

A Financial Abuse Toolkit

What is financial abuse?

Financial abuse is: “The unauthorised and improper use of funds, property or any resources belonging to another individual”

It includes:

- Theft, fraud and exploitation.
- Pressure in connection with wills, property, inheritance or financial transactions.
- Misuse or misappropriation of property, assets, possessions,
- Savings, capital or benefits.

Types of financial abuse

Financial abuse may include:

- Theft i.e. money or possessions stolen, borrowed or withheld Without permission.
- Wrongfully controlling access to money or benefits.
- Preventing someone buying goods, services or leisure activities.
- Money being absorbed into a care home or household budget without the person’s consent.
- Being deliberately overcharged for goods or services, or being asked to part with money under false pretences.
- Not providing the care (1 to 1 and shared hours) but charging the

- client.
- Carrying out unnecessary work and / or overcharging.
- Postal, telephone and internet scams where the person has
- interacted with someone and has lost money.
- Unlicensed money lending (loan sharks) i.e. being offered a loan on very bad terms.
- Staff or volunteers borrowing money, or accepting gifts or money from clients.
- Misuse of a person's assets by professionals.
- Altering ownership of property without consent.
- Exerting undue influence to give away assets.
- Pressure in connection with wills, property, inheritance, possessions or benefits.
- Putting undue pressure on the person to accept lower-cost / lower quality services in order to preserve more financial resources to be passed to beneficiaries on death.
- Misuse of powers of attorney.

Types of financial misuse, abuse and fraud within the personal

budget/direct payments system

Financial misuse, abuse and fraud within the personal budget/direct payment system may include:

- The client and/or their representative exaggerating the clients needs to increase their entitlement. (misuse of the process)
- The client and/or their representative not declaring all their income or capital to reduce their client contribution.(misuse of the process)
- The client and/or their representative using the direct payment for items not covered in the care plan. (misuse of the process)
- The client and/or their representative not declaring a change in their financial circumstances which would affect their client contribution. (misuse of the process)
- A care provider (or Personal Assistant) charging for care which has not been delivered. (adult abuse and possible crime)
- Third party who has control of the direct payment not using the payment for the benefit of the client. (adult abuse and fraud)

Why is recognising financial abuse important?

The impact of financial abuse should not be underestimated and can be every bit as significant as physical abuse. Even small losses have the potential for significant impact when considered in context with a person's overall wealth / income and whether or not they have access to the right support. The negative impact of financial abuse, regardless of the source, can leave people unsettled and without the confidence to live independently. It can cause the person who previously did not have a need for social care services to deteriorate to the level at which they require services. How does financial abuse affect someone?

A person may experience any of the following:

- Depression / anxiety
- Distress
- Anger
- Embarrassment / loss of self-esteem
- Self-blame – decline in mental health
- Denial / fear
- Betrayal
- Stress
- Loss of confidence to live independently
- Deterioration in physical health (leading to premature death)
- Social isolation
- More vulnerable to further exploitation
- Inability to replace lost savings due to lack of earning potential

. Recognising someone at risk of financial abuse

Profile of an adult at risk of financial abuse

An adult at risk of financial abuse is likely to display one or more of the following:

- The person is unable to manage their own finances due to lack of

- capacity or sufficient numeracy skills.
- The person is dependent on another person or people to manage their money.
- The person is dependent on others for all aspects of daily living, such as those who live in residential care.
- The person is known to be isolated or is regarded as at risk within the community.
- A person who is isolated or lives on their own may be more at risk of being exposed to financial pressure e.g. from salespersons, loan firms, rogue traders or bogus callers.
- The person is of a trusting or gullible nature.
- The person is susceptible to emotional grooming.
- For older people in particular, potentially increased assets coupled with low-cost lifestyles and a lack of awareness of the modern world may make them more susceptible.

Note: Whilst a person who lacks capacity may be considered to be more at risk of financial abuse, it should be remembered that someone with capacity can be equally susceptible. For example, it should not be assumed that if a person who has capacity makes a gift, then it cannot be regarded as theft. Coercion and undue influence, emotional grooming and predatory behaviours as well as the reasonableness of the transaction all need to be considered.

Who is likely to perpetrate financial abuse?

Financial abuse is most frequently perpetrated by a person acting in a trusted capacity, for example, a family member or friends and neighbours or care workers / other professionals.

