



Staffordshire and Stoke on Trent Adult Safeguarding Partnership Board (SSASPB)

The protection of people from financial abuse: a guide

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FINANCIAL ABUSE

“The intentional or opportunistic appropriation of the income, capital or property of a vulnerable person through theft, fraud, deception, undue influence or exploitation; including the hoarding of a vulnerable person’s resources for future gain which is also a form of exploitation and may be associated with culpable neglect”.

Brown H. Journal of Adult Protection (2003)

1. Introduction

The purpose of the document is to identify ways in which financial abuse can be prevented from occurring and provide guidance in the event of financial abuse. All organisations will have different roles and responsibilities in relation to helping people manage their finances but everyone should be actively working to help people improve their skills to manage their money and prevent financial exploitation and crime.

The term ‘financial abuse’ potentially applies to a wide variety of acts and failures to act both criminal and non criminal. Whilst some find the label ‘abuse’ unnecessarily stigmatising and inflammatory, it is worth remembering that most financial abuse is of a criminal nature and should be considered as such.

2. Mental Capacity

The Mental Capacity Act covers important decisions relating to an individual's property, financial affairs and health and social care. It also applies to everyday decisions, such as personal care, what to wear and what to eat. It can help support people lacking capacity, their carers and professionals to make decisions, both now and in the future.

The Mental Capacity Act 2005 is a law that protects and supports people who do not have the ability to make decisions for themselves. This could be due to a learning disability, mental health problem or a health condition such as dementia. The act applies to people aged 16 and over in England and Wales. It also provides guidance to support people who need to make decisions on behalf of someone else.

What is mental capacity?

Mental capacity is the ability to make decisions for yourself. People who cannot do this are said to 'lack capacity'. This might be due to illness, injury, a learning disability or a mental health problem that affects the way their brain works.

3. Assessing capacity

Capacity is assessed by a two stage test:

1. **Diagnostic test**

Is there an impairment or disturbance of the person's mind or brain? This test does not require a clear medical diagnosis. Reasonable belief based on the evidence is sufficient.

2. **Functional test**

Can the person:

- understand the information that is relevant to the decision they want to make;
- retain the information long enough to be able to make the decision;
- weigh up the available information in order to make the decision;
- communicate their decision by any possible means, for example talking, using sign language, or through simple muscle movements such as blinking an eye or squeezing a hand.

A person is deemed to lack capacity if they are unable to satisfy any part of the functional test.

Who decides whether a person has mental capacity or not?

People should be assessed on whether or not they have the ability to make a particular decision at a particular time. The mental capacity of a person may fluctuate and there may be times of the day when the person is able to think more clearly, perhaps first thing in the morning or after having medication.

The Mental Capacity Act allows for a number of people to assess capacity and make decisions on behalf of an individual. The assessment should be made by the person who believes a decision is required. For everyday matters this may be a family member or carer; for formal decisions an appropriately trained professional may be required.

Examples:

Cash transactions - If there are concerns about the decisions made by a person an assessment can be completed by a family member or carer. The person should be given all reasonable help to support them to make the decision themselves.

Tenancies - In order for a tenancy contract to be lawful a person needs to understand the basic responsibilities of a tenant in order to make a decision and

agree to a tenancy. The housing provider may undertake this assessment but is likely to ask for an opinion from carers or appropriate professional.

Legal - For legal matters such as a will, a solicitor needs to make a judgement about whether a person is capable of understanding the meaning of the will. If in doubt they would get an opinion from a doctor or other appropriate professional. Solicitors will also often be involved in drafting a Lasting Power of Attorney and so would need to decide whether or not a person understands the consequences of making this decision and that no undue influence was being placed on the individual. In small numbers of cases, where there is a dispute regarding mental capacity which cannot be resolved, the Court of Protection can make a decision following an application by one of the parties involved.

The five principles of the Mental Capacity Act

People who support or make decisions on behalf of someone who may lack mental capacity must follow five main principles:

1. Every adult has the right to make decisions for themselves. It must be assumed that they are able to make their own decisions, unless it has been shown otherwise.
2. Every adult has the right to be supported to make their own decisions – all reasonable help and support should be provided to assist a person to make their own decisions and to communicate those decisions, before it can be assumed that they have lost capacity.
3. Every adult has the right to make decisions that may appear to be unwise or strange to others.
4. If a person lacks capacity, any decisions taken on their behalf must be in their best interests. (The act provides a checklist that all decision makers must work through when deciding what is in the best interests of the person who lacks capacity – see below.)
5. If a person lacks capacity, any decisions taken on their behalf must be the least restrictive option to the person's rights and freedoms.

