

# ADULTS WITH INCAPACITY

(SCOTLAND) ACT 2000

## A Guide to Investigations



### What is the Office of the Public Guardian (OPG)?

The OPG was created by the Adults with Incapacity (Scotland) Act 2000. This Act gives the Public Guardian powers to investigate concerns and take steps to safeguard the property and financial matters of an adult with incapacity, where it appears they are at risk of misuse or abuse. The OPG is an independent body and does not represent any other person or public body.

### What is an adult with incapacity?

This is someone who is aged 16 years or over who is unable to act, make, communicate, understand or retain the memory of decisions because of a mental disorder e.g. dementia or because of a physical inability to communicate.

### What could be considered misuse or abuse?

An example would be when it appears that an adult's funds are not being used for their benefit, to meet their needs, or in line with their wishes.

### What do I do if I have concerns about an adult's property or financial affairs?

You should contact the OPG Investigation Team to explain the reasons why you think that an adult's property or financial affairs appear to be at risk, and provide any evidence which you may have in support or your concerns. If you are unsure about the situation, a member of the Investigation Team will be able to talk to you in confidence over the telephone to provide advice and guidance.

A concern can also be raised anonymously; however progress and conclusion of such an investigation may be limited due to clarification of information provided by the complainer. A referral form is available and can be downloaded from our website. If you require a copy to be sent to you, please telephone the office.

### What does the Investigation Team do?

The Investigation Team seeks to ensure an adult's property or financial affairs are suitably safeguarded and not at risk from abuse or misuse. An investigation involves finding out if a person is incapable of managing their affairs and gathering information from all relevant parties. This is done by interviewing people and reviewing documentation such as medical opinions, bank statements, financial records, receipts, legal papers, etc. A view is then taken as to whether or not the adult's property or financial affairs appear to be at risk.

## What does the Investigation Team NOT do?

We do not:

- Investigate concerns relating to an adult's personal welfare.
- Attempt to resolve any personal or family disagreement.
- Retrieve debt of any kind owed to a third party by the adult.
- Investigate concerns relating to a capable adult or continue to investigate concerns/complaints if medical evidence confirms that an adult is capable of managing their own finances.
- Commence or continue to investigate following the death of the adult.

## If it is the Public Guardian's view that an adult's property and/or financial affairs are not at risk:

No action will be taken, as the Public Guardian is of the view that the adult's property and financial affairs are being suitably managed and safeguarded. Advice and guidance may be given if necessary to ensure continued protection of the adult's affairs. If it is the view of the Public Guardian that a particular adult is capable but appears vulnerable to outside influences we will formally refer the matter to the local authority for the area in which the adult is resident. This is a legal requirement in terms of section 5 (3) of the Adult Support & Protection (Scotland) Act 2007.

## If it is the Public Guardian's view that an adult's property and/or financial affairs are at risk:

- Advice and guidance may be given to appropriate parties so that safeguards can be put in place to make sure the adult's property and financial affairs are suitably protected.
- In certain circumstances the adult's bank accounts may be frozen or income suspended until redirected for the benefit of the adult.
- A recommendation may be made for an appropriate body or person to consider making an application under the Act, e.g. access to funds or financial guardianship; or where appropriate to consider appointeeship.
- An application may be made to the Sheriff seeking to have anyone acting under the Act, or under any other authority, to either be formally supervised or removed.
- If there is an indication of fraud or theft we may refer the matter to the police.
- Refer the matter to the local authority for the area in which the adult is resident as a legal requirement in terms of section 5 (3) of the Adult Support and Protection (Scotland) Act 2007.

## How long will an investigation last?

Each investigation is unique and looked at on its own individual circumstances. The speed with which an investigation is progressed is greatly dependent upon the parties concerned providing information when requested and the complexity of the investigation.

## Will an investigation be confidential?

All information and/or evidence collected during an investigation will remain confidential and will not be shared with third parties other than in accordance with the law. We do not disclose details of who raised the concern or any investigation findings to other parties during or at the conclusion of an investigation. However, in some circumstances we are required by legislation to share some details.

Section 5(3) of the Adult Support & Protection (Scotland) Act 2007 requires the Public Guardian to report the facts and circumstances of a case to the local authority if we reasonably consider the adult to be at risk. We may also be required to report details of our findings to the sheriff court if action is deemed necessary or to the police if there is evidence a criminal act has been committed.

At the end of the investigation we will only advise relevant parties of the outcome of the investigation, that is that the adult's property and/or financial affairs are, or are not, at risk. Where risk has been identified we may also advise what steps have been taken to safeguard the adult's property and/or financial affairs.

### I would like to know who has made the complaint against me. Will I be told?

No. It is appreciated that you may feel upset, possibly angry and apprehensive about a concern being raised. However, the Public Guardian is obliged to investigate concerns or complaints where current risk is established. The identity of the complainer and the nature of their complaint will not be made known to you or any other party, with the exception of the local authority as required by legislation. The local authority is bound by the same data protection laws as we are.

The reason for this is to ensure impartiality, as knowledge of the complainer may cause undue friction between parties and perhaps influence the nature of any information given during the course of the investigation. It may also have a detrimental effect on the adult if, for example, family members fall out with each other over the handling of an adult's financial affairs.

If you are looking after the financial affairs of someone else it is good practice for you to discuss their finances with them where possible and in all circumstances keep a written record of what you do with their money.

### I have been asked to attend a meeting, what should I expect?

The meeting will be informal and the purpose is to allow the Investigating Officer(s) to obtain factual information as to how the adult's property and financial affairs are being dealt with. Investigation Officers are impartial and non-judgemental and on many occasions they are able to provide advice and guidance relating to the management of the adult's affairs. Notes of the meeting will be recorded to ensure accuracy of what has been discussed and they can be made available to the person interviewed if requested.

### The investigation has come to an end. Is that it?

Sometimes a case is monitored/reviewed by this office for a period of time. Every so often someone involved in the investigation may be contacted to ascertain if there have been any significant changes to the adult's circumstances since the case was closed. Not all parties will be contacted as each case is looked at under its own unique circumstances.

### The Investigation Team has informed me that the adult is not considered to be currently at risk but I'm still not satisfied. What can I do?

It is open for anyone who is sufficiently concerned, at any time, (even during the course of an investigation), to make an application to the Sheriff for any order under the Act that they feel is necessary. However, it is recommended that professional legal advice is sought prior to taking this action.

## Who should I contact if I think the adult's personal welfare is at risk?

In the first instance you should contact the local authority (usually the Social Work Department or the Adult Support and Protection Specialist Team) in the area where the adult lives. Contact details can be found in the local telephone directory.

You may also wish to contact the Mental Welfare Commission for Scotland for guidance.  
Telephone: 0131 313 8777 or email: [enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)

Both of these bodies have equivalent investigation powers in relation to concerns about the personal welfare of an adult being at risk.

### Further information is available from:

Office of the Public Guardian (Scotland)  
Hadrian House  
Callendar Business Park  
Callendar Road  
FALKIRK, FK1 1XR

DX: 550360 Falkirk 3  
LP: LP-17 Falkirk

- Telephone: 01324 678300
- Email: [opg@scotcourts.gov.uk](mailto:opg@scotcourts.gov.uk)
- Website: [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)

Opening hours: 09:00-17:00 Mondays-Fridays