



East Lothian and Midlothian Public Protection Committee

Practitioners Guidance on Financial Harm

1) Introduction

Financial harm is complex and diverse in nature and ranges from opportunistic financial harm to subtle, ongoing, complex targeting and repeat victimisation. This can present itself in a variety of circumstances and can be perpetrated not just by strangers but by family members, support staff and those in a position of trust for example Power of Attorney and paid carers. Financial harm can occur in various settings: this includes care homes, residential care, the adults own home and day care centres.

Research strongly suggests that financial harm is likely to happen where there is little external scrutiny, compounded by the reluctance of some victims to disclose their experiences because of a fear of reprisal, or recognise their experience of harm and the associated feeling of embarrassment or shame that this may bring¹.

East Lothian and Midlothian Public Protection Committee (EMPPC) is committed to working collaboratively to prevent and minimise the risk posed to adults at risk of financial harm.

Local statistics indicate that financial harm is the main type of principal harm reported within East Lothian and Midlothian and that the majority of adults harmed are harmed within their own homes. The aim of this guidance is to support all staff to:

- Recognise financial harm.
- Prevent and report harm.
- Investigate and report alleged offenders.
- Provide support and remedial action to adults at risk of harm.

2) Definition of Financial Harm

The term financial harm describes a disparate range of acts arising out of different dynamics and in different contexts and is defined as: *The risk of experiencing or the actual experiencing of financial or material abuse, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property possessions or benefits*².

3) Characteristics of Financial Harm

Those who perpetrate financial harm can be skilled in exerting undue influence on their victims, effectively grooming them, resulting in the individual's judgement being compromised. Research by Fischer et al (2013) suggest that there are four key psychological

¹ Safeguarding Adults: Scamming and Mental Capacity – Lee-Ann Fenge, Sally Lee and Keith Brown (2017)

² National Harm Prevention Group (Scotland 2015)

processes that can come into play when being financially harmed where someone has capacity.

- 1) **Urgency and scarcity** – the perpetrator encourages victims to rush decision making. Emotive language can be used which excites emotions such as hope and fear and makes emotional control more difficult.
- 2) **Social influence and consistency** – the perpetrator can groom the victim making them feel sorry for their situation or creating a false rapport (e.g. “I can help” or “you know you can trust me”).
- 3) **Acceptance** – the perpetrator imitates authority promoting reciprocation.
- 4) **High value incentives** – victims lured in and hooked by promises of various types. These visceral triggers make the victim focus on huge benefits to them and imagined positive future emotional states.

Financial harm can describe actions of fraud, pressure in connection with wills, property or money, exploitation and / or the misuse or misappropriation of money, possessions, benefits and / or property as well as the following:

- Bogus workmen.
- Cold calling.
- Theft.
- Fraud.
- Embezzlement.
- Robbery.
- Distraction robbery.
- Scam mail.
- Online scams.

4) Information Sharing

The impact of financial harm on the victim is not just in relation to the loss of income or property but to the individual's health and wellbeing. Tackling financial harm effectively requires a robust partnership approach and the sharing of information between agencies. Therefore it is important that you:

- Understand the legislative, policy and practice context parameters when sharing personal and / or sensitive personal information.
- Understand the limitations and constraints of confidentiality and consent, and
- Understand that you are empowered to share personal and / or sensitive personal information, if you are worried and / or concerned about an adult's wellbeing nothing prevents you from doing so as long as you record the reasons for your decision to share.

The Information Commissioner for Scotland has advised that Data Protection Act should not act as a barrier to the sharing of information but is in fact an enabler to the sharing of information:

“While it is acknowledged that practitioners need to be sure that their actions comply with all legal and professional obligations, fear that sharing genuine concerns about an adult will breach the Act (Data Protection Act 1998) is misplaced. Rather, the Act promotes lawful and proportionate information sharing, whilst also protecting the right of the individual to have their personal information fairly processed” – Information Commissioners Office (28th March 2013)

For further information please refer to the [EMPPC – A practitioners guide to information sharing to support the wellbeing of adults.](#)

5) Roles and Responsibilities



Local Authority

Not all victims of financial harm will meet the criteria of an adult at risk of harm. Victims will not always necessarily be obviously vulnerable, for example a person who may be well able to look after their other finances may be targeted. However where there are vulnerabilities then the Adult Support and Protection (Scotland) Act 2007 should be considered and applied. Victims of financial harm are often repeatedly targeted by the same individuals or linked groups, meaning that intervention measures are of particular importance.