Examples include:

- Staff in care establishments exploiting residents by gaining their trust and taking over their finances unlawfully.
- Care providers invoicing for services not provided.
- Powers of attorney exploiting their position by misappropriating funds.
- Some families may have a view that the income of individual family members, including benefits for disabled adults, should be pooled into the family income.

- The person managing a direct payments account (which can include the client) engaging in false accounting through the forgery
- of accounting records / payslips, to allow monies to be misappropriated.
- Financial abuse more commonly perpetrated by a stranger
- includes mass marketing fraud, identity theft or rogue trading.

The following organisations give examples of this type of financial abuse:

- The Office of Fair Trading (OFT)
- National Crime Agency (NCA)
- Trading Standards
- Think Jessica <http://www.thinkjessica.com/>

How can you recognise if someone is experiencing financial abuse?

Indicators of financial abuse

The list below includes a range of possible indicators. It should not be considered an exhaustive list.

- Unexplained withdrawals from a person's bank account.
- Cheque withdrawals to unknown businesses / persons.
- An unexplained shortage of money, despite an adequate income or immediately following benefit day.
- Unpaid or a sudden inability to pay bills.
- Payment of client contribution suddenly stops.
- Disparity between assets and satisfactory living conditions.
- The person lacks belongings or services which they can clearly afford.
- Reluctance on the part of family, friends or the person controlling funds to pay for replacement clothes or furniture.
- Items purchased which are not appropriate for the person.
- Home improvements or repairs that are 'out of fashion' with the person's lifestyle or are 'worrying' the person or staff.
- Loans or credit being taken out by a person in circumstances that give cause for concern, such as the age of the person taking out the loan and the alleged reason for the loan.
- Pressure by family members and other people to sign over assets or alter wills.

- Recent change of deeds or title of house.
- A person's inability to explain what is happening to their own income.
- The disappearance of bank statements, other documents or valuables, including jewellery.
- Carer asking only financial questions of the worker, does not ask questions about care.
- Large volumes of 'junk' mail.
- Lack of records within a care home or supporting living accommodation, such as time sheets, invoices, receipts etc.

Planning an investigation/making s42 enquiries into financial abuse

Safeguarding s42 enquiries will need:

- To consider welfare and prevention alongside any investigatory actions.
- To work with the adult at risk to identify and manage their expectations and focus on their desired outcomes.
- To consider the breadth of remedies available to the person at risk of financial abuse. Please see Appendix C for more information.
- A well planned strategy which involves and utilises the skills of partners at the earliest opportunity. Please see Appendix B for a list of internal and external teams that should be considered .
- All direct payment misuse should be reported to the local authority.

Responsibilities of practitioners

Financial abuse involving Adult Social Care (ASC) monies

As soon as a practitioner suspects an irregularity affecting Adult social care or other Public monies, they should inform the relevant local authority and NHS safeguarding team immediately.

*Financial abuse within a
regulated service*

The Care Quality Commission (CQC) should be made aware of any safeguarding concerns within a regulated service. The CQC will need to attend adult safeguarding meetings if the registered service is directly implicated.

Who can help with what?

A key element in an investigation and/ or S42 enquiry is planning who to involve and what information needs to be gathered.

Appendix B provides a list of internal and external teams and details of their roles and how they can assist in the investigation/s42 enquiry into financial abuse.

Appendices

Appendix A

Internal Teams and External Teams

Appendix B

Seeking Legal Redress

Appendix C

Protecting adults at risk of financial abuse

Appendix A:

Internal and External Teams

- **Local Authority Financial Teams**

The team can provide financial documentation that may be held after the completion of a financial assessment. Information is requested as part of a safeguarding s42 enquiry. Financial information will be shared on a need to know basis, in accordance with the Data Protection Act.

- **Client Financial Affairs**

Referrals for Corporate Appointeeship or Deputyship

The team can accept appropriate referrals with a view to applying for a Corporate Appointeeship or Deputyship from a client's Care Manager where there have been allegations of financial abuse and where the client lacks sufficient mental capacity to deal with their finances themselves. The client must have an ongoing involvement with Health & Social Care, cannot have savings/assets in excess of £23250 and must not own property or land. In those circumstances legal services may be able to assist with an application to the Court of Protection to appoint an external panel deputy.