Making a decision in a person's best interests

Anyone making a decision on behalf of a person they believe to lack mental capacity must do so in that person's best interests. To work out what is in the person's best interests, the person who is making the decision must consider the following factors:

- encourage the person to participate or improve their ability to take part in making the decision
- identify all relevant circumstances
- find out the person's views (current or past), if possible, and take these into account
- avoid discrimination - not simply make assumptions about someone's best interests on the basis of their age, appearance, condition or behaviour

- consider if the decision can be postponed until the person has sufficient mental capacity to make the decision themselves
- consider the views of others, such as carers and people interested in the person's welfare, where appropriate, and take these into account.

4. Informal management of finances and affairs

The Mental Capacity Act 2005 encourages the informal support with finances of people who may lack mental capacity but it is important to recognise the limitations and risks associated with this.

Informal management of small amounts of money to provide for necessary items and to pay bills is generally not problematic and is to be encouraged as a means to promote independence and normality. There are a number of situations that are fraught with risk and which may be unlawful and these should be discouraged to prevent future problems.

1. Managing a person's bank account

This should only be done where there is a formal authority and where the bank is fully aware of the situation. Signing of cheques for a person, using their cashpoint card or debit/credit cards are all potentially fraudulent and the person who does this could be liable for prosecution.

2. Adopting a joint bank account with a person who lacks mental capacity

The hazards of this are similar to the above and although the person who is the joint account holder will have authority to use the account there is a high risk that the management of the account will be questioned. This is less likely where the account is held by a married or co-habiting couple but even here there can be difficulties if one party lacks capacity. It is unlikely that it will ever be acceptable for a joint account to be opened with a person who is not a partner or family member. Where a person does not have capacity to decide for themselves and there is no-one with legal authority to make the decision on their behalf it is not possible for a bank account held in the person's sole name to be changed to a joint account. In the event of the death of one joint account holder the contents of the account become the property of the other.

3. Transfer of money from a service user to another person's bank account

This is also not advisable, as it could be seen as theft and the person doing so will clearly appear to have enriched themselves at the service user's expense.

All of the above situations are best resolved through a timely use of Lasting Powers of Attorney or Deputyship. The larger the amount of money in question, the greater the need for clear legal authority and accountability.

5. Payment for outings, meals, activities and general expenses

These are occasions where a service user wishes to take part in activities in the community but will require support from a carer. These activities can empower and notably improve quality of life for the service user. If applicable the service user's representatives should be involved in agreeing expenses.

Often physical or general support and assistance is required to enable a service user to attend a concert or go on holiday etc.

Providers must have a transparent protocol and recording procedures in place to support service user expenditure on activities and these must have been explained to any commissioners or care managers arranging the service.

The payment of any carer expenses must be agreed in detail between the service user and the member of staff and recorded before the activity takes place. Where the service user lacks mental capacity the issue should be subject to the consultation and best interests considerations required by the Mental Capacity Act 2005. In all situations the expenditure must take account of the financial resources of the service user and the benefit and enjoyment they will derive from the activity. There should also have been proper investigation of any discounts or exemptions that the service user might benefit from (e.g. free or reduced ticket prices).

As good practice, the Provider may decide to implement a formal sliding scale authorisation process for expense levels. For example: Going out to lunch – immediate supervisor. Attending a concert - line manager. Escorting a service user on holiday - senior manager agreement. Managers must ensure that there is no undue staff benefit from any arrangement and that there is evidence of all expenses and clarity on what element relates to staffing costs.

Providers should ensure that they are aware of services which have an allowance available from the funding authority user for these types of activities.

6. The Court of Protection and Office of the Public Guardian (OPG)

The Court of Protection is a superior court of record. It has the same rights, privileges, powers and authority as the High Court. It is able to establish precedent – this means it can establish case law which gives examples of how the law should be put into practice. The Court of Protection has been established to build up expertise in matters relating to mental capacity.

The Court of Protection makes decisions on behalf of people who are unable to make decisions about their personal health, welfare and property and financial affairs.

The Court of Protection may appoint Deputies to act in the best interests of an individual in order to;

- look after property and financial affairs
- look after a person's health and welfare

The range of decisions the Court of Protection includes single orders for example regarding contact issues or serious medical treatment decisions.