If it is known or believed that an adult maybe at risk of financial harm then the local authority **MUST** make inquiries to determine if the adult meets the criteria of an adult at risk of harm. Once determined, the Local Authority may require any person holding financial records relating to an individual to provide copies of the records. This request must be submitted in writing, failure to comply with a valid request is a criminal offence.

Banks / Financial Sector

Banks provide financial services, but also work to safeguard their customers' best interests. This can include referring customers they believe are being financially harmed to the local authority, and / or reporting individuals / business they believe may be financially harming their customers.

The common theme with all financial harm is that it requires access to money at some point, so the bank will always be involved to a degree, whether it is behind the scenes monitoring of accounts for suspicious activity or active intervention at branch level.

How does financial harm play out at a bank?

- Series of unusual or suspicious debits being credited to the same or overseas destination(s) (overseas dating agencies or lotteries – guardian / attorney withdrawing regular cash amounts or paying for services not in keeping with account holder's profile).
- Customer calling at the branch and withdrawing large or unusual amount(s) of cash.
- Sudden and unexplained changes in the conduct of an account (guardian / attorney adding / subtracting signatory or making material changes to the account).
- Sons / daughters / relatives falling out and requesting the bank not to tell others about transactions on the account.
- Police / Social Work / Trading Standards call at the bank and inform staff of their suspicions.

Royal Mail

Royal Mail are obliged to deliver properly franked mail, but now work closely with Trading Standards to refer potential victims of financial harm, due to the nature or quantity of mail being received by individuals.

Police Scotland

- Physical harm – any type of physical harm should be considered for reporting to Police Scotland.
- Distraction burglary – if there have been any bogus claims that persons are working on behalf of the Council, water board, gas board etc and need access to the property, report these immediately to Police Scotland. These incidents are carried out in quick succession so it is important to alert the Police as soon as possible.
- Theft – do you believe that someone is stealing in some way from a client? This can include unauthorised withdrawals of money using the clients' card, simply stealing cash / items from the home but also subtle pressure to pay bills / give cash etc.

- Fraud – fraud is misleading someone into doing something for financial gain. This could mean convincing a client of financial hardship in order that they send money to another account, but also falsely stating that work needs carried out in their home or that they have specific expertise in a trade / profession. This can be taking money for work, and then never returning to carry out any work. Fraud consists of: intent, falsity and benefit to the accused. Other financial crimes: embezzlement / extortion etc.

Trading Standards

Trading standards have a particular interest in traders who call door to door. The criminal offences they could investigate include:

- Aggressive commercial practices such as:
 - Repeat visits to consumers.
 - Driving consumers to the bank.
 - Starting work without permission.
 - Grossly overcharging for work done.
- Other common offences include:
 - Using a false name and address.
 - False claims of membership to trade associations.
 - False statements that work was done or was necessary.
 - Failing to provide a cooling-off period.

Council legal departments may also seek a court order requiring traders to stop trading unfairly if trading standards can provide evidence of harm done to consumers generally.

Trading standards are also interested in scams. These include:

- 'Free' trials which turn out to be monthly subscription traps.
- Copycat websites such as for passports, driving licences, EHIC cards etc.
- Loan fees paid but loan not provided.
- Lottery winnings, prize draws, payments to psychics etc.

Trading standards contact details:

- East Lothian Council – 01620 827 365 / ehs@eastlothian.gov.uk
- Midlothian Council – 0131 271 3549 / tradingstandards@midlothian.gov.uk

Health Boards

NHS Lothian employees have a duty to report to the local authority if ‘they know or believe that an adult is at risk of harm’ (see guidance on the intranet under Adult Support and Protection). You would be required to report this to the local area’s social work department. We have a ‘duty to co-operate’ in any investigation that is conducted by the local authority and / or Police Scotland ensuing we keep accurate documentation.

Many of these bodies will request / require information to progress their investigations / support. These bodies have a statutory power to request this information. If you are in any doubt, consult your line manager who will be able to ensure that the correct information is being disclosed. NHS Lothian has clear guidance notes for staff on the intranet.

If you would like to discuss scenarios without making a formal referral, you can discuss with your line management or the designated point of contact within your organisation. They will be able to consult the relevant agencies to ascertain whether a certain situation would be within your remit.

The agencies involved will be happy to explain how they are authorised to be given the information involved.

Department of Work and Pensions Appointeeship (DWP)

An application can be made to receive and manage the DWP benefits or state pension income of an individual who is “incapable” of managing their affairs. This can either be done by an individual (benefits appointee) or by an organisation (corporate appointee) who can then act as their appointee.

