has been in hospital or unable to access the funds themselves) or full transfer of ownership of both capital and/or property. The Contract Officer will investigate to determine if the adult is, or has been, at risk of financial harm. This investigation will include making contact with the noted next of kin, power of attorney or financial guardian to ascertain the reasons for the withdrawals, transfers etc and if they were carried out with the adult's knowledge or permission.

Where it is determined the adult has had no knowledge of the transactions or through their illness did not have capacity to make financial decisions and has therefore possibly been subject to financial harm, Contract Officers will complete and submit a Cause for Concern to the Contact Centre. Officers will also make contact with the Office of the Public Guardian to ascertain what legal powers (if any) are in place to manage funds on the adult's behalf.

Where it is established a Power of Attorney or Financial Guardian is in place and actions have been taken by them which would indicate possible financial harm, the Office of the Public Guardian, will take steps to prevent funds being accessed in the future.

These steps may include income being re-directed from the Department for Work and Pensions to Fife Council (Corporate Appointee), bank accounts being frozen, the individual who has been granted the Power of Attorney or Financial Guardian being placed under review by the Office of the Public Guardian or their powers being withdrawn fully.

Where it is established the adult is at risk of, or has been the victim of, financial harm the Contracts Officer will liaise with the allocated Social Worker/Social Work Team to implement measures to ensure the adult's remaining and future income and capital are safe guarded. This may include the Social Worker nominating a third party (i.e. Solicitor or Accountant) to apply to the Court to become Financial Guardian. In addition, the Contracts Officer and Social Worker will liaise with Police to establish if a crime has been committed and to determine what further action can be taken.

Suspected financial harm can also be highlighted during the annual financial reassessment. Representatives of adults who are in care are contacted on a yearly basis to obtain updated information on income and capital.

If it is identified that capital levels have been depleted without any explanation as to why, this will be investigated and the appropriate steps taken if financial harm is suspected.

In addition, where invoices have been raised to collect an adult's contribution towards care costs and they are unpaid or direct debits continually cancelled, this will be highlighted through the Council's Income Recovery Service. Officers will investigate the reasons why and follow the process as outlined above if required.

7.5 Trading Standards

In relation to Adult Protection, Trading Standards have a role in prevention and investigation of doorstep crime. Trading Standards can take criminal proceedings or seek undertakings from the trader to prevent repeat occurrences.

Repeat victimisation is known to happen. The victim's details may be placed on a list of similar victims which is passed to other unscrupulous traders.

Trading Standards have a role in educating those people who come into contact with adults at risk of this kind of harm. We encourage vigilance regarding scam mail, bogus prize draws and telephone competitions and scams relating to the extortion of large amounts of money, for example, share and land scams.

7.6 Care Inspectorate

The Care Inspectorate is the independent scrutiny and improvement body for care and children's services. They have a significant part to play in improving services for adults and children across Scotland. They regulate and inspect care services and carry out social work and child protection inspections. They make sure that people receive the highest quality of care and that their rights are promoted and protected.

The Care Inspectorate recognises that procedures alone will not ensure that people's finances are within their control or managed with their best interests in mind. Any form of mismanagement, neglect or harm is the result of human interactions and so cannot be completely eliminated. But good financial management and procedures to safeguard adults help to minimise the risk of harm and increase the likelihood of harm being detected.

Robust arrangements must be in place for the storage of users' monies and valuables and for the recording of all financial transactions carried out on behalf of a user. This should encompass the requirements under the terms of the Adults with Incapacity (Scotland) Act 2000. (SSI 2002 No 114, Regulation 19(3) (h)) Care services must have procedures in place so that staff can help

people with their finances appropriately. Staff also need to be aware of the signs of financial harm and know how to respond appropriately.

7.7 Department of Work and Pensions

While the ASPA 2007 is not recognised as an enactment by the Social Security Administration Act 1992, the Department for Work and Pension's (DWP) policy for disclosure of personal information for "vulnerable adults" is that as long as a requester can provide sufficient informative detail as to the indicators of the person's vulnerability and risk to DWP, factual and relevant information will be disclosed in order to ensure the safety of the person.

7.8 Office of the Public Guardian (OPG)

The OPG has certain key responsibilities in relation to adults with impaired capacity. These are:

- Registration of all appointees (includes financial attorneys, interveners, guardians and withdrawers);
- Supervision of persons appointed to manage the property and finances of others e.g. withdrawers under the Access to Funds Scheme; Interveners and Guardians
- Provide information, advice and guidance;
- Investigate complaints or concerns about the way someone's property and financial affairs are being managed, including obtaining information on the actions of appointees;
- Consult with the Mental Welfare Commission and local authorities to safeguard the interests of persons with impaired capacity;
- Initiate or participate in court proceedings when necessary to safeguard the property or finances of a person who is incapable;
- Grant authority under the Access to Funds scheme for a person or organisation to access information on the bank accounts belonging to an adult with incapacity; and
- Allow a person or an organisation to access funds to pay for daily living expenses of an adult who is unable to do so for him/her self

7.9 Local Bank

Local banks can play an important role in helping to prevent financial harm to customers. Bank staff may get to know a customer well because of her/his regular visits to the local branch and consequently may form a view of the level of vulnerability of a particular customer or if something unusual occurs with a customer. For example, they may become aware of a customer's increasing forgetfulness which might be manifested by the customer visiting the bank with increasing frequency to withdraw money. Staff will aim to work with and support their customers. All banks have procedures which aim to protect a customer from financial harm and steps that they will take if a customer is the victim of financial harm. Often this will involve specialist areas within the bank rather than the local branch.