The team can take over the management of a client's financial affairs on their behalf and put measures in place to safeguard their finances. The team will then provide financial information as required to assist with their financial assessment and / or the safeguarding s42 enquiry.

Removing Powers of Attorney or appointees

The team will provide advice to teams with regards to removing an existing Attorney or Appointee where it has been identified the person has not been carrying out their duties appropriately, and will support this process for clients that have been referred to the team to apply for a Corporate Appointee ship or Deputyship.

- **The Debt Recovery Team**

- **The Direct Payments Monitoring Team**
- **The Commissioning Team**
- **Internal Audit and HR Advisory Services**
- **Trading Standards**
- **Legal Services**

Police

Where a practitioner is making enquiries regarding financial abuse and suspects that a crime may have been committed, MET Police should be consulted. The Police Public Protection Unit or the Combined Safeguarding Unit will review the information and determine whether there is evidence to suggest that a criminal offence has been committed and whether MET Police should lead the investigation.

NHS Counter Fraud Team

Where a practitioner has concerns that NHS funds are being defrauded or misused they can report their concerns by either calling 0800 028 4060 or by visiting www.reportnhsfraud.nhs.uk and completing an online reporting form

Office of the Public Guardian

The Office of the Public Guardian (OPG) protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as about their health and finance.

They also help people plan ahead for someone to make certain important decisions for them, should they become unable to do so because they lack mental capacity.

They support the Public Guardian in carrying out the legal functions of the Mental Capacity Act 2005.

They are responsible for:

- Taking action where there are concerns about an attorney or deputy
- Registering lasting and enduring powers of attorney, so that people can choose who they want to make decisions for them
- Maintaining the public register of deputies and people who have been given lasting and enduring powers of attorney

- Supervising deputies appointed by the Court of Protection, and making sure they carry out their work in line with Mental Capacity Act

- Looking into reports of abuse against registered attorneys or deputies
- Contact the Office of the Public Guardian if you have concerns about an attorney or a deputy, eg the misuse of money or decisions that aren't in the best interests of the person they're responsible for.

Contact details:

opg.safeguardingunit@publicguardian.gsi.gov.uk

Telephone: 0300 456 0300

Textphone: 0115 934 2778

Monday to Friday, 9am to 5pm except Wednesday, 10am to 5pm

The Office of the Public Guardian can help if there is a:

- registered lasting power of attorney
- registered enduring power of attorney
- deputy appointed by the Court of Protection

Court of Protection

The Court of Protection makes decisions on applications which involve people who lack mental capacity.

You can contact the court (with support of you manager and legal teams only) if you have a query about an application:

- that deals with someone's personal welfare
- to become a deputy or change an existing deputy order
- concerning deprivation of liberty
- to sell jointly owned property
- to make a statutory will or gift
- To cancel an enduring power of attorney
- To object to a lasting power of attorney

The HM Courts and Tribunals website has:

- guidance on making applications

- A full list of application forms

Court of Protection

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courtofprotectionenquiries@hmcts.gsi.gov.uk

Telephone: 0300 456 4600 -Monday to Friday, 9am to 5pm

Emergency applications

Contact the Court of Protection if there's a situation that needs an urgent decision, eg when you want to stop someone who lacks mental capacity being removed from where they live.

Ask to speak to the urgent business officer when you call.

Emergency applications

Telephone: 0300 456 4600

Monday to Friday, 10am to 4pm

Department of Work and Pensions

The department of Work and Pensions administers a number of benefits to people across England, Scotland and Wales.

Become an appointee for someone claiming benefits

You can apply for the right to deal with the benefits of someone who can't manage their own affairs because they're mentally incapable or severely disabled.

Only 1 appointee can act on behalf of someone who is entitled to benefits (the claimant) from the Department for Work and Pensions (DWP).

An appointee can be:

- an individual, eg a friend or relative
- an organisation or representative of an organisation, eg a solicitor
- or local council
-

Appointee's responsibilities

As an appointee you're responsible for making and maintaining any benefit claims. You 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 you) in the claimant's best interests

- tell the benefit office if you stop being the appointee eg, the claimant can now manage their own affairs
- If the benefit is overpaid, depending on the circumstances, you could be held responsible.