“Incapable” of managing their affairs is not defined in the DWP regulations and the executive officer from the DWP has discretionary powers in relation to the appointment of an appointee. The appointee then has the authority to receive and manage payment on behalf of the DWP claimant. This can include consideration of his or her vulnerability to exploitation.

It can be a very straight forward and useful measure in supporting an individual who may be at risk of financial harm. However, some caution is required as there is no further scrutiny. If it is thought that an adults welfare benefits are being misappropriated Council Officers can complete a mandate to request information from the DWP.

Citizens Advice Bureau (CAB)

Help with all kinds of situations, assist and signpost as necessary regarding benefit questions, rent arrears, consumer queries, legal, housing, employment and tax.

6) Office of the Public Guardian

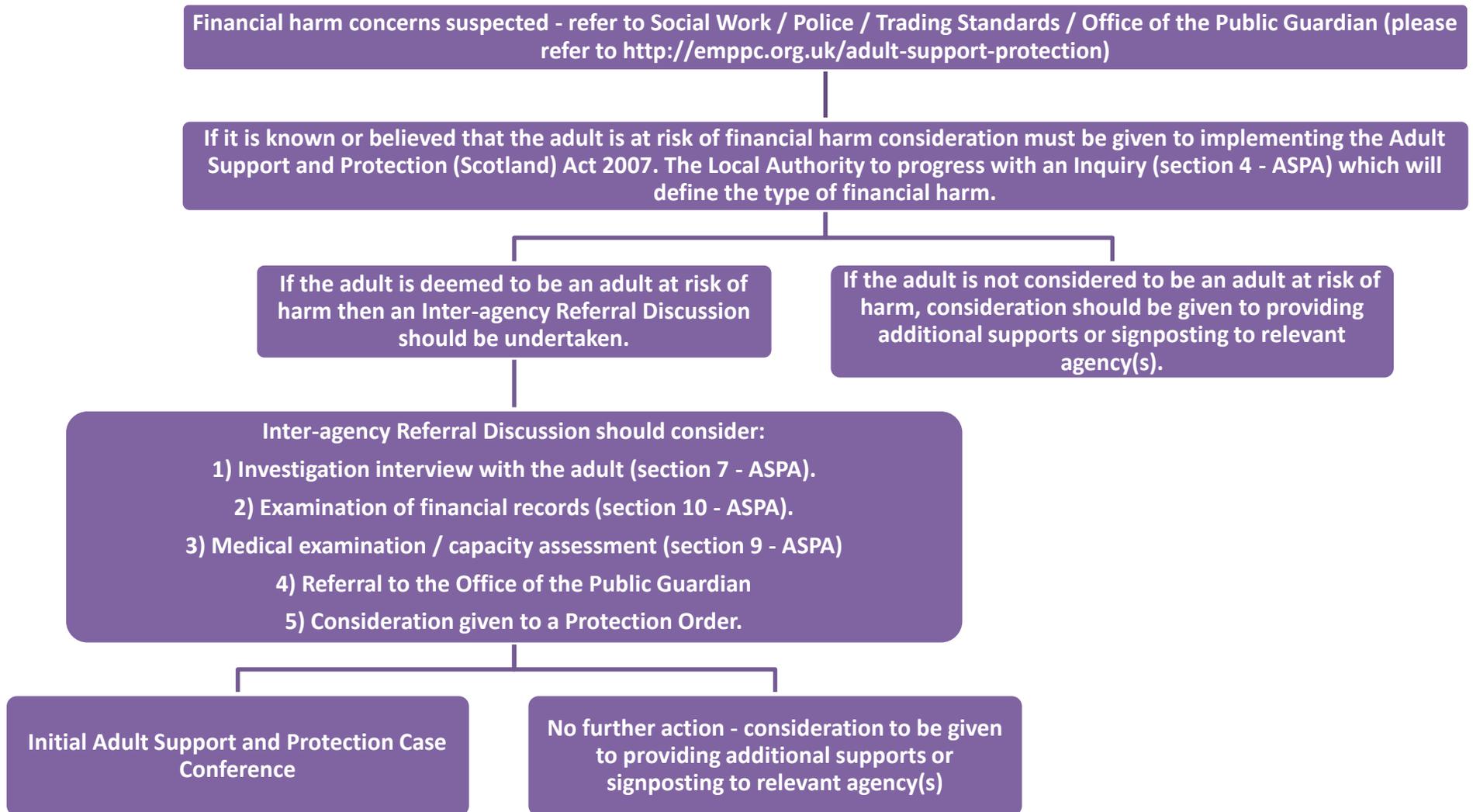
The Office of the Public Guardian (OPG) has the primary responsibility to oversee financial Powers of Attorney who have been appointed to look after an adult's financial affairs. The OPG has a duty to investigate Attorneys who are failing to meet their duties or misusing their powers.