Court appointed Deputies

The Court of Protection can assist an individual lacking capacity by appointing a Deputy to manage their affairs. The appointment does not require the consent of the individual, but family members are notified of the application and are given the opportunity to object to the appointment.

An application to become a Deputy must be supported by evidence which establishes that the person lacks the capacity to manage their own affairs. The Deputy can be a family member, other trusted person, a solicitor, the Local Authority or a representative of the Court. An officer of a Local Authority may be appointed Deputy in appropriate cases, usually where there is no one else including family or friends able to act in the best interests of the person.

The fees incurred in making and maintaining the appointment may be paid from the individual's funds.

The Office of the Public Guardian (OPG) oversees the Deputy, ensuring that the person's affairs are being managed properly.

Office of the Public Guardian (OPG)

The Mental Capacity Act created the role of the Public Guardian; an individual appointed by the Lord Chancellor to protect people who lack capacity. The Public Guardian is supported in his role by the Office of the Public Guardian. The Public Guardian and his office help protect people who lack capacity by:

- Setting up and managing a register of Lasting Powers of Attorney (LPA);
- Setting up and managing a register of Enduring Powers of Attorney (EPA);
- Setting up and managing a register of court orders that appoint Deputies;
- Supervising Deputies and Attorneys (where the Power of Attorney has been registered);
- Instructing Court of Protection Visitors to visit people who lack mental capacity to make particular decisions and those who have formal powers to act on their behalf such as Deputies;
- Receive reports from Attorneys and from Deputies; and
- Provide reports to the COP and respond to cases where there are concerns raised about the way in which Attorneys or Deputies are carrying out their duties.

The OPG have a safeguarding policy which can be found at

<http://www.justice.gov.uk/downloads/protecting-thevulnerable/mca/safeguarding-policy.pdf>. The OPG's role will include investigating where there are concerns regarding abuse by the Attorney or Deputy and if necessary referring these concerns

to other agencies including the Police and raising a safeguarding alert. It should be remembered that the only sanction available to the OPG is referral of a case to the Court of Protection and therefore an OPG investigation should not be seen as an alternative to a criminal investigation.

The OPG keeps a register of Attorneys and Deputies these can be checked through a simple application to the OPG.

The powers of the individual Attorney or Deputy can vary significantly depending what is stated within the document. It is therefore important that the original documentation is available and is seen to ensure that the Attorney/ Deputy is legally authorised to make the specific decision on behalf of the person.

7. Powers of Attorney

Anyone aged 18 or older who has the mental ability to make decisions for themselves can arrange for someone else to make these decisions for them in the future. This can be done at any time. This legal authority is called "Power of Attorney". The person who is given Power of Attorney is known as the 'Attorney' and must be over 18 years old.

Appointing attorneys

The person can appoint one person as their Attorney. Or they can appoint more than one Attorney to act as follows:

- "jointly", meaning they must make all decisions together;
- "jointly and severally", meaning that the attorneys can make decisions together and also that each attorney can make decisions acting by themselves. The donor may grant a power for the attorneys to act only jointly on some decisions and individually on others;

For example, someone can appoint Attorneys to act jointly when making decisions regarding their money but state that only one Attorney, acting independently (or "severally"), should decide where the person should live. The person has the right to say that the Attorneys must act jointly on all their affairs.

It is up to the person who is making the Power of Attorney to decide how many Attorneys they want and how they should act. However, if more than one Attorney is appointed to deal with the same issue, then they must act jointly unless the Power of Attorney states they do not need to.

A Lasting Power of Attorney (LPA) is a legal document that enables a person with capacity to appoint people (known as Attorneys) to make decisions on their behalf. It is primarily used if the person becomes unable to make their own decisions.

Types of Power of Attorney

There are three different types of Power of attorney for people who lack mental capacity:

- Lasting Power of Attorney (LPA), for matters relating to property and financial affairs
- Lasting Power of Attorney (LPA) for matters relating to the person's health and welfare
- Enduring Power of Attorney (EPA) concerning only property and financial affairs, made under a previous law, the Enduring Powers of Attorney Act 1985 (before the Mental Capacity Act 2005 came into effect. An EPA made before October 1 2007 remains valid).

The LPA has to be created in a prescribed manner and cannot be used until it is registered with the Office of the Public Guardian. The person making the Power of Attorney (known as the donor) can register the LPA while they are able to make decisions for themselves. Alternatively, it can be registered by the Attorney at any time. A Property and Affairs LPA can be used both before and after the donor loses capacity to manage their financial affairs. The donor can specify whether the power can be used immediately (i.e. while the donor has capacity). However, a Health and Welfare LPA can only be used after the donor has lost capacity..

