



Information for Social Workers on the Investigation Process

The Investigation Team at the Office of the Public Guardian (OPG) carries out an investigation when concerns are raised in order to ensure that the property or current and future financial affairs of an incapable adult are suitably safeguarded and not at risk. In terms of the Adults with Incapacity (Scotland) Act 2000 “adult” means a person who is aged 16 years or more.

If you have concerns that an adult’s funds/property are at a risk, you can refer the matter to the Investigation Team. Examples of what might constitute the misuse or abuse of the adult’s funds are:

- 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;
- way in which a person, e.g. an attorney, who has authority to manage an adult’s finances or property, is using that authority; or
- where an adult’s property or financial affairs appear to be at risk, perhaps because of the involvement of a third party who has no authority to manage the adult’s finances.

What the Investigation Team does not do

The Investigation Team does not:

- investigate concerns raised in respect of a capable adult;
- investigate concerns relating to the welfare of an incapable adult;
- attempt to resolve any personal or family disagreement or business disputes (e.g. funding issues);
- recover any debt owed by a third party to the adult. This is because the Public Guardian has no legislative powers to recover funds which have been identified as lost due to misuse or abuse of an adult’s funds;
- investigate deprivation of capital issues; or
- commence or continue to investigate following the death of an adult.

Where a capable adult is seen as vulnerable or where the concern relates to welfare issues, we will refer the matter to the relevant local authority for their action under the Adult Support and Protection (Scotland) Act 2007. The Mental Welfare Commission also have investigative powers in relation to concerns about the personal welfare of an adult.

How do I start an investigation?

In order to assist the Investigation Team in carrying out an investigation, the person raising the concerns will be requested to submit them in writing, preferably by completing the Local Authority [referral form](#). You should provide an explanation of the reasons why you think that the adult's property and/or financial affairs appear to be at risk. You should also provide as much information and evidence as you can to support your concerns. A view will be taken on any information provided to establish whether the team has a remit to commence an investigation.

The Public Guardian has no legislative powers to recover funds which have been identified as lost due to misuse or abuse. Therefore if you have concerns an early referral is imperative, to ensure the adult's current and future funds are safeguarded.

If you are unsure about the situation you can contact the OPG in the first instance by telephone and a member of the Investigation Team will be able to talk with you in confidence to provide advice and guidance.

You must formally advise your Adult Support and Protection (ASP) Specialist Team that you have made a referral to the OPG for investigation and when you are informed of the conclusion to our investigation you should pass our response to that team.

Are investigations confidential?

All information and/or evidence gathered during an investigation will remain confidential and will not be disclosed to anyone except where required to do so by law. For example Section 5(3) of the Adult Support and Protection (Scotland) Act 2007 states that "Where the Public Guardian knows or believes that a person is an adult at risk, and that action needs to be taken in order to protect that person from harm, the Public Guardian must report the facts and circumstances of the case to the council for the area in which it considers the person to be". Other than where required by law we will not disclose the source of the concern. Any information received by the OPG identifying risk to the adult's welfare will be passed to the appropriate council for investigation under ASP legislation as required by law. However, we will not make a referral where the concern has been raised by the local authority.

The investigation process

1

Establishing the adult's capacity/incapacity

At the outset of an investigation, the adult's capacity requires to be determined in order to establish whether the Public Guardian has a remit to investigate. This is because under AWI legislation the Public Guardian has no authority to investigate the property or financial affairs of an adult who has capacity.

2

Information/evidence gathering

The Investigation Team will ingather information from relevant parties and a variety of sources. This is done by contacting people and reviewing documentation such as medical opinions, bank statements, financial records, receipts, legal papers etc. The Public Guardian can request the sight of records and paperwork relating to an adult with incapacity's property of financial affairs in terms of section 81A of the Adults with Incapacity (Scotland) Act 2000.

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Outcome of the investigation

Once all the evidence and information ingathered has been looked at, a view is taken by the Investigation Officer as to whether or not the adult's property and/or financial affairs appear to be at risk.

The OPG can put safeguards in place if the adult's property or financial affairs are found to be at risk. However if the OPG considers that there is no risk then no further action will be taken.

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Action/safeguards if risk found

- Advice and guidance may be given to the appropriate parties so that safeguards can be put in place to make sure that the adult's property and financial affairs are suitably protected.
- In certain circumstances restrictions can be placed on the adult's bank accounts or their income suspended until it can be 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 Adults with Incapacity (Scotland) Act 2000, for example: the access to funds scheme or financial guardianship.
- An application may be made to the Sheriff seeking to have anyone acting under the Act or under any authority to:
 - be supervised by the Public Guardian,
 - be ordered to submit accounts for audit by the Public Guardian,
 - have any or all of the powers they were given revoked, or
 - have their appointment revoked.
- If there is an indication of criminality then the OPG may refer the matter to the police.

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Action taken if no risk found

If it is the view of the Public Guardian that the adult's property and/or financial affairs are not at risk and are being managed suitably and to the adult's benefit, no further action will be taken.

However, advice and guidance may be given, if necessary, to ensure the continued protection of the adult's interests. The situation may be monitored/reviewed by the Investigation Team to ensure that any issues have been resolved and that any advice or guidance given is being followed.

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What happens at the end of an investigation?

When an investigation is concluded all relevant parties involved will be advised of the outcome of the investigation. The OPG will not provide specific details, as the information obtained during the investigation is confidential. We will only advise that the adult's property and/or financial affairs have, or have not, been at risk. If at risk we will advise that steps have been taken to safeguard the adult's property and/or financial affairs.

Sometimes a case is monitored / reviewed by the OPG for a period of time. One or more of the parties involved in an investigation may be contacted to ascertain if there have been significant changes to the adult's circumstances since the case was closed. Not all parties will be contacted as each case is different and judged on its own merits. Parties may be signposted to appropriate organisations that can assist them in pursuing any outstanding issues e.g. seeking legal advice.

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Dissatisfied with the outcome of an investigation?

If the Investigation Team have informed you that the adult is not considered to be at risk and you are not satisfied with the outcome you may make an application to the Sheriff.

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 Adults with Incapacity (Scotland) Act 2000 that they feel is necessary. However, it is recommended that professional legal advice is sought prior to taking such action.

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What happens if the adult dies during the course of an investigation?

When an adult dies during an investigation the Public Guardian's involvement in the matter comes to an end, as there is in effect no longer an adult with incapacity. The OPG would require written confirmation of death. Usually a copy death certificate will suffice to satisfy this office that the adult is deceased.

When an adult dies prior to the conclusion of an investigation, any outstanding financial matters can be pursued by the executor of the adult's estate. Interested parties are also free to seek direction from a Sheriff. The Investigation Team will, if they consider it appropriate, offer a view to the complainer in their closing letter as to what further steps they might take regarding their concerns or who they might contact for further assistance.

However as our staff are not legally qualified, it is recommended that professional legal advice is sought, if necessary, when considering taking any legal action.

Further information

The OPG provides a variety of information and guidance on the investigation remit. You may find the case studies listed below, which are available to view on our website, a useful source of reference.

[Case Study A](#)

[Case Study D](#)

[Case Study B](#)

[Case Study E](#)

[Case Study C](#)

Further information and guidance is available from:

The Investigation Team

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