Apply to become an appointee

Who you phone to apply to depends on the benefit:

- Attendance Allowance - contact the Attendance Allowance helpline
- Disability Living Allowance - contact the disability benefits helpline
- State Pension - contact your local pension centre
- Personal Independence Payment (PIP) - contact the PIP new claims line
- all other benefits - contact Jobcentre Plus

Appendix B - Seeking Legal Redress

The criminal courts

If a criminal offence, such as theft or fraud has been committed, the person experiencing financial abuse may wish to press criminal charges against the person alleged responsible.

For more information about theft and fraud, see [The Theft Act 1968](#) and [The Fraud Act 2006](#) – both available on www.legislation.gov.uk.

The civil courts

Where a criminal offence has not been committed, it may be possible for the person subjected to financial abuse to obtain relief through civil law. This would be the case where financial abuse occurs as a result of undue influence or duress.

Undue influence occurs when a person's wishes regarding a gift or bequest are overruled as a result of coercion or undue pressure by somebody else.

Duress relates to a person entering into an agreement as a result of threats.

Where it is established that duress or undue influence has been exerted, any contract the person experiencing financial abuse has entered into may be set aside and they must take steps to void the contract. Where duress has occurred, it may also be possible to obtain damages; damages are not available with undue influence.

Office of the Public Guardian

If the abuse is perpetrated by an attorney or deputy and the donor still has capacity, he / she can revoke the Lasting Power of Attorney (LPA) by way of a Deed of Revocation. The attorney should be alerted and,

where the LPA is registered, the Public Guardian informed. Where the donor lacks capacity case managers can refer concerns directly to the Office of the Public Guardian.

A local authority via Client Financial Affairs can make representations to the Office of the Public Guardian if there is reasonable belief that an attorney or deputy is not acting in the person's best interest.

The Court of Protection

Where the person experiencing financial abuse lacks capacity the Court of Protection has wide powers to deal with the consequences of financial abuse.

These include:

☑ Making an order prohibiting a named person from having contact with the person experiencing financial abuse.

☑ Making an order enabling another person to bring proceedings on behalf of the person experiencing financial abuse, for example, for redress in the civil court. This may involve claims of fraud, coercion, undue influence, lack of capacity, and breach of trust.

☑ Appointing a deputy.

In addition, the Court can simply set aside gifts or wills on the grounds that the person lacked capacity at the relevant time.

The High Court

The High Court can make:

- Freezing injunctions to prevent money or property being disposed of, and search orders to allow access to the home or workplace of the person alleged responsible to search for documents.
- Injunctions can also be obtained to prevent the person alleged responsible from leaving the country.
- A person acting as a 'litigation friend' (ie. representing a person with mental health issues) can also apply to the High Court for recovery of funds.

The Legal Ombudsman

Complaints about a solicitor should, in the first instance, be directed to the practitioner or law firm concerned, in writing.

Should the practitioner not deal satisfactorily with the complaint the matter should be referred to the Legal Ombudsman. The Legal Ombudsman is a free, independent service that has formal powers to resolve complaints about lawyers.

The Legal Ombudsman can be contacted on 0300 555 0333 or at

Appendix C

Strategies for Protecting Adults at risk of Financial Abuse

The following are potential methods of protecting an adult at risk of financial abuse which should be considered as part of the safeguarding plan.

Appointeeship: An appointee is someone appointed under the Social Security (Claims and Payments) Regulations 1987 to claim and collect social security benefits on behalf of a person who lacks capacity to manage their own benefits.

Deputyship: A deputy is someone appointed by the Court of Protection to manage the property and affairs or the personal welfare (including healthcare), or both, of another person who lacks the mental capacity to manage them themselves.

Where a person lacking capacity does not have anyone to act as their deputy, or if there is a safeguarding issue, an application can be made by the local authority to act as deputy.

Lasting Power of Attorney (LPA): An LPA is a legal document made by someone (the donor) that allows another person (the attorney) to make decisions about the donor's health and welfare or property and affairs, or both.

An LPA can be made at any time and gives the attorney power to act at a time in the future when the donor may no longer wish to make decisions or may not have the mental capacity to do so.

