

# WAKEFIELD & DISTRICT safeguarding adults board

## FINANCIAL ABUSE OPERATIONAL PROTOCOL

### Background

The incidence of financial abuse is a growing problem which presents challenges to everyone involved in dealing with the cases presented.

The Social Care Institute for Excellence SCIE Report 49, Financial Crime against Vulnerable Adults was a report commissioned by the Association of Chief Police Officers (ACPO), the Home Office and the Department of Health and conducted by the National Fraud Intelligence Bureau. Whilst this report was published in November 2011 its findings remain very relevant today as the same challenges remain and it is important reference material for practitioners dealing with financial abuse.

The SCIE document identifies the scale of the problem with the following relevant comments:

‘The diversity of financial crime against vulnerable adults makes it difficult to provide a single, all embracing solution to the problem. Prevention and responses need to take into account the nature of the perpetrator, the detail of the crime and the level of vulnerability of the adult.

A Perpetrator may be a family member, friend, care worker / professional or a stranger who has chosen to target a vulnerable adult. Abuse can range from not acting in the person’s best interests, to persuasion or coercion in respect of gifts or loans, misappropriation of property or allowances, theft, rogue trading or mass market fraud.

Regardless of the nature of the abuse, or the method used by the perpetrator, the resulting impact on the vulnerable adult can be significant.

Research evidence suggests that financial abuse is most frequently perpetrated by a person acting in a trusted capacity, for example a family member, or to a lesser extent, friends, neighbours or care workers / other professionals.

The literature suggests that if perpetrators are heirs, they may feel that they are simply securing assets to prevent their inheritance being spent on fees for care services. Furthermore 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.’

## **Financial Abuse which is Relatively Easy to Deal With**

Allegations of theft of money or other valuables by third parties, bogus official type thefts, and rogue traders charging high prices for unnecessary work to confused and vulnerable people are usually comparatively straight forward cases to deal with and there is no identified requirement to change current practice. These third party cases normally involve a report to the police and a criminal investigation with a need to support the adult to try and prevent them becoming repeat victims.

There is a growing incidence of families who have relatives living in residential homes, or receiving care in their homes from paid carers using covert recording devices when they have concerns about the care their relative is receiving.

The Care Quality Commission (CQC) has published a guide available on their web site about when and how to do this. Public bodies such as the Police and the Local Authority are subject to the Regulation of Investigatory Powers Act (RIPA) and cannot place covert recording devices in peoples' homes, but individuals / family members are not subject to this act.

Police and Local Authority staff must not be involved in any way in the decision making of family members to place covert recording devices. However, if such a device has been deployed by relatives and captured evidence of carers stealing from the adult in question, that is primary evidence which would be key in securing a successful prosecution. This would also result in the carer being placed on the Disclosure and Barring Service (DBS) barred list which prevents them from working with vulnerable people.

## **Financial Abuse which can be More Complex**

Financial abuse can become much more complex when family members are involved. Often the first anyone knows there is a problem is when the care provider notifies the local authority that their fees have not been paid or the adult in their care does not appear to have any money for basic necessities and concern is expressed about how their finances are being managed.

There can be many reasons why the relative has not paid the required fees ranging from being in debt themselves and just taking the money to a genuine error which is quickly put right. Relatives can have control of the adult's finances facilitated because they have appointee ship from the Department of Works and Pensions (DWP) to manage their relative's income, and / or Power of Attorney or Deputyship to manage their relative's finances.

We know that relative's often see money and any property if a house is involved as their inheritance which they seek to protect. If steps have been taken to pass on assets at a time before the adult has any care and support needs, this could be seen as good financial planning. However if relatives seek to secure assets for their use at the time the adult has care and support needs, it can be deemed as deprivation of assets or treated as notional capital/income (dependent upon capacity of the service user). Government policy sets out the regulations and

guidance for Council's who then makes decisions on who will receive financial assistance for social care services.

Whatever the reason for not using the adults' income / assets to pay for the adults care, the Council has to fund the eligible care and the relative potentially gets to keep the adults money / assets unless the right action is taken to prevent this.

In order to understand more complex financial abuse, it is helpful to know how the Council conducts business in relation to care fees.

### **Brief Overview of the Local Authority Procedure to Determine Financial Eligibility and Financial Assessment Contribution**

When an adult / relative contacts the Council regarding care and support the first step is to make an assessment of their care needs. Once their needs are known the next step is to conduct a financial assessment to determine if they have the ability to pay the full cost of their care or a contribution towards it.

If a person has assets of more than £23,250 they will be required to pay the full costs of their care. If they do not have such an amount in cash, but own a house, the Council can place a charge against the value of the house, which must be repaid when the house is sold. This is called the Deferred Payments Scheme and is specific to residential and nursing care. If the adult has less than £23,250 in assets they will pay a contribution towards their care from their income.