- An EPA made under the old law can only be registered if the person is losing, or has lost, their mental capacity. It must be registered by the Attorney.
- Once registered a Power of Attorney allows the Attorney(s) to make decisions on behalf of the individual.
- A Power of Attorney may have specific limitations on the decisions that can be made.

Abusing a Power of Attorney

A Power of Attorney (Deputy) gives the Attorney (Deputy) the legal authority to act on behalf of the Donor in his/her best interests. If the Attorney (Deputy) acts in a way which is not commensurate with that responsibility, he/her may be personally liable for any legal action arising from his/her actions. If the Attorney's (Deputy's) action appears to amount to theft or fraud a complaint should be made to the Police who may carry out enquiries to establish whether a criminal offence has been committed.

Gifts

Section 12 of the MCA 2005 gives the Attorney(s) limited authority to make gifts of the donor's money or property. Gifts made by an Attorney or Deputy using the donor's money should only be made where:

1. The recipient of the gift should be either an individual who is related to or connected with the donor (including the Attorney(s)), or a charity to which the donor actually made gifts or might be expected to make gifts if they had capacity.

2. The timing of the gift must occur within the prescribed parameters. A gift to charity can be made at any time of the year, but a gift to an individual should be of a seasonal nature, or made on the occasion of a birth or marriage/civil partnership, or on the anniversary of a birth or marriage/civil partnership.
3. The value of the proposed gift is not unreasonable having regard of all the circumstances and in particular the size of the donor's estate.

The following go beyond the powers of an Attorney:

- Passing assets to the next generation in order to mitigate a potential Inheritance Tax liability of the estate of the donor.
- Purchase of an insurance product also designed to mitigate potential Inheritance Tax liability.
- Building an extension to the Attorney's house.
- Lending money to a family member.
- Using the Donor's money to pay off an overdraft or loan, possibly at the same bank, of another family member.
- Passing money on `because the donor no longer needs it` as he or she is adequately provided for, and no longer has any need of money apart from nursing home fees.
- Paying over money because the donor would not want it to be used to pay for nursing care, if he or she had to go into a care home.

Failure to register a Lasting Power of Attorney

If a Donor loses capacity the Lasting Power of Attorney must at that point be registered with the Office of the Public Guardian if it is not already registered. Any dealings with the Donor's financial affairs purportedly under an LPA which is unregistered are not lawful. The Attorney would be dealing with the Donor's financial affairs with no legal authority to do so. The Attorney is therefore likely to be personally liable for any legal action against the Donor arising from the unauthorised action of the Attorney. The Attorney may also be the subject of criminal charges where they are believed to be involved in an offence e.g. theft or fraud.

It is important to note that there is a charge to register a Power of Attorney however this can be reclaimed from the donor's capital.

8. Appointeeship

Where a person in receipt of state benefits is incapable of managing their own financial affairs and no Deputy or Attorney has been appointed to act for him an appointee should be considered. An appointee can be an individual, an organisation or be a representative of an organisation. An Appointee has the legal authority to

receive and manage the person's benefits until such time as the person is no longer unable to act or a Deputy or Attorney is appointed by the Court of Protection. The Appointee does not require the consent of the person whose benefits are to be managed but is required to make decisions on the persons behalf and in their best interests. An Appointee is authorised by the Department of Work and Pensions to the most appropriate person, such as a family member, the local authority, the manager of a care home where the person is resident or a domiciliary care manager.

Where a person does not have family/friends willing to act as appointee and where it is in their best interests an agency involved in caring for the person is likely to be the most suitable appointee. Only as a last resort will assessment and care management teams consider acting in this role. All agencies likely to become appointees should have a policy/procedure to ensure consistent good practice. This guidance should ensure that all actions that are taken are in the persons best interests, are clear and transparent and that the persons finances are appropriately safeguarded from misuse and fraud.

Duties and responsibilities of appointees

An appointee has the same rights and responsibilities (though not all responsibilities) as the person on whose behalf they are acting, and in effect acts as though they are that person in relation to their benefits. This means that they are responsible for:

- completing DWP claim and renewal forms
- receiving or collecting benefits – these will be in the name of the appointee; the money must be used for the welfare of the claimant
- responding to any correspondence about the benefits
- reporting any changes in the claimant's circumstances
- repaying any overpayments of benefit

The appointee has a responsibility to involve the person as much as possible in making decisions about their money. This means seeking their views about how their money is spent, consulting other people who know them well and taking the time to work out what they might have chosen to do if they had capacity to make the decision.