The OPG is responsible for investigating in circumstances where there are concerns that the person in a position of trust such as a Financial Guardian or Withdrawer under the Adults with Incapacity (Scotland) Act 2000, is abusing their privilege (e.g. money being removed for purposes other than authorised purposes).

There will be a substantial crossover with Police investigations into fraud / theft.

The OPG may contact Banks to request information regarding a person's account. They will enquire under the Adults with Incapacity Act (Scotland) 2000 and they are authorised to request this information.

7) What should I do flowchart?



Author's name	Denice Lilley
Designation	Adult Support and Protection Lead Officer
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Appendix 1

Definitions

Adult Support and Protection (Scotland) Act 2007

Adults at Risk – Section 3 (1)

Are aged 16 or over and who:

- Are unable to safeguard their own wellbeing, property, rights or other.
- Interests.
- Are at risk of harm and,
- Because they are affected by disability, mental disorder, illness or physical or mental infirmity are more vulnerable to being harmed than adults who are not so affected.

Risk of Harm – section 3

An adult is at risk of harm if:

- Another person's conduct is causing (or is likely to cause) the adult to be harmed, or,
- The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self harm.

Harm – section 53 (1)

Includes all harmful conduct and, in particular includes:

- Conduct which causes physical harm.
- Conduct which causes psychological harm (for example by causing fear, alarm or distress).
- Unlawful conduct which appropriates or adversely affect property, rights or interests (for example theft, fraud, embezzlement or extortion).
- Conduct which causes self harm.

Duty to Inquire – section 4

The Council must make inquiries about a person's wellbeing, property or financial affairs if it knows or believes:

- That the person is an “adult at risk” and,
- That it might need to intervene in order to protect the person’s wellbeing, property or financial affairs.

Duty to Co-operate / report – section 5

The following public bodies and office holders must:

- Co-operate with the Council making inquiries under section 4 and each other where this will assist the Council and where the public body or office holder knows or believes:
 - That a person is an adult at risk and,
 - That action needs to be taken to protect them from harm.

They must report the facts and circumstances to the Council.

Public Bodies

- The Mental Welfare Commission.
- The Public Guardian.
- The Police.
- The Care Inspectorate.
- All Councils.
- Health Boards.

Examination of Records – section 10

A Council Officer may require **any person** holding health, financial or other records (in any format) relating to an individual when the officer knows or believes them to be an adult at risk to give records or copies of them to the officer. The request must be put in writing. Failing to comply with a valid section 10 request is a criminal offence.

Continuing (or Financial) Power of Attorney (part 2, AWI Act) (CPOA / POA)

A CPOA is granted by a person who has the capacity to do so. This is a proactive measure that gives the granter control of who acts on their behalf, with what powers and at what stage they can begin to act. A CPOA must be registered with the **OPG** who may investigate any complaints regarding mismanagement.

Access to Funds (part 3, AWI Act)

This allows an individual or organisation to open and operate a ‘designated bank account’ on behalf of a person who does not have capacity to manage their own financial affairs. It allows for the management of funds to cover living costs and ‘day to day’ expenses, but is not suitable where the adult’s financial circumstances are complex. Access to funds is overseen by the **OPG**.

Management of patients' / residents' funds (part 4, AWI Act)

Care homes and hospitals are able to manage up to £10,000 funds of an adult who has lost capacity to do this. This does include DWP benefits so DWP appointeeship may also be required. Care homes are monitored by the Care Inspectorate and hospitals by NHS Boards.

Intervention Orders (part 6, AWI Act)

An application can be made to the Sheriff Court by an individual or the Local Authority for an intervention authorising a 'one-off' transaction such as selling a house or managing / dealing with an inheritance. An Intervention Order does not give lasting authority. An application must be accompanied by two medical certificates confirming that an Adult lacks capacity to manage their finances and a report by a 'suitable person'. The **OPG** will supervise the intervener and require quarterly reports until all actions have been completed.

Financial Guardianship (part 6, AWI Act)

An application can be made to the Sheriff Court by an individual or the Local Authority for a financial and / or welfare guardianship order. Local Authorities cannot act as financial guardians and will nominate somebody else, often a solicitor with relevant experience. Joint and substitute guardians can also be appointed. A financial guardianship order is appropriate where the affairs of an adult who lacks capacity to manager their own finances are complex, involve large sums of money and require ongoing management.