



North Lanarkshire  
Adult Protection  
Committee

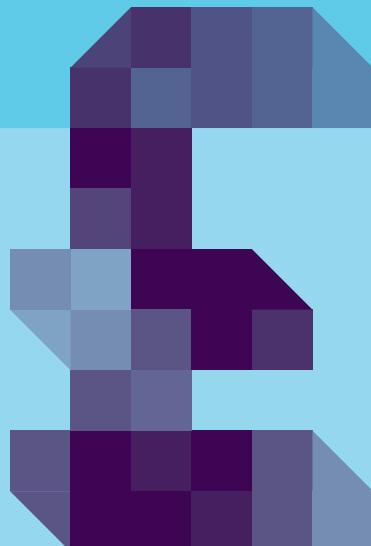
South Lanarkshire  
**Adult Protection**  
Committee

Adult Support and Protection

# Finance and Property Harm

**Criminal law:** finance and property

**Civil legal remedies:** financial and property harm



**First edition**  
October 2013

# Contents

## Background

### **Financial crime and mental capacity – Local Authority position**

#### Continuing attorneys

#### Financial guardianship / intervention orders

#### Access to funds

#### Repayment of misappropriated funds

#### Management of residents' finances

#### DWP appointeeship

#### Informal measures of managing finances

#### Direct payments

#### Contractual remedies

### **Criminal offences – Police position**

#### Theft

#### Embezzlement

#### Fraud

#### Robbery

#### Targeting vulnerable people and gaining their trust first

#### Theft by housebreaking

#### Preventative offences

#### Distraction thefts

#### Difficulties in prosecution

### **Civil and criminal offences – Trading Standards position**

#### Trading names on business materials

#### Cancellation rights

#### Bogus Caller Task Force

#### Civil enforcement action

#### Enterprise Act 2002 – enforcement orders

#### Other cold calling action

#### Suspicious activity reports

#### Wide definition of money laundering

#### Duty on banks and building societies

#### Application to, for example, dishonest care workers

#### Good practice guidance

### **Office of the Public Guardian Powers**

#### Safeguards

# Background

**Financial harm involves a complex set of circumstances and to tackle it effectively requires robust partnership working. The impact of financial harm on its victims relates not only to loss of income or property but to health and well-being.**

Crimes targeting people thought to be more vulnerable are committed by a wide range of perpetrators in a variety of situations. Sometimes people are deliberately and systematically targeted. Sometimes the offence is more opportunistic, but still made easier to commit by the vulnerability of the person. There are typically recurring circumstances, and some less expected instances. For instance, carers in care home or in people's own homes may misuse bank cards and personal identification numbers (PINs) with which they have been trusted. Or they might simply rifle through people's furniture and belongings to find cash. Cheques might be forged.

Sometimes it is people's families who misuse their position to steal money, through theft, fraud or forgery. And professionals, too, in positions of trust in relation to those people who are vulnerable, are sometimes implicated in these offences. This includes, for instance, accountants, solicitors, social and health care workers, bank staff, police officers and church ministers.

It is recognised that not only do people lose money and property, they are very unlikely to get their money and property back, and it is also very unlikely there will be any legal redress in the form of a perpetrator being subject to criminal prosecution.

## **Criminal law: finance and property** **Civil legal remedies: financial and property harm**

As well as criminal prosecution, there are also a range of civil legal options that can be pursued by the adult, or by someone acting on behalf of the adult, to seek redress.

This document gives an account of the various types of criminal activity that can be identified when someone is subject to financial harm. The document also gives an account of the range of civil legal remedies and outlines

the range of organisations that have a duty or role to respond. This includes the Police, the Council (Social Work Services and Trading Standards), and the Office of the Public Guardian.

The adult can also seek the services of a solicitor to pursue action on their behalf. Between these organisations, a range of criminal and civil options are available. As indicated within the Adult Support and Protection (Scotland) Act 2007, the most effective way to support someone who is seeking to pursue the return of monies and legal redress is for agencies to work together to identify what options are available.

## **Adult Support and Protection (Scotland) Act 2007**

Under the Adult Support and Protection (Scotland) Act 2007, a council must make inquiries about a person's well-being, property or financial affairs if it knows or believes:

- (a) that the person is an adult at risk, and
- (b) that it might need to intervene to protect the person's well-being, property or financial affairs.