In order to determine an adult's assets, the local authority requests the adults last six months bank statements and the completion of a statement of financial circumstances. This information will identify what other assets the adult owns and also if anyone is an appointee for DWP pensions, and/or has a Power of Attorney for financial matters and/or for Deputyship.

If the review of financial assets shows money being taken out to get the adult below the £23,250 figure and there is no reasonable explanation for this, the local authority can treat this as a deliberate deprivation of assets or notional capital / income if removal is done by a person with POA or Deputyship powers. The Personalisation and Assessment team will follow The Care Act guidance in Annex D and E to seek the civil recovery of these assets where ever possible.

### **Procedure when Notified of a Financial Concern**

#### **Person already Known to the Local Authority**

As previously stated the first notification to the Council is normally when a service providers fees have not been paid. In these circumstances it is usually because someone else (often a close relative) has control of their income and any assets and/or a cash personal budget provided by the Council to pay for the adults care in the community.

However this is reported, either direct to the Personalisation and Assessment team, through the contact centre and Social Care Direct, or to a locality team. Where the person is already known and is receiving assessed services liaison must occur with the Personalisation and Assessment team.

The Personalisation and Assessment team of the Council will request a meeting with the person who is managing the adult's money to discuss what is happening. They may also request they provide the last six months (or more depending on how long the fees have not been paid) bank statements of the adult to see what has happened with the money. The Personalisation and Assessment staff will work on the principles of:

**Research** - Seeking face to face meetings and requesting documents.

**Resolve** – Where ever possible they will resolve the matter. Sometimes this can be achieved with advice and guidance and it is possible to agree a process for recovering any outstanding payments.

**Refer** - If there are immediate serious concerns, or the initial research does not resolve the issue the Personalisation and Assessment team will notify the Adult Social Care (ASC) Safeguarding team of the matter (if not already aware) and the ASC Safeguarding team will make a determination if this should become a statutory Section 42 safeguarding enquiry.

### **Person not Previously Known to the Local Authority**

A financial concern about how an adult's finances are being managed is most likely to come via the Council contact centre and Social Care Direct, to a community team or a call into the Safeguarding team.

Where-ever the financial concern arises from, because the person is previously unknown to the local authority, liaison must take place with the safeguarding team so a decision can be made on the need for further action.

The principles of research / review / refer will also apply in these cases with the need to research the information, check the facts with the person(s) managing the money and if necessary make enquiries into the matter as a statutory Section 42 safeguarding concern coordinated or led by the safeguarding team.

### **Civil Remedies Available to the Local Authority**

The Council has a statutory duty to provide care and this is delivered by commissioning services from residential care and nursing homes where the adult may have to make a contribution to the costs dependant on their income and/or assets, or by a cash budget or commissioning services from providers who provide care in peoples own homes. These services can be provided through a managed account where the local authority pays the service provider, or the adult can have a cash personal budget where they are paid the money in to a nominated bank

account and they secure their own service provider or may employ a personal assistant.

In all cases the person responsible for managing the adults finances in terms of their assessed financial contribution or cash personal budget sign an applicable agreement and/or the statement of financial circumstances. If this person does not pay for the services delivered the Council can instigate debt recovery procedures up to and including Court action. A decision will be made on whether recovery is appropriate or viable i.e. if the person managing the account has assets which can be recovered.

If the person is self -funding (paying for all their care costs) and they have the mental capacity to manage their own affairs, then this is a matter between the adult and the service provider in terms of the outstanding amount.

If the adult lacks capacity to manage their own finances and there is no one else willing to make these arrangements (which may well be the case if the person who had been making the arrangements is the abuser), then the Council will need to step in as a last resort and take over the management of the finances, which can be a challenge if the abuser is refusing to relinquish control.

The Council's civil remedies in terms of this type of financial abuse are therefore limited and the Council can be placed at risk, particularly when someone takes an adult's cash personal budget and spends the money inappropriately and has no recoverable assets.

### **Making Safeguarding Personal**

Making Safeguarding Personal (MSP) is an ethos of putting the adult at the centre of decision making when they have the capacity to understand and make decisions for themselves. Financial abuse issues can present classic MSP dilemmas where the adult has capacity and does not want the Police involved in any enquiry into why their relative has not paid their care fees. They will want their finances put in order, but do not want their loved one to get into trouble with the Police.

As the civil remedies available to deal with people responsible for the adults' finances are limited often the best that can be done is to change the control of the finances to prevent further losses to the adult and make arrangements to repay the outstanding fees.

Adults' can of course change their minds, so the Council may initially try and deal with a situation without Police involvement, only for circumstances to change and the adult change their mind at a later date resulting in a report to the Police much later than the Police would anticipate.

Where a person responsible for the adults' finances takes that money for their own use resulting in a loss to the Council, or if a best interest's decision is needed due to the adult's capacity, the Council position will be to report this as a crime to the Police.

## **Mental Capacity**

The capacity of the adult is a key feature in financial abuse enquiries or Police investigations.