For more details see: www.gov.uk

The Mental Capacity Act 2005

The Mental Capacity Act 2005 in relation to adult safeguarding, the Act introduces four key elements:

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- New offences of wilful neglect and/or mistreatment of a person lacking mental capacity.
- Powers to make decisions in the best interests of a person who lacks capacity.
- A duty for proxy decision makers and professionals to act in a person's best interests and abide by the code of practice.
- The leaving of specific decisions and capacity assessments to the person or professional concerned.
- For more details see: The Mental Capacity Act 2005 and its Code of Practice

Office of the Public Guardian (OPG): The Office of the Public Guardian's main statutory duties are to:

- Register Powers of Attorney.
- Supervise deputies appointed by the Court of Protection.
- Investigate safeguarding concerns or allegations and report these to the Court of Protection, when required.
- Provide guidance to the public, and legal and health professionals.
- A deputy may be subject to close supervision from the OPG. This can be because of concerns about how the deputy is acting, but can also be because they are acting in difficult circumstances.

A local authority can make representation to the Office of the Public Guardian if there is a reasonable belief that a Lasting Power of Attorney is not acting in a person's best interests.

For more details see:

www.justice.gov.uk

Court of Protection: The Court of Protection has the power to:

- Decide whether a person has capacity to make a particular decision for themselves.
- Make decisions on financial or welfare matters on behalf of a person who is unable to do so.
- Appoint a deputy to act for someone who is unable to make their own decisions.
- Enable a third party to look into the financial affairs of someone under the Court's jurisdiction where financial abuse is suspected,

and to safeguard the person's resources, if appropriate.

- Decide whether a Lasting or Enduring Power of Attorney is valid.
- Hear cases concerning objections to the registration of a Lasting or Enduring Power of Attorney.
- Remove deputies or attorneys who fail to carry out their duties.

For more details see: www.gov.uk

Preventing financial abuse

There can be significant difficulties in investigating, proving and rectifying financial abuse once it has occurred. So, the most effective way of protecting people from financial abuse is through preventive interventions.

Education and training

Information sharing and training will raise awareness that financial abuse is not ordinarily a one-off or isolated incident, it is often ongoing and early reporting may prevent escalation.

Working with clients

Prevention needs to take place in the context of person-centred support, with clients empowered to make choices and supported to manage risks. The following should be considered in individual cases:

- The risk of potential exploitation should be included in the client's support plan, and shared with care providers.
- The use of advocacy (or if an Adult Protection Alert is raised, an Independent Mental Capacity Advocate may enable an adult at risk to express themselves in a potentially abusive or actually abusive situation, or assist the person in moving towards self advocacy and independence).
- Advising the adult at risk of sources of useful information eg. [The Money Advice Service](#).
- Working with partner agencies

Trading Standards

Trading Standards can help to protect against financial abuse by:

- Providing information and advice on how the adult at risk can protect themselves from being deceived in relation to doorstep crime, rogue traders, loan sharks and mass marketing scams e.g. lottery, postal or internet scams.
- Known scam victims can be supported by Trading Standards, and interventions can take place where necessary to support the person.

Policies and procedures

Residential care homes should have policies and procedures in place for dealing with clients' finances and valuables, and keep proper auditable records.

Home care providers should have formal arrangements in place for home care staff to take on financial responsibilities.

Supported living accommodation should have systems in place to support clients in managing their finances which do not put staff in conflict with their employer. Clear auditable records should exist to show the client has been invoiced in accordance with the care that has been delivered.

More information on the minimum financial and accounting standards/controls in care homes and supported living are available in section 17 of the Kent and Medway Multi-Agency Safeguarding Adults Policy, Protocols and Guidance.

Direct payments

There are a number of ways Care Managers/direct payment coordinators can reduce the risk of direct payment misuse by:

- Conducting a capability assessment on the client's/third party ability to manage the direct payment.
- Be clear that providers and PA's should not manage any of the finances associated with the Direct Payment
- Undertake a DBS check on the third party.
- Risk assess people the client is likely to be influenced by, especially if the client is living on their own/supported living and is easily influenced.
- Be specific in the Support and Care plan about what the direct payment can be spent on.
- Ensure the Direct Payment recipient or 3rd party understands the need to keep records of all Direct Payment spend.

Additional resources

Assessment: Financial Crime Against
Vulnerable Adults, Social Care
Institute for Excellence, November
2011

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www.scie.org.uk/publications/reports/report49.asp

The Financial Abuse of Older People – A review from the literature, Help
the Aged, 2008

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

The Money Advice Service

www.moneyadviceservice.org.uk/

Elder Financial Abuse

www.elderfinancialabuse.co.uk/

36