## **Adult at risk**

The Adult Support and Protection (Scotland) Act 2007, defines an "adult at risk" as:

Adults (aged 16 or over) who:

- (a) are unable to safeguard their own well-being, property, rights or other interests,
- (b) are at risk of harm, and
- (c) 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.

An adult is at risk of harm for the purposes of subsection (1) if:

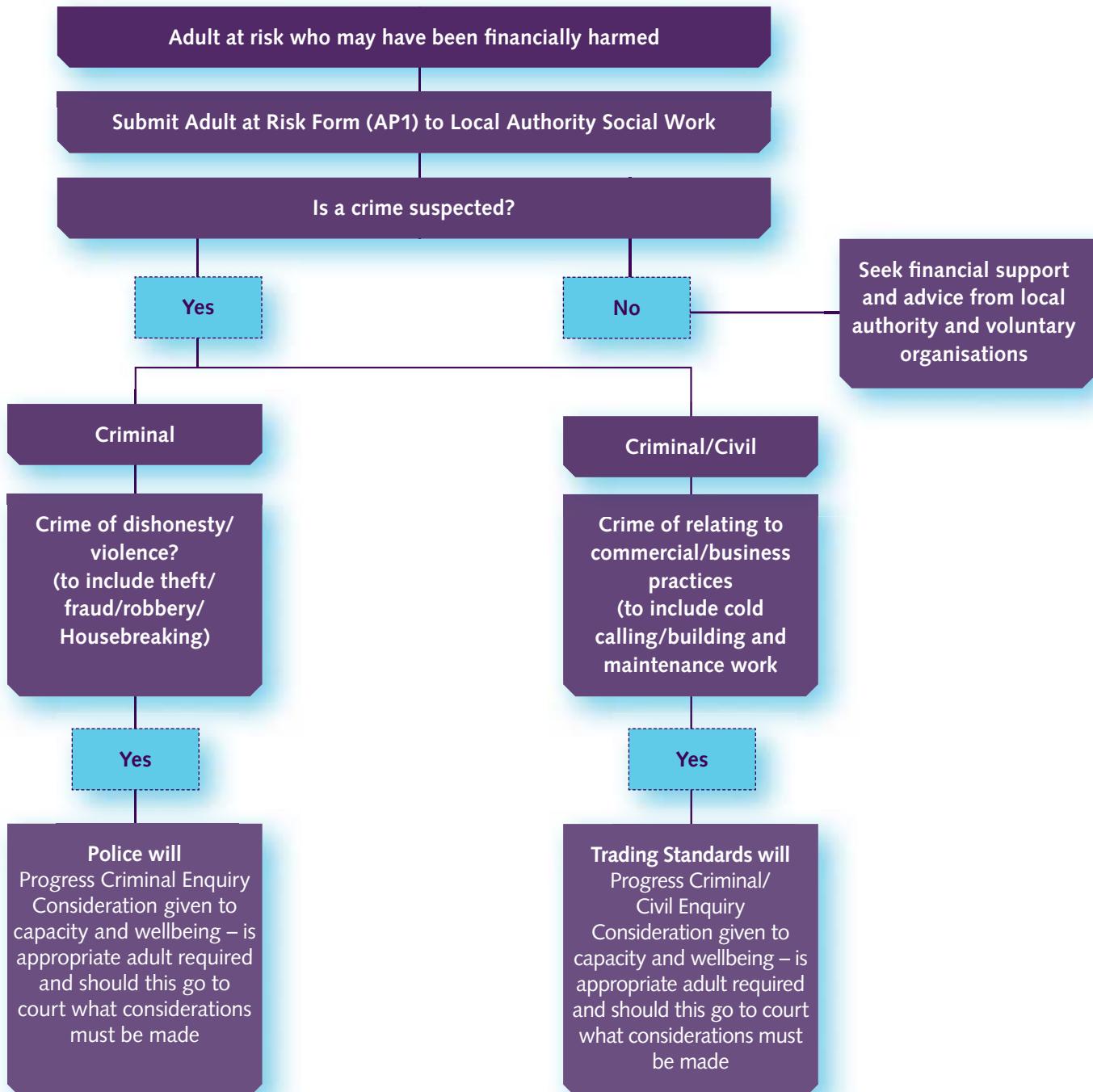
- (a) another person's conduct is causing (or is likely to cause) the adult to be harmed, or
- (b) the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

# Background

## Statutory Responsibilities

Statutory bodies have a duty to report their concerns if they 'know or believe' that an adult may be 'an adult at risk.' Staff should follow their organisational adult protection procedures.