Remember, being an appointee relates solely to benefits. It does not create duties relating to any other money or property that the person may have; this would include such things as signing a tenancy in the person's name or signing a contract for a mobile phone. If there is a situation in which these sorts of decisions need to be made, an attorney or deputy may need to be appointed.

Abuse by Appointees

Where it appears that an Appointee is abusing the position e.g. by not passing benefits on to the person entitled, evidence may be put before the Benefits Agency of the Appointee's unsuitability. Where satisfied that the Appointee is unsuitable the Benefits Agency may revoke the Appointee and, where appropriate, appoint

another to act. Failure to pass on or properly apply benefits may amount to theft. Where there are concerns that this may be the case, the Police should be informed. The person entitled to the benefits may, if they have capacity, make a complaint to the Police. Where the person is considered to be an adult at risk of abuse or neglect, a complaint may be made on their behalf.

9. Deprivation of assets

This section is taken directly (slightly abbreviated) from the guidance in Annex E: Deprivation of Assets in the Care and Support Statutory Guidance 2014

What is meant by deprivation of assets?

Deprivation of assets means where a person has *intentionally* deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support.

Where this has been done to remove a debt that would otherwise remain, even if that is not immediately due, this must not be considered as deprivation.

Has deprivation of capital occurred?

It is up to the person to prove to the local authority that they no longer have the asset. If they are not able to, the local authority must assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:

- (a) A trust deed;
- (b) Deed of gift;
- (c) Receipts for expenditure;
- (d) Proof that debts have been repaid.

A person can deprive themselves of capital in many ways, but common approaches may be:

- (a) A lump-sum payment to someone else, for example as a gift;
- (b) Substantial expenditure has been incurred suddenly and is out of character with previous spending;
- (c) The title deeds of a property have been transferred to someone else;
- (d) Assets have been put in to a trust that cannot be revoked;
- (e) Assets have been converted into another form that would be subject to a disregard under the financial assessment, for example personal possessions;
- (f) Assets have been reduced by living extravagantly, for example gambling;
- (g) Assets have been used to purchase an investment bond with life insurance.

However, this will not be deliberate in all cases. Questions of deprivation therefore should only be considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded.

Example of where deprivation has not occurred:

Max has moved into a care home and has a 50% interest in a property that continues to be occupied by his civil partner, David. The value of the property is disregarded whilst David lives there, but he decides to move to a smaller property that he can better manage and so sells their shared home to fund this.

At the time the property is sold, Max's 50% share of the proceeds could be taken into account in the financial assessment, but, in order to ensure that David is able to purchase the smaller property, Max makes part of his share of the proceeds from the sale available.

In such circumstance, it would not be reasonable to treat Max as having deprived himself of capital in order to reduce his care home charges.

Example of assets to be considered (1):

Emma gives her daughter Imogen a painting worth £2,000 the week before she enters care home. The local authority should not consider this as deprivation as the item is a personal possession and would not have been taken into account in her financial assessment.

However, if Emma had purchased the painting immediately prior to entering a care home to give to her daughter with £2,000 previously in a savings account, deprivation should be considered.

There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:

- (a) Whether avoiding the care and support charge was a significant motivation;
- (b) The timing of the disposal of the asset. At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?;
- and
- (c) Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

For example, it would be unreasonable to decide that a person had disposed of an asset in order to reduce the level of charges for their care and support needs if at the time the disposal took place they were fit and healthy and could not have foreseen the need for care and support.

Example of assets to be considered (2):

Mrs Kapoor has £18,000 in a building society and uses £10,500 to purchase a car. Two weeks later she enters a care home and gives the car to her daughter Juhie. If Mrs Kapoor knew when she purchased the car that she would be moving to a care home, then deprivation should be considered. However, all the circumstances must be taken into account so if Mrs Kapoor was admitted as an emergency and had no reason to think she may need care and support when she purchased the car, this should not be considered as deprivation.

Has deprivation of income occurred?

It is also possible for a person to deliberately deprive themselves of income. For example, they could give away or sell the right to an income from an occupational pension.

It is up to the person to prove to the local authority that they no longer have the income. Where a local authority considers that a person may have deprived themselves of income, they may treat them as possessing notional income.

