



North Lanarkshire
Adult Protection
Committee

Finance and Property Harm

Adult Support and Protection

Criminal law: finance and property
Civil legal remedies: financial and property harm

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Background

This document has been developed for the multi-agency workforce to support practice in relation to financial harm.

It provides an account of various types of criminal activity that can be identified when someone is subject to financial harm. As well as criminal prosecution, there are also a range of civil legal options that can be pursued by the adult, or by someone acting on behalf of the adult, to seek redress. The adult may wish to seek the services of a solicitor to pursue action on their behalf.

The document also gives an account of the range of civil legal remedies and outlines the range of organisations that have a duty or role to respond. This includes the police, the council (Social work services and Trading Standards), and the Office of the Public Guardian. Between these organisations, a range of criminal and civil options are available. As indicated within the Adult Support and Protection (Scotland) Act 2007, the most effective way to support someone who is seeking to pursue the return of monies and legal redress is for agencies to work together to identify what options are available.

Financial harm involves a complex set of circumstances and to tackle it effectively requires robust partnership working. The impact of financial harm on its victims relates not only to loss of income or property but to health and well-being.

Crimes targeting people thought to be more vulnerable are committed by a wide range of perpetrators in a variety of situations. Sometimes people are deliberately and systematically targeted. Sometimes the offence is more opportunistic, but still made easier to commit by the vulnerability of the person. There are typically recurring circumstances, and some less expected instances. For instance, carers in care homes or in people's own homes may misuse bank cards and personal identification numbers (PINs) with which they have been trusted. Or they might simply rifle through people's furniture and belongings to find cash. Cheques might be forged.

Sometimes it is people's families who misuse their position to steal money, through theft, fraud or forgery. And professionals, too, in positions of trust in relation to those people who are vulnerable, are sometimes implicated in these offences. This includes, for instance, accountants, solicitors, social and health care workers, bank staff, police officers and church ministers.

It is recognised that not only do people lose money and property, they are very unlikely to get their money and property back, and it is also unlikely there will be any legal redress in the form of a perpetrator being subject to criminal prosecution.

Adult Support and Protection (Scotland) Act 2007

Under the Adult Support and Protection (Scotland) Act 2007, a council must make inquiries about a person's well-being, property or financial affairs if it knows or believes:

- (a) that the person is an adult at risk, and**
- (b) that it might need to intervene to protect the person's well-being, property or financial affairs.**

Adult at risk

The Adult Support and Protection (Scotland) Act 2007, defines an “adult at risk” as:
Adults (aged 16 or over) who:

- (a) are unable to safeguard their own well-being, property, rights or other interests,**
- (b) are at risk of harm, and**
- (c) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.**

An adult is at risk of harm for the purposes of subsection (1) if:

- (a) another person’s conduct is causing (or is likely to cause) the adult to be harmed, or**
- (b) the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.**

Statutory Responsibilities

Statutory bodies have a duty to report their concerns if they ‘know or believe’ that an adult may be ‘an adult at risk.’ Staff should follow their organisational adult protection procedures.

It is recognised that, at times, the ‘duty to report’ may pose a dilemma for staff who may feel that by so doing this could alienate the individual and/or the family and the potential for preventative work. To do nothing or to promise confidentiality and then report the concern is not acceptable. The recommended procedure is to openly and honestly discuss with the individual and/or family the intention to report the information given and to advise them of the possible consequences.

- If an adult at risk may have been financially harmed, submit Adult at Risk form (AP1) to local authority social work.
- If a crime of dishonesty/violence is suspected (including theft/ fraud/ robbery/ Housebreaking), police will progress a criminal enquiry. Consideration will be given to capacity and wellbeing. Consideration is given to whether an appropriate adult is required and should this go to court what considerations must be made.
- If a crime relating to commercial/business practices is suspected (including cold calling/building and maintenance work), Trading Standards will progress Criminal/Civil Enquiry. Consideration will be given to capacity and wellbeing. Consideration will be given to whether an appropriate adult is required and should this go to court what considerations must be made.
- If no crime has been committed, seek financial support and advice from the local authority and appropriate voluntary organisations.
- For further information please refer to your agencies Adult Support and Protection Policies and Procedures.

Financial crime and mental capacity - Local Authority position

Where the person meets the criteria of an adult at risk in terms of the Adult Support and Protection (Scotland) Act 2007, a referral should be made and followed through appropriately. For the police this means the submission of an adult referral through the Vulnerable Persons Database (VPD).