It is recognised that, at times, the 'duty to report' may pose a dilemma for staff who may feel that by so doing this could alienate the individual and/or the family and the potential for preventative work. To do nothing or to promise confidentiality and then report the concern is not acceptable. The recommended procedure is to openly and honestly discuss with the individual and/or family the intention to report the information given and to advise them of the possible consequences.



For further information please refer to your agencies Adult Support and Protection Policies and Procedures

# Financial crime and mental capacity

## Local Authority position

Where the person meets the criteria of an adult at risk in terms of the Adult Support and Protection (Scotland) Act 2007, a referral should be made and followed through appropriately. For the police this means the submission of an adult referral through the Vulnerable Persons Database (VPD).

If a crime is suspected to have been committed, then **this should be reported to the Police at the earliest opportunity**.

Section 10 of the 2007 Act allows a **council officer** to require **anyone holding financial records** relating to a person to **produce those records**, where they know or believe the person to be an adult **at risk**. Such a request **must be in writing**. This can be a useful way to obtain financial information, although anecdotal evidence suggests that some banks are more willing to comply with these requests than others. The law is clear that to **fail to comply** with a valid s.10 request is a **criminal offence**, so this can be stressed where difficulty is encountered. There has also been a history of difficulty in obtaining **benefits information** from the DWP in terms of this section, due to a **loophole in the relevant law**. Following the intervention of the Scottish Government, an agreement has been reached and in most cases the DWP have undertaken to provide the records requested. There is now in place a mandate which can be completed by Council Officers and submitted to the DWP when requesting information.

In addition to helping with the investigation of the situation, it may be that the person would benefit from the use of one of the **Protection Orders in the 2007 Act** (most likely, a **Banning Order**) where the financial harm is taking place in the adult's own home, or some other defined place.

In other situations, it may be appropriate simply to support an individual to take their own legal advice. The **Citizen's Advice Bureau** can be a less intimidating way of gaining access to advice - but there are some measures (e.g. the removal of an attorney) which will require a solicitor.

Where an individual **has capacity** and does not wish to take steps to deal with financial harm themselves, or accept support to do so – it is important that efforts are made to find out why the adult is reluctant or unwilling to engage.

## Continuing attorneys

The primary responsibility in terms of the oversight of continuing attorneys (i.e. attorneys with powers in relation to the management of an adult's finances which continue after the adult has lost capacity) lies with the **Office of the Public Guardian**. Where there are concerns in relation to the actions of such an attorney, these should therefore be reported to the **OPG** in the first instance. Nonetheless, these attorneys' actions will usually have implications for the adult's welfare and the Council does have a duty to investigate situations where an adult's welfare is at risk.

For this reason, the indication from the **Mental Welfare Commission's report on Mr and Mrs D\*** is that, even with continuing attorneys, the Council should consider whether it is appropriate for it to make an application to have the attorney removed, to be made subject to the supervision by the OPG or be given directions in the use of their powers by the Sheriff. In some circumstances, it may also be worthwhile considering the appointment of a Financial Guardian. This appointment would have the effect of removing the attorney's powers, insofar as they are granted to the Guardian.

## Financial guardianship / intervention orders

Financial guardians and interveners with financial powers are also subject to the oversight of the OPG and concerns should therefore be addressed to them, in the first instance. The **Local Authority** can make an application for the **removal of a guardian or intervener**, either altogether, where the Order is no longer required, or to be replaced by another, more suitable individual.

\* Refer **Mr and Mrs D – MWC 2012**

# Financial crime and mental capacity

## Local Authority position

### Access to funds

Withdrawers appointed in terms of the Access to Funds section of the 2000 Act are subject to the direct oversight of the OPG. Any concerns in relation to their exercise of their powers should therefore be reported to them. The OPG may suspend or terminate any withdrawal certificate granted in response to such a report.

### Repayment of misappropriated funds

Where an attorney, guardian, intervener or withdrawer has **misappropriated or negligently mismanaged funds**, they may be **liable to repay any sums**, with interest. If necessary, a **Court Order ordering repayment may be obtained** - however, this is unlikely to be of much practical effect, if the sums have already been expended.