The local authority will need to determine whether deliberate deprivation of income has occurred. In doing so it should consider:

- (a) Was it the person's income?
- (b) What was the purpose of the disposal of the income?
- (c) The timing of the disposal of the income? At the point the income was disposed of could the person have a reasonable expectation of the need for care and support?

In some circumstances the income may have been converted into capital. The local authority should consider what tariff income may be applied to the capital and whether the subsequent charge is less or more than the person would have paid without the change.

Local authority investigations

In some cases a local authority may wish to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person. There is separate guidance under the Regulation of Investigatory Powers Act 2000 that has recently been updated. That sets out the limits to local authority powers to investigate and local authorities should have regard to it before considering any investigations.

What happens where deprivation of assets has occurred?

If a local authority decides that a person has deliberately deprived themselves of assets in order to avoid or reduce a charge for care and support, they will first need to decide whether to treat that person as still having the asset for the purposes of the financial assessment and charge them accordingly.

As a first step, a local authority should seek to charge the person as if the deprivation had not occurred. This means assuming they still own the asset and treating it as notional capital or notional income.

If the person in depriving themselves of an actual resource has converted that resource into another of lesser value, the person should be treated as notionally possessing the difference between the value of the new resources and the one which it replaced. For example, if the value of personal possessions acquired is less than the sum spent on them, the difference should be treated as notional resource.

Recovering charges from a third party

Where the person has transferred the asset to a third party to avoid the charge, the third party is liable to pay the local authority the difference between what it would have charged and did charge the person receiving care. However, the third party is not liable to pay anything which exceeds the benefit they have received from the transfer.

If the person has transferred funds to more than one third party, each of those people is liable to pay the local authority the difference between what it would have charged or did charge the person receiving care in proportion to the amount they received.

As with any other debt, the local authority can use the County Court process to recover debts, but this should only be used after other avenues have been exhausted. When pursuing the recovery of charges from a third party, a local authority must read Annex D on debt recovery.

Example of liability of a third party:

Mrs Tong has £23,250 in her savings account. This is the total of her assets. One week before entering care she gives her daughters Louisa and Jenny and her son Frank £7,750 each. This was with the sole intention of avoiding care and support charges.

Had Mrs Tong not given the money away, the first £14,250 would have been disregarded and she would have been charged a tariff income on her assets between £14,250 and £23,250. Assuming £1 for every £250 of assets, this means Mrs Tong should have paid £36 per week towards the cost of her care. After 10 weeks of care, Mrs Tong should have contributed £360. This means Louisa, Jenny and Frank are each liable for £120 towards the cost of their mother's care.

10. Doorstep Crime/ Distraction Burglary
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Doorstep Crime can be defined as offenders cold-calling at the homes of consumers, most commonly older adults and/or vulnerable people offering property repairs such as roofing, tarmac work, block paving, fascia and soft installations or gardening work or offering to sell products. Recent examples include fish, furniture, mobility aids, security systems and energy saving products.

It often involves charging extortionate prices for the goods or services including charging for unnecessary work, deliberately damaging property in order to obtain work, leaving work unfinished, substandard or poor quality work, claiming to have done work which has not been done and making false statements about goods and services supplied for specific reasons.

It may also involve intimidating and aggressive behaviour on the part of the offenders or an element of befriending or grooming of the victim to facilitate the offending or repeat victimisation.

In some cases the visit to the person's home may be preceded by a telephone cold call. This is more common with the sale of goods. In other cases the person may have received a flier through the door or even been targeted by scam mail.

The offenders involved in doorstep crime are often associated with distraction burglary (e.g. bogus water board and other bogus officials).

Rogues will insist on payment in cash, often escorting the victim to the bank to withdraw their savings.

A good indicator of rogue trading is a lack in the provision of paperwork, especially a written cancellation notice or cooling off period which is legally required under Trading Standards legislation.

The sums of money taken may not necessarily be large. Perpetrators may befriend their victim who is then targeted repeatedly for small sums of money. There have been instances where victims have been persuaded to sign over their property in exchange for free property repairs for life.

The vulnerable person may well have capacity to contract and it may be difficult to prove that fraud has taken place. However, providing there is a pattern of the behaviour described above, there could be Trading Standards offences.

An urgent referral to Trading Standards can prevent a vulnerable person losing their savings and from becoming a repeat victim. There is evidence to suggest that once targeted the victim's details are sold on to other criminals who gather the intelligence to target households in the future".

Vulnerable people may be reluctant to report such crimes because they are frightened, they feel foolish about being duped or are worried they may lose their independence. Those who are socially isolated and lonely are most at risk. Of particular concern is that victims can fail to recognise that they have been conned and believe that a decent job has been carried out and that unscrupulous traders are actually their friend.