If a crime is suspected to have been committed, then **this should be reported to the police at the earliest opportunity**.

Section 4 of the ASP Act (2007) states that a council [or delegated agency] must make inquiries about a person's wellbeing, property or financial affairs if it knows or believes that the person is an adult at risk, and that it might need to intervene to protect their wellbeing, property or financial affairs. As part of this process, Section 10 of the Act stipulates: A Council Officer may require any person holding health, financial or other records relating to an individual whom the officer knows or believes to be an adult at risk to give the records, or copies of them, to the officer.' There is now in place a nationally agreed section 10 mandate which can be completed by Council Officers and submitted to financial institutions to request this information. This can be a useful way to obtain financial information, 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 section 10 request is a criminal offence, so this can be stressed where difficulty is encountered.

In addition to helping with the investigation of the situation, it may be that the person would benefit from the use of one of the **Protection Orders in the 2007 Act** (most likely, a **Banning Order**) where the financial harm is taking place in the adult's own home, or some other defined place.

In other situations, it may be appropriate simply to support an individual to take their own legal advice. The **Citizen's Advice Bureau** can be a less intimidating way of gaining access to advice - but there are some measures (e.g. the removal of an attorney) which will require a solicitor.

Where an individual **has capacity** and does not wish to take steps to deal with financial harm themselves or accept support to do so – it is important that efforts are made, using a trauma informed approach and professional curiosity, to understand why.

Continuing 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 (OPG)**. 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 [Mr and Mrs D MWC Report](#)** 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 be given directions in the use of their powers by the Sheriff. 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 powers, 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 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.

Access to funds

Withdrawers appointed in terms of the Access to Funds section of the Adults with Incapacity (Scotland) Act 2000 are subject to the direct oversight of the OPG. Any concerns in relation to their 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.

Repayment of misappropriated funds

Where an attorney, guardian, intervener or withdrawer has misappropriated or negligently mismanaged funds, they may be liable to repay any sums, with interest. If necessary, a Court Order ordering repayment may be obtained - however, this is unlikely to be of much practical effect, if the sums have already been expended.

It should be remembered that if the adult meets the criteria of an 'adult at risk of harm' – the public body duties to report and inquire under the adult protection legislation require to be met.

Management of residents' finances

If the individual resides in a **care home or is in hospital**, their funds can be managed by the institution. This is overseen by the **Care Inspectorate or Health Board**.

Any issues of financial harm arising in this 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 Contract Compliance Quality Assurance.

Department of Working Pensions (DWP) Appointeeship

Appointee's responsibilities

An appointee is responsible for making and maintaining any benefit claims. They must:

- sign the benefit claim form
- tell the benefit office about any changes which affect how much the claimant gets
- spend the benefit (which is paid directly to them) in the claimant's best interests
- tell the benefit office if they stop being the appointee, for example the claimant can now manage their own affairs

If the benefit is overpaid, depending on the circumstances, the appointee could be held responsible.

Once the appointee is authorised, DWP will monitor the situation to make sure it's still suitable for the appointee and the claimant.

Stop being an appointee

The appointee should contact DWP immediately if they want to stop being an appointee. Phone the benefit office that deals with the claim - the number will be on any letters they've sent.

Appointees can be stopped if:

- They do not act properly under the terms of the appointment
- The claimant is clearly able to manage their own benefits
- The appointee becomes incapable - let DWP know immediately

DWP can assist with changing benefit payment types or payment accounts, with no other alternative, the benefit can be suspended until an appropriate safe method of payment or appointee can be established.

Informal measures of managing finances

Various informal measures are used to manage the finances of adults with incapacity. The most common of these are the setting up of **joint accounts with relatives** and the **sharing of bank cards and PIN numbers**. Such measures are **not subject to any formal oversight** and may be difficult to deal with, where there is suspicion of mismanagement.

The ability to request financial records to be produced in terms of s.10 of the Adult Support and Protection (Scotland) Act 2007 (see above) may afford some power to investigate such arrangements. Raising concerns with banks can provide a quick, short-term means of preserving such funds as are left in an account in some circumstances. Anecdotal evidence suggests that some banks will agree to freeze accounts where there appears to be abuse of 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, even where PIN information has been shared on purpose, banks are generally more willing to suspend its validity, but again this will depend on the bank in question.