7.10 Advocacy

A citizen advocate can be particularly valuable in protecting against financial harm in terms of "arming" the individual with information on which to make choices or take actions. Equally group/self advocacy groups can support

individuals with the skills and knowledge they will require to protect themselves against financial harm.

There are many types of advocacy including legal, independent, group and informal advocacy.

Advocates can play a crucial role within the adult protection process, by providing an independent and impartial environment; enabling the client to explore the options that are available to them.

Through the use of an advocate, the relevant agencies should be able to develop strategies to promote the safety of the client, which, having been developed by the client themselves are more likely to be effective. Advocacy provides an indispensable measure to balance against over protection and paternalism, by ensuring that the views and wishes of the client are heard and respected.

7.11 Housing Services

Housing staff are well placed to identify financial harm.

The key staff who will do this are -

- Housing Maintenance Officers when they are out on visits for repairs may identify neglect, lack of money etc.
- Housing Neighbourhood Officers may find neglect which could relate to lack of money. Also in dealing with rent arrears this may be identified.
- Sheltered Housing Officers when providing housing support may spot financial harm
- Housing Case Workers when conducting housing advice / enhanced housing management may spot neglect / lack of money.

All Housing Staff will sensitively question further, to try to support the service user and will raise a Cause for Concern.

7.12 Self-Directed Support, including Direct Payments

The Social Care (Self-directed Support) (Scotland) Act 2013 aims to give people eligible for social care more choice and control.

Direct Payments provide eligible people money in lieu of services to address their social care needs. Direct Payments are administered by the Self-Directed Support Team in Fife Council. Direct Payments can be used to

- purchase services
- employ individuals, sometimes called Personal Assistants(PA's)
- purchase items to address the needs agreed.

The SDS Team can provide support, advice and guidance for individuals including

- recruitment and becoming an employer,
- record keeping
- adult protection issues. Direct Payment users are strongly encouraged to undertake PVG checks when recruiting PA's.

Direct Payment users' transactions are monitored on a quarterly basis. There is an annual review which includes a check that the funds are being used to address the assessed need. These processes may help identify financial harm.

Where the Social Work Services are aware of specific risks in an individual situation these are dealt with uniquely.

7.13 Home care, Community living scheme, Regulated care settings, Day service provision etc

Regulated support services, whatever the setting, have responsibilities which include having policies and procedures designed to safeguard individual's finances and protect staff from accusations of financial impropriety.

The service will comply with the relevant National Care Standards which include the management of risk, record keeping as well as recruitment, staff training and whistle blowing. Depending on the service the standards may be more explicitly expressed regarding support with finances.

Where the individual requires practical support to manage his/her finances this is provided in a professional yet person centred manner.

Staff working in or visiting these settings are in a strong position to identify if the adult is experiencing financial harm. Understanding what harm is, how it may present and how and when to report is included in staff induction and ongoing training.

All concerns and complaints of financial harm are reported and investigated within the terms set out in Fife Adult Protection Guidance.

Regular checks on financial records (receipts and transactions) are conducted to ensure that procedures are being followed. There is a review process which would include a financial audit where relevant to confirm compliance with financial procedures

7.14 Financial Procedures

Robust internal financial procedures governing the way in which service users monies are handled within organisations will limit the possibilities for financial harm. This will need to be balanced against the accessibility of the service users' personal moneys for their use and benefit.

Where there is evidence that procedures are inadequate or where procedures are being flouted this may reveal financial harm or the potential for it occurring.

7.15 Role of Adult Protection Committee

The role of the Adult Protection Committee in addressing financial harm is in accordance with its functions as laid down in the Adult Support and Protection (Scotland) Act 2007. This role is one of strategic development and ensuring that there is a commitment to working within the local multiagency policy and procedures across agencies.

The drafting of joint guidelines around preventing and intervening in situations of financial harm of adults at risk is undertaken as part of that role along with ensuring that there is ongoing dialogue across all parties to enhance protection in this aspect of our work.

The Adult Protection Committee will facilitate communication on financial protection issues both within and outside of Fife Council Social Work Services ensuring that both national and local developments/guidance are disseminated as appropriate. The Adult Protection Committee will give advice on adult protection policy and monitor its effectiveness in practice.

8. Resources

Fife Inter-Agency Adult Support and Protection Guidance

www.fifedirect.org.uk/adultprotection

National Care Standards

www.nationalcarestandards.org

Trading Standards

www.fifedirect.org.uk/tradingstandards

Scam Mail advice: www.Thinkjessica.com

Money and Mental Health

<http://www.mind.org.uk/information-support/tips-for-everyday-living/money-and-mental-health/>

The Easy Picture Guide to Banking

<http://banking.making-money-easier.info/PIN>

Help manage the money of someone you're caring for:

<https://www.moneyadvice.service.org.uk/en/articles/help-manage-the-money-of-someone-youre-caring-for>

Mental Health and Debt:

http://images.moneysavingexpert.com/attachment/mentalhealthguide_2013_2.pdf

Barclays Money Skills: resources to support organisations working with vulnerable groups to support their clients to manage their money more effectively: www.barclaysmoneyskills.com/Information/Resource-centre/Other-Resources.aspx

ARC Guidance on money management for people who may lack capacity to make some decisions about how their money is used

arcuk.org.uk/publications/files/2011/09/Guidance-on-Money-Management.pdf

Moving On and Planning Ahead: Easy Picture Guide to Planning Ahead

<http://www.unitedresponse.org.uk/wp-content/uploads/2011/09/Moving-on-and-Planning-Ahead.pdf>

The Financial Abuse of Older People: Help the Aged report

[www.cpa.org.uk/information/reviews/financialabuse240408\[1\].pdf](http://www.cpa.org.uk/information/reviews/financialabuse240408[1].pdf)