It is important to note that within 2 years of a doorstep crime incident occurring a victim is 2.5 times more likely to enter a care facility or to pass away than a non-victim. There is also evidence to suggest that in the six months following an incident of doorstep crime there is an increase in the likelihood of the victim being admitted to hospital.

If information is received to suggest that a service user has been or is likely to become a victim of doorstep crime contact:

Trading Standards (Public Protection) Tel: 01782 237788 (Stoke) or 0300 111 8045 (Staffordshire).

11. Types of abuse

Financial Abuse can take a variety of forms including theft, deception, false accounting, fraud, exploitation or pressure in connection with wills, property inheritance or financial transactions.

They can be usefully categorised as:-

- misappropriation of money and/or other assets by various means including theft or fraud;
- transactions to which the person could not consent or resulting from intimidation, deception or exploitation;
- misuse of assets lawfully accessed;
- failure to use the vulnerable person's assets to meet their needs.

12. Indicators of Financial Abuse

Indicators of financial abuse may include:

- inconsistency between the standard of living and the income/savings of a vulnerable person;
- recent changes to ownership of property;
- large, sudden or irregular withdrawals from bank accounts;
- the adult with care and support needs is prevented from taking up services for which there is a charge;
- non-payment of bills and charges where funds are available to pay them;
- unexplained loss /misplacement of financial documents;
- arrangements inconsistent with the person's circumstances e.g. taking out loans, payment to catalogues etc.
- The adult is nervous and uncommunicative when discussing finances in the presence of certain others.

It is important to recognise that some of the mechanisms specifically designed to assist people to manage their finances can also potentially be corrupted to defraud the individual:

- acting as agent or securing appointeeship for DWP benefits which, contrary to popular belief, does **not** require the consent of the person;
- securing Power of Attorney or Lasting Power of Attorney, where the person already lacks mental capacity;
- failure to register Enduring Power of Attorney when the person loses capacity.

Concerns about these sorts of arrangements need to be considered in the light of their effect on the adult with care and support needs. If they are being used entirely for the positive benefit of the person then the questionable legal basis becomes less relevant. However, there may be situations where powers have been applied for lawfully but are set in the context of an exploitative relationship.

13. Who presents a risk?

Planned financial abuse is commonly perpetrated by individuals who acquire a position of trust and deliberately target vulnerable people. A common feature of this type of abuse is social isolation, whether pre-existing or created by the source of risk replacing existing contacts. Where abuse is planned there will always be the possibility of multiple victims.

It has to be acknowledged that Deputies and Attorneys may be subject to a conflict of interest, which sets the needs of the adult with care and support needs against the need to preserve estates and assets including property.

14. Criminal Offences

What is a Criminal investigation?

The Criminal Procedure and Investigations Act 1996 (CPIA) Code of Practice under Part II of the Act defines a criminal investigation as:

'An investigation conducted by police officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it. This will include:

- *Investigations into crimes that have been committed;*
- *Investigations whose purpose is to ascertain whether a crime has been committed, with a view to the possible institution of criminal proceedings; and*

- *Investigations which begin in the belief that a crime may be committed, for example when the police keep premises or individuals under observation for a period of time, with a view to the possible institution of criminal proceedings;*
- *Charging a person with an offence includes prosecution by way of summons.'*

(Core Investigative Doctrine 2005)

When will Police commence an investigation?

Each case must be decided upon on by its own merits and at the very least there must be a degree of information which would suggest that a criminal offence has occurred or will occur for police to make the decision of commencing an investigation.

There are other agencies who can carry out initial investigations to establish facts and should information be found that will lead to a criminal prosecution a referral will be made to police e.g. Her Majesty's Revenue and Customs; the Office of the Public Guardian.

Offences commonly used to prosecute incidents of financial abuse:-

The legislation below outlines some of the more commonly used offences used by Police in prosecuting offenders who are financially abusing adults at risk.

This list is not exhaustive and there are many other offences that can be utilised, however these are a few examples:

Section 4 of the Fraud Act 2006 sets out one way of committing fraud under section 1 of the Act, namely fraud by dishonestly abusing one's position. It applies in situations where the defendant has been put in a privileged position, and by virtue of this position is expected to safeguard another's financial interests or not to act against those interests.