Intervention Orders or Financial Guardianship will provide a means of stepping in to regularise the management of such an adult's finances in the long-term and will be required if it is proposed to close accounts or take other steps to secure funds held. Where urgent, it may be possible to shorten the usual court process to obtain the necessary Order: however, the standard medical and other reports will still be required before such an application may be submitted to Court, so there is still likely to be some delay in obtaining the necessary authority. It will usually therefore be necessary to ask banks to take the informal steps described above, while initiating the process to obtain the relevant Orders.

Direct payments

There are a number of controls over the use and management of direct payments which allow action to be taken where an adult's direct payments are being mismanaged or taken by third parties. In the first instance, the Self-directed Support (Direct Payments) (Scotland) Regulations 2014 are clear that there is no requirement to give the option of direct payments to an adult, where the making of such a payment is likely to put their safety at risk. There are now organisations which will undertake to manage direct payments on behalf of care users and other third parties are also allowed to fulfil that function. Before payments to such third parties may be made, the local authority must be satisfied that the adult retains total control over the way in which the monies are expended. If at any time the authority ceases to be satisfied that that is the case, the payments can no longer be made to the third party in question.

Where the option of direct payments has been taken up, and concerns emerge after the payments have commenced, the regulations allow payments to be terminated where they are used, whether wholly or partly, for purposes other than the provision of the support for which they were intended. This rule applies equally to payments being managed by third parties. There is nothing in the regulations which requires this misuse to be deliberate or in some way culpable on the part of the adult: theft or embezzlement of the monies by another individual would also allow the payments to be terminated.

In addition, the use of direct payments to employ family members is strictly regulated and is usually not allowed. Where payments are being given to family members, ostensibly in return for support, it should therefore be ensured that this is strictly within the terms of the regulations. Guardians or attorneys who are empowered to make decisions regarding the support the direct payment relates to are never allowed to receive payment for that support in that way. If family members are being paid from direct payments in contravention of these rules, or if there is evidence that an adult is under undue pressure to allow a family member to provide support in exchange for money coming from a direct payment, the payments may, again, be stopped.

If payments are to be stopped due to misuse, or contravention of the rules on payment of family members, notice must be given to the adult of the reason for the termination and the date from which it will apply. Care must be taken, in fixing that date, to ensure that an adult is not left without adequate support or with outstanding contractual obligations which they are unable to meet. Following the termination of payments, the local authority is not required to give the option of direct payments to the adult again.

Contractual remedies

A vulnerable person who has entered into a contract may have legal remedies available to them through the law of contract. These are private civil remedies and the individual may need to be supported to obtain advice from a solicitor or Citizens Advice Bureau.

If the individual lacks capacity then in appropriate circumstances a Financial Guardian could be appointed to pursue contractual remedies. In every case these are remedies which must be sought by or on behalf of the individual concerned.

For statutory powers which may be exercised by official bodies please refer to the appropriate section.

Certain types of contract may be invalid and an individual could be entitled to seek redress in the form of return of money paid out and damages in certain circumstances. Examples of grounds of invalidity which may be relevant to adults at risk are:-

- **Force and fear.** If some form of coercion or unfair pressure is applied to secure consent the contract may be invalid. The most important element is the fear on the part of the individual that there will be consequences if they do not enter the contract. Usually this is a threat to carry out an unlawful act such as violence or blackmail but it can also involve economic duress;
- **Facility and circumvention.** This is where one party has taken advantage of someone who is in a vulnerable state and the vulnerable individual has suffered loss as a consequence. There must be evidence of unfair advantage having been taken and the degree of "facility" of the victim;

- **Undue influence.** Where the parties are in a relationship of trust (which could be a family, friendship or professional relationship), a contract may be set aside if the trust is abused; and
- **Misrepresentation.** Where someone has been induced to enter into a contract by misleading statements it may be open to challenge.

This list is not exhaustive and is intended only for illustrative purposes. In every case where it appears that a vulnerable individual may have entered a contract where it is disadvantageous, or which they do not understand, then appropriate legal advice should be obtained.

Criminal offences

Police Scotland

There are a number of common crimes or offences that the police encounter when dealing with vulnerable adults that can be enforced by police through detection of the perpetrators, where a report can then be submitted to report the circumstances and the offender to the Procurator Fiscals Service. Part of the issue encountered is where it has been a friend or family member that has committed the crime. Often in these cases, the victim will not wish to proceed with a criminal investigation. This often leaves police feeling helpless as without a victim and corroborative statements there would be insufficient evidence to report an individual to the Procurator Fiscal.