- Can the adult manage their own finances?
- Can the adult decide if they want to involve the Police?

These two key questions must be determined by the local authority at the outset of any safeguarding enquiry as part of the MSP outcomes process.

A Mental Capacity Act (MCA) assessment is required for these key decisions

## **The Court of Protection (Office of the Public Guardian)**

The Court of Protection authorises someone to make decisions about the property and affairs and personal welfare of adults who lack mental capacity.

Mental capacity is the ability to make a decision about a particular matter at the time the decision needs to be made (refer to MCA literature for further guidance)

Amongst other things, the Court can appoint Deputies to make decisions for people who lack capacity as well as removing Deputies and people who have Power of Attorney (Attorneys) who fail to carry out their duties.

The Office of the Public Guardian (OPG) is an agency of the Ministry of Justice.

Amongst other things the OPG investigates complaints against Deputies and Attorney's.

The Court of Protection (OPG) fulfils vital functions, but rarely acts quickly. In terms of financial abuse concerns the Court should be seen as a venue of last resort for impasse situations and the OPG investigation as a long process, so any financial abuse enquiry must run fast time processes to protect the adults' income and assets and not just rely on these slow time processes.

## **Continuing Health Care Issues**

Where a family are disputing what constitutes care and health costs and there is a clear dispute and not a deliberate attempt to take the adults' money for their own, the safeguarding procedures must not be used. This is a matter to be resolved between Wakefield Council and the Clinical Commissioning Group (CCG) in line with their procedures

## **Summary of Local Authority Procedure**

The Council makes a care needs assessment, and alongside this there is a financial assessment to determine the adults' contribution to the care costs.

For any financial concern (about a known person) raised with the Council, the person receiving the concern must liaise with the Personalisation and Assessment team. They will seek to research / resolve / refer the matter.

A financial concern involving none payment of care provider fees may initiate a request to the person managing the adults' finances to account for the failure to pay the fees and provide the adults' last six months or more bank statements. Co-operation or none co-operation will provide valuable information to determine future action.

The Personalisation and Assessment team will refer matters to the ASC safeguarding team who will work with them and determine if this proceeds to a statutory safeguarding enquiry.

Any financial issue which progresses to a statutory safeguarding enquiry must result in a capacity assessment to determine the ability of the adult to manage their finances and the involvement of the Police as part of the MSP process of determining outcomes.

Where it appears that a person responsible for an adult's finances has taken that money for their own use resulting in a financial loss to the adult then either with the consent of the adult or an appropriate advocate if they do not have capacity, the matter would be reported to the Police in the adult's best interests.

Where a statutory safeguarding enquiry identifies a financial loss to the Council with no hope of recovery, then this would also be reported as a crime to the Police.

The ASC safeguarding team will coordinate any action into a financial abuse enquiry in accordance with the safeguarding procedures.

In certain circumstances this may involve a referral to the corporate fraud team in the Council, but their ability to intervene may be limited.

## **Police Action**

There needs to be a consistent response to financial abuse from the Council, but there needs to be an equally consistent response from the Police.

Allegations of financial abuse are in fact allegations of theft and must not be dismissed as civil matters without fully examining all the facts of the case.

The victims in these cases are often some of the most vulnerable people in our society, elderly people in care homes, often suffering from dementia with a relative(s) taking their money / assets for their own use.

If a person takes an adults money, particularly where they have been provided with a cash budget to pay for their care and the local authority cannot recover this money, the Council may have to pay again for these outstanding care costs. This means both the individual and the Council have suffered a financial loss and would seek to report this as a crime to the Police for investigation.

It is really important that liaison takes place between the ASC and Police safeguarding teams so that fully informed enquiry/investigation decisions can be made.

Certain cases may have mitigating factors which would not make a Police criminal investigation appropriate. Provided it is made clear why this is the case, the Council can proceed knowing the Police have been consulted. New information may change this position.

Equally the Police may record a crime but finalise this under the 'Recorded Crime Outcomes' procedure as a matter dealt with by a partner agency.

Some of these financial investigations can be extremely complex, especially when working with capacity issues. It is important that Powers of Attorney, Deputyship etc. working closely with experts in the Council on these subjects as part of the close working relations with the ASC safeguarding team will be of benefit to everyone.

## **Conclusion**

Financial abuse is just an all-encompassing phrase for theft or fraud. Sometimes it is relatively straight forward and sometimes it can be extremely complex.

Professionals dealing with financial abuse need to be able to rely upon a consistent response to support the needs of the victims.

Where the abuse is complex, it is sometimes not clear if or where the criminality may lie, but allegations must not be dismissed as civil matters without fully examining the whole circumstances.

Generally where another person takes an adults' money / assets for their own use and leaves them without any means of support there is likely to be an element of wrong doing. Where the Police and Council work effectively together, sharing knowledge and information the best course of action for the adult /victim is likely to be determined.

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