**It should be remembered that if the adult meets the criteria of an 'adult at risk of harm' – the public body duties to report and inquire under the adult protection legislation require to be met.**

### Management of residents' finances

If the individual resides in a **care home or is in hospital**, their funds can be managed by the institution. This is overseen by the **Care Inspectorate or Health Board**. Any issues of financial harm arising in this setting would be investigated by the OPG. Where the placement is purchased by the Council, any remedies available in terms of the contract should also be explored and the concerns notified to Contract Compliance Quality Assurance.

### DWP appointeeship

**DWP appointees** are **not** subject to the same level of supervision as e.g. financial guardians. The legislation states simply that the DWP may revoke an appointment at any time, but does not place any requirement on them to ensure that an appointee is expending funds appropriately, or to take action in cases where there appears to be financial harm.

In practice, the DWP usually will revoke an appointment where concerns are made known to them. However, if there is no other person authorised to receive benefits on behalf of the adult, this will usually mean the freezing of the majority of benefit payments until a suitable individual can fulfil this role. This can result in greater hardship for the adult, so care should be taken to work with the DWP as far as possible to ensure that the proposed action is really to the benefit of the adult.

As with continuing attorneys, one option can be to consider the appointment of a financial guardian. Provided the guardian has clear powers to claim and receive benefits, this will have the effect of revoking the Appointeeship immediately, once the DWP are notified of their appointment. Care should be taken in considering this option, however, since the use of a financial guardian where a person is solely in receipt of benefit income is unlikely to be considered proportionate.

### Informal measures of managing finances

Various informal measures are used to manage the finances of adults with incapacity. The most common of these are the setting up of **joint accounts with relatives** and the **sharing of bank cards and PIN numbers**. Such measures are **not subject to any formal oversight** and may be difficult to deal with, where there is suspicion of mismanagement.

The ability to request financial records to be produced in terms of s.10 of the Adult Support and Protection (Scotland) Act 2007 (see above) may afford some power to investigate such arrangements. Raising concerns with banks can provide a quick, short-term means of preserving such funds as are left in an account in some circumstances. Anecdotal evidence suggests that some banks will **agree to freeze accounts** where there appears to be abuse of a joint account holder's funds by another, but there is **no strict legal basis** for such action, so this cannot be insisted upon. Where the security of a PIN card has been compromised, **even where PIN information has been shared on purpose**, banks are generally **more willing to suspend its validity**, but again this will depend on the bank in question.

# Financial crime and mental capacity

## Local Authority position

Intervention Orders or Financial Guardianship will provide a means of stepping in to regularise the management of such an adult's finances in the long-term and will be required if it is proposed to close accounts or take other steps to secure funds held. Where urgent, it may be possible to shorten the usual Court process to obtain the necessary Order: however, the standard medical and other reports will still be required before such an application may be submitted to Court, so there is still likely to be some delay in obtaining the necessary authority. It will usually therefore be necessary to ask banks to take the informal steps described above, while initiating the process to obtain the relevant Orders.

## Direct payments

A person is not eligible to receive direct payments if they are incapable of managing the payment, with or without assistance. Therefore, where there is concern in relation to misappropriation of monies paid as direct payments, the Council must take a view as to whether this indicates that the adult is incapable of managing the payments and, if so, cease the payments and ensure the provision of care by other means.

While the above position pertains at the time of writing (December 2012), the future state of the law in relation to eligibility of an individual to receive direct payments is uncertain, due to the recent passing of the Social Care (Self-directed Support) (Scotland) Bill. This is likely to come into force at some point in 2013 and empowers the Scottish Government to make Regulations in relation to the question of eligibility. If you have concerns in relation to the misuse of direct payments, you should refer to any updated procedures available, or contact legal services for advice

## Contractual remedies

A vulnerable person who has entered into a contract may have legal remedies available to them through the law of contract. These are private civil remedies and the individual may need to be supported to obtain advice from a solicitor or Citizens Advice Bureau. If the individual lacks capacity then in appropriate circumstances a Financial Guardian could be appointed to pursue contractual remedies. In every case these are remedies which must be sought by or on behalf of the individual concerned.

For statutory powers which may be exercised by official bodies please refer to the appropriate section.