Theft

Theft is a crime at common law and a person is guilty of theft if he or she dishonestly appropriates property belonging to somebody else. The intention must be to permanently deprive the other person of the property.

However, the appropriation will not be dishonest if the person believes he or she has a right in law to deprive the other person of it. It will also not be dishonest if the person believed that the other person would have consented, if the other person knew of both the appropriation and the circumstances.

In the context of safeguarding, there are typical types of theft. For instance, care workers who are entrusted with a person's bank card and PIN. Care workers visiting people in their own homes may systematically rifle through drawers, pockets or coats. Staff in institutions such as hospital or care home may steal a person's belongings, from their locker or a drawer, for example. It may be on a larger scale, and committed by a care home manager who takes advantage of lax accounting procedures to plunder the bank accounts of residents.

Embezzlement

If property has been entrusted to someone to look after it, but they take it and use it for their own purposes, that is embezzlement. This would therefore apply to Trustees or other individuals given authority to hold funds belonging to an adult a risk. This applies to professionals such as lawyers and accountants but would also apply to Attorneys or other individuals who have been authorised to manage someone's finances.

Fraud

Fraud occurs where there has been consent but false pretences have been used to obtain that consent. It is sometimes difficult to decide whether the crime is fraud or attempted fraud. Although they need not have derived any gain, the accused must have had some measure of success before the crime is complete. The fraud must have passed the stage of preparation, and entered a stage of perpetration, tending to prejudice the interests of another person.

Robbery

Robbery is a crime at common law, a person is guilty of robbery if he or she steals and, immediately before or at the time of doing so and in order to do so, he or she uses force on any person or puts or seeks to put any person in fear of being subjected to force.

In the context of this guide, robbery is included because some robbers will target adults precisely because of their vulnerability.

Targeting vulnerable people and gaining their trust first

There may be intensive targeting of vulnerable people through deliberately gaining their trust in order to breach it. This can blur the line between what practitioners view as abuse by a 'stranger' and abuse of a position of trust. The following resulted in a conviction for robbery:

Theft by housebreaking

Theft by housebreaking occurs when the security of a building is overcome and property is thereafter stolen. In the context of this guide, theft by housebreaking is included because some housebreakers will target adults already at risk of harm, precisely because of their vulnerability.

Preventative offences

Under Scottish Law there is also a preventative offence in relation to persons found in circumstances where the inference is that they were there to commit theft. This can be used where no actual theft has yet occurred.

Section 57 of the Civic Government (Scotland) Act 1982 determines that any person who, without lawful authority to be there, is found in or on a building or other premises, whether enclosed or not, or in its curtilage or in a vehicle or vessel so that, in all the circumstances, it may reasonably be inferred that he intended to commit theft there shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale or to imprisonment for a period not exceeding 3 months or to both. In this section "theft" includes any aggravation of theft including robbery.

Difficulties in prosecution

There can be difficulties in charging and prosecuting criminal offences. For example, false (or no) names and addresses may be given and therefore protracted investigation may be required to identify the perpetrator. In this type of case involving a vulnerable witness, every step would be taken to ensure progression of the enquiry, including DNA/fingerprints, witness statements and check of CCTV. A small amount of token work might be carried out so that the perpetrator can claim that the matter is civil (contractual) rather than criminal in nature, however in instances such

as this, the local authority maintenance inspector or Trading Standards Officer may be able to determine if a criminal offence has occurred.

Many steps have been taken to improve the challenges faced through prosecution in these cases including the Appropriate Adult Scheme. The responsibility for identifying when an appropriate adult is required rests with the police officer who is dealing with the case, whether the person with the mental disorder is a witness, suspect or accused. It should be emphasised that appropriate adults are now available for those with all types of mental disorder.

Civil and criminal law - Trading Standards

North and South Lanarkshire Councils' Trading Standards Services promotes and contributes to the maintenance of a safe, fair and equitable trading environment and also strive to protect and improve the health, safety and the environment of the people of Lanarkshire.

They achieve this aim by ensuring that the regulation and enforcement of statutes is fair, transparent and consistent, thereby assisting businesses and individuals to achieve compliance with Trading Standards Legislation.

In relation to adults at risk of harm, tackling Doorstep Crime which includes bogus trading is a key priority for the service and a summary of the common offences is detailed below.