4(1) A person is in breach of this section if he;

- a) occupies a position in which he is expected to safeguard, or not to act against the financial interests of another person;
- b) dishonestly abuses that position and
- c) intends, by means of the abuse of that position:-
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

4(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Section 1 of the Theft Act 1968 provides the legal definition of theft;

1(1) A person is guilty of theft if he dishonestly, appropriates, property belonging to another, with the intention of permanently depriving the other of it and 'thief' and 'steal' shall be construed accordingly.

1(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

Section 1 of the Forgery and Counterfeiting Act 1981 creates the offence of a person making a false document or instrument.

A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

The intention which is required to be proved is two-fold:

- a) the intention that the false instrument shall be used to induce somebody to accept it as genuine; and
- b) the intention to induce somebody, by reason of accepting it, to do or not to do some act to his own or any other person's prejudice.

Section 24A of the Theft Act 1968 creates an offence of dishonestly retaining a wrongful credit (funds) that has been made to a bank account (or a similar business process).

24A(1) A person is guilty of an offence if –

- a) a wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;
- b) he knows or believes that the credit is wrongful; and
- c) he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

24A(2) References to a credit are to a credit of an amount of money.

24A(2A) A credit to an account is wrongful to the extent that it derives from:-

- a) theft;
- b) blackmail;
- c) fraud (contrary to section 1 of the Fraud Act 2006); or
- d) stolen goods.

24A(3) *repealed*

24A(4) *repealed*

24A(5) In determining whether a credit to an account is wrongful, it is immaterial (in particular) whether the account is overdrawn before or after the credit is made.

24A(6) *penalty only - see below*

24A(7) Subsection (8) below applies for purposes of provisions of this Act relating to stolen goods (including subsection (2A) above).

24A(8) References to stolen goods include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

24A(9) **Account** means an account kept with:-

- a) a bank;
- b) a person carrying on a business which falls within subsection (10) below; or
- c) a person falling within any of paragraphs (a) to (j) of the definition of "**electronic money issuer**" in regulation 2(1) of the Electronic Money Regulations 2011.

24A(10) A business falls within this subsection if:-

- a) in the course of the business money received by way of deposit is lent to others; or
- b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

24A(11) References in subsection (10) above to a deposit must be read with -

- a) section 22 of the Financial Services and Markets Act 2000
- b) any relevant order under that section; and
- c) Schedule 2 to that Act;

but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded.

24A(12) For the purposes of subsection (10) above:-

- a) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him; and
- b) '**money**' includes money expressed in a currency other than sterling.

15. Summary

Financial abuse remains one of the most commonly reported forms of Adult Abuse and it is important that this document is read in conjunction with Staffordshire and Stoke-on-Trent *Adult Safeguarding Enquiry Procedures*. Financial abuse commonly leads to significant harm through loss of resources, autonomy or opportunities and the *Adult Safeguarding Enquiry Procedures* provide a multi-disciplinary framework for reporting and investigating concerns as well as supporting and protecting the victims.

16. Document Review

This document will be reviewed in April 2017.

Policy Checklist

1. Is this a new policy?	Yes
Aims	
2. Have the aims, objectives and intended outcomes been identified?	Yes
Impact	
3. Does the policy affect any of the following groups in terms of their protected characteristic? <ul style="list-style-type: none"> • Gender (incl trans gender) • Disability • Age • Sexual orientation • Pregnancy and maternity 	No No No No No
4. Please explain how the policy will ensure that the groups identified above have equal access to this policy.	This document will be widely available via the SSASPB website once this is live (Autumn 2015) and in the meantime will be found on the www.stopabuse.info pages.
5. Are there any other groups whom the policy may have a differential impact on? If so, please explain.	No

Data & Evidence	
6. What data/evidence has been collated to inform the development of the policy?	N/A
7. Does the policy respond to the needs that were identified from the data, evidence and consultation? If not, please briefly explain why.	N/A
Consultation & Involvement	
8. Has consultation been carried out with partners?	Yes – SSASPB Partners
9. Were the consultation activities carried out inclusive and accessible?	Yes
10. Briefly outline the findings from the consultation and whether the policy needs to be adjusted/amended as a result of the consultation.	Please see minutes of Policies and Procedures and Executive sub-group meetings
Monitoring	
11. How will the policy be monitored and reviewed for any potential future impacts?	Annual review to be completed by Executive sub-group.
12. In what ways does the policy promote equal opportunities?	N/A – there are no equal opportunity implications within this document.
13. Has any inequality impact been identified? If yes, what action/has will be taken to remedy?	No