Consumer Protection from Unfair Trading Regulations 2008

The purpose of these Regulations is to prohibit unfair commercial practices. The prohibitions relate to commercial practices that contravene the requirements of professional diligence, use misleading or unfair actions and omissions, aggressive commercial practices and introduce a set list of 31 banned commercial practices.

Regulation 3 relates to professional diligence which is defined as the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with honest market practice within the trader's field of activity and the general principles of good faith.

Penalties: Potentially unlimited fine and/or 2 years imprisonment on indictment.

Unfair and aggressive commercial practices:

- Harassment, coercion or exerting undue influence
- Refusing to leave a property when asked to do so
- Quoting one price then charging a much higher one
- Falsely stating a property needs urgent repairs
- Falsely claiming membership of a trade association
- Untruthfully claiming to be working for the local council
- Failing to give a cancellation notice when required
- Misleading / false premises address given on documents / flyers
- Returning to doorstep repeatedly after being told not to
- False claims about the goods or services supplied or to be supplied.

Trading names on business materials

The Companies Act (2006) and associated legislation requires individuals using trading names to disclose the true name of the legal entity of the trader and their geographic address on invoices, receipts, written orders and on all business letters.

Cancellation rights

The Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013 state that for contracts worth over £42 which are made at a distance or off trade premises such as in consumers home or place of work, traders are required to provide consumers with a written notice informing them they have a fourteen day cooling off period during which they can change their mind and cancel the contract. This notice should give the consumer specific information on how to cancel.

The consumer should be advised that failure to receive this notice means that the trader is in breach of contract and he/she may not be liable for any sums due.

In certain circumstances the consumer may request to have these cancellation rights waived i.e. for the contract to commence within the 14 day cooling off period. It is up to the consumer to initiate this and not the trader.

Civil enforcement action

Enterprise Act 2002 – Enforcement Orders

Failure to comply, contempt of court, criminal, report to Procurator Fiscal

Enforcers may take either criminal enforcement action in respect of any breach of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) or consider a civil action under the Enterprise Act 2002 Under this procedure, Trading Standards may apply to a court for an enforcement order to prevent future infringements. Breach of an enforcement order may be classed as contempt of court which could lead to a term of imprisonment and/or a fine.

A criminal enquiry into the activities of a bogus crime group revealed several elderly victims who were unable to give evidence due to their infirmity and mental capacity. The total monies paid over amounted to approximately £150,000. Cases investigated by Trading Standards concerned instances of;

- taking large sums of money from customers without carrying out any work,
- gross overcharging,
- fraudulent claims as to the nature and extent of work required,
- fraudulent claims as to the nature and extent of work carried out,
- gain confidence of customers and obtain money or attempt to obtain money as personal loans with no intention of paying back,
- fail to issue cancellation rights notice,
- fail to exercise reasonable skill and care when providing services.

An Enforcement Order under Section 217 of the Enterprise Act 2002 was granted at Glasgow Sheriff Court against two individuals.

Other cold calling action

In the absence of identifying and prosecuting perpetrators, other approaches can be taken. The police and local authority might agree a local strategy involving the following sort of action.

An area might be blighted by doorstep selling and 'cold calling', with the result that vulnerable elderly people are being exploited and sometimes having criminal offences (of theft or fraud) committed against them. However, the offenders are very difficult to apprehend. So, apart from identifying and prosecuting where possible, the police and local council may introduce a '**no cold calling zone**' (such zones can lawfully be designated by local authorities).

Suspicious activity reports ***

Under the Proceeds of Crime Act 2002, there are particular provisions relating to money laundering. Although these are in large part aimed at large-scale operations, including organised crime and terrorism, the provisions are drawn widely, so as to be relevant to the financial safeguarding of vulnerable adults.

Wide definition of money laundering ***

Sections 327 to 329 of the Act create a number of money laundering offences in relation to concealing, disguising, converting, transferring or removing from the jurisdiction criminal property; to making arrangements for acquisition, retention, use or control of criminal property by or on behalf of somebody else; and to acquiring, using and possessing criminal property. Criminal property is widely defined.

In addition, it is an offence for staff – working for particular financial bodies such as banks and building societies – to fail to report known or suspected money laundering. The grounds for reporting are that the person (a) knows or suspects, or (b) has reasonable grounds for knowing or suspecting that another person is engaged in money laundering.

Banking Protocol

In 2017 the Banking Protocol was launched. A joint initiative between Trading Standards, police and banks and building societies, it provides bank and building society staff with guidance to spot when withdrawals may be suspicious and a route to report their concerns.

Scammers often target their victims repeatedly and this can lead to a pattern of unusual financial activity. If someone visits a branch and asks to withdraw or transfer an amount of cash which appears unusual for them or makes multiple withdrawals in a short space of time, branch staff will gently enquire about the reasons for the transactions.

Depending on the outcome, if staff suspect the customer may be a victim of fraud, they can call 999 and there will be an immediate priority response to the branch by police and / or Trading Standards.

Duty on banks and building societies

This means that if banks or building societies suspect criminal activity, including such activity involving vulnerable adults, they must report it by means of a suspicious activity report (known as a SAR). The report goes to the Serious Organised Crime Agency (SOCA) who in practice might then feed the details back down to the local police force.

Application to, for example, dishonest care workers ***

In terms of use of cash machines by dishonest care workers, for example (a typical type of theft from vulnerable people), computerised systems can pick up unusual transaction patterns. However, if the theft has been regular over an extended period of time, this may not be easily identified. Alternatively, if people are coming physically into branches, staff might more easily pick up suspicious activity.

Good practice guidance ***

The British Bankers' Association has published a good practice guide for bank staff. It includes two examples of suspicious activity (British Bankers' Association, 2010):

Case studies (British Bankers' Association):

In the first case, there had been attempts to obtain several bankers drafts from an elderly customer, to the value of £31,000. The bank staff formed the view that the customer was being exploited by an individual pretending to be a relative. The suspicious activity report was passed on by the SOCA to the police, who were then able to protect the customer.

In a second case, an elderly person attended a building society branch with a carer, and made several withdrawals up to a value of £2,000. There were also cash point withdrawals, as much as £1,500 in one week. The building society thought the cheque signatures might have been fraudulent; they blocked cash point withdrawals and cheques. A SAR was made. A trusted third party was appointed signatory. No action was ultimately taken against the carer, but the report had the effect of preventing further exploitation.

****Not Trading Standards related enforcement activities.*

Office of the Public Guardian Powers

Section 6(2) allows the Public Guardian

“to receive and investigate any complaints regarding the exercise of functions relating to the property or financial affairs of an adult made

- (i) in relation to continuing attorneys;**
- (ii) concerning intromissions with funds under Part 3;**
- (iii) in relation to guardians or persons authorised under intervention orders”**

Section 6(2) (d) allows the Public Guardian

“to investigate any circumstances made known to him in which the property or financial affairs of an adult seem to him to be at risk”

Section 6 (2)(d)(a) allows the Public Guardian

“to take part as a party in any proceedings before a court or to initiate such proceedings where he considers it necessary to do so to safeguard the property or financial affairs of an adult who is incapable for the purposes of this Act”

The Public Guardian only has locus to investigate provided it has been confirmed by a medical person that the adult lacks capacity. If the adult is deemed to have capacity the investigation would fall to be made under the Adult Support and Protection Act.

Assuming the adult lacks capacity and following investigation the Public Guardian considers that the adult's property and/ or funds are at risk the Public Guardian can put the following safeguards in place.

Safeguards

- a) Advice and guidance may be given to the appropriate parties so that safeguards can be put in place to make sure that the adult's property and financial affairs are suitably protected.**
- b) In certain circumstances the adult's bank accounts may be frozen or income suspended until redirected for the benefit of the adult.**
- c) A recommendation may be made for an appropriate body or person to consider making an application under the Adults with Incapacity (Scotland) Act 2000, for example: the access to funds scheme or financial guardianship.**
- d) An application may be made to the Sheriff seeking to have anyone acting under the Act or under any authority to:**
 - be supervised by the Public Guardian,
 - be ordered to submit accounts for audit by the Public Guardian,
 - have any of the powers they were given revoked/terminated, or
 - have their appointment revoked/terminated.

If there is an indication of fraud or theft then the Office of the Public Guardian may refer the matter to the police.

For further information of what support the Public Guardian can offer please go to their website at [Office of the Public Guardian \(Scotland\)](http://www.publicguardian.gov.scot)

“Financial harm involves a complex set of circumstances and to tackle it effectively requires robust partnership working. The impact of financial harm on its victims relates not only to loss of income or property but to health and well-being.”

For more information:

www.adultprotectionsouthlanarkshire.org.uk

<https://publicprotectionnl.com>

If you need this information in another language or format, please contact us to discuss how we can best meet your needs.

Phone: **0303 123 1015**

Email: **equalities@southlanarkshire.gov.uk**