Certain types of contract may be invalid and an individual could be entitled to seek redress in the form of return of money paid out and damages in certain circumstances. Examples of grounds of invalidity which may be relevant to adults at risk are:-

- **Force and fear.** If some form of coercion or unfair pressure is applied to secure consent the contract may be invalid. The most important element is the fear on the part of the individual that there will be consequences if they do not enter the contract. Usually this is a threat to carry out an unlawful act such as violence or blackmail but it can also involve economic duress;
- **Facility and circumvention.** This is where one party has taken advantage of someone who is in a vulnerable state and the vulnerable individual has suffered loss as a consequence. There must be evidence of unfair advantage having been taken and the degree of "facility" of the victim;
- **Undue influence.** Where the parties are in a relationship of trust (which could be a family, friendship or professional relationship), a contract may be set aside if the trust is abused; and
- **Misrepresentation.** Where someone has been induced to enter into a contract by misleading statements it may be open to challenge.

This list is not exhaustive and is intended only for illustrative purposes. In every case where it appears that a vulnerable individual may have entered a contract where it is disadvantageous, or which they do not understand, then appropriate legal advice should be obtained.

# Criminal offences

## Police position

There are a number of common crimes or offences that the police encounter when dealing with vulnerable adults that can be enforced by police through detection of the perpetrators, where a report can then be submitted to report the circumstances and the offender to the Procurator Fiscals Service. Part of the issue encountered is where it has been a friend or family member that has committed the crime. Often in these cases, the victim will not wish to proceed with a criminal investigation. This often leaves police feeling helpless as without a victim and corroborative statements there would be insufficient evidence to report an individual to the Procurator Fiscal.

## Theft

Theft is a crime at common law and a person is guilty of theft if he or she dishonestly appropriates property belonging to somebody else. The intention must be to permanently deprive the other person of the property. However, the appropriation will not be dishonest if the person believes he or she has a right in law to deprive the other person of it. It will also not be dishonest if the person believed that the other person would have consented, if the other person knew of both the appropriation and the circumstances.

In the context of safeguarding, there are typical types of theft. For instance, care workers who are entrusted with a person's bank card and PIN. Care workers visiting people in their own homes may systematically rifle through drawers, pockets or coats. Staff in institutions such as hospital or care home may steal a person's belongings, from their locker or a drawer, for example. It may be on a larger scale, and committed by a care home manager who takes advantage of lax accounting procedures to plunder the bank accounts of residents.

In May 2011, Coatbridge (North Lanarkshire) an elderly female was within her home address when she was waiting on a roofer attending that she had contacted to repair damage to her roof. At this time a male arrived asking if she needed any roofing work done. The householder, believing this was the male she had prearranged allowed him access to the house. The "roofer" had a child with him which he stated was hungry, the householder went into the kitchen where she gave the child money and food and left her purse in the kitchen. The adult suspect then made his way through the house where the householder asked them to leave as she became suspicious of their actions. She thereafter noticed her purse had been stolen from the kitchen. The males were later traced and arrested where they pled guilty to theft and were sentenced to a Community Payback Order and Compensation payable to the complainer.

## Embezzlement

If property has been entrusted to someone to look after it, but they take it and use it for their own purposes, that is embezzlement. This would therefore apply to Trustees or other individuals given authority to hold funds belonging to an adult a risk. This applies to professionals such as lawyers and accountants but would also apply to Attorneys or other individuals who have been authorised to manage someone's finances.

# Criminal offences

## Police position

In 2011, an Ayrshire Social Worker admitted embezzling more than £26,000 from five different people over a two year period. These were Service Users in relation to whom the Social Worker had been given responsibility for managing their finances. She had access to the funds and was entitled to deal with the funds but she transferred the money to her own account for her own purposes and therefore was guilty of embezzlement.

## Fraud

Fraud occurs where there has been consent but false pretences have been used to obtain that consent. It is sometimes difficult to decide whether the crime is fraud or attempted fraud. Although he need not have derived any gain, the accused must have had some measure of success before the crime is complete. The fraud must have passed the stage of preparation, and entered a stage of perpetration, tending to prejudice the interests of another person.

**In May 2012, Motherwell (North Lanarkshire) a resident with mental health issues was within his home address when a male entered his garden claiming to have done gardening work for him for a sum of money.**

The complainer looked at his garden and confirmed that no work had been carried out. The suspect threatened to assault the complainer if he did not pay for the work that he had completed. At this time the complainer's home carers arrived and the suspect left. He was later traced by police and arrested for fraud (as no work had been carried out) and a disorder offence (threatening behaviour). He was later found guilty of threatening behaviour and sentenced to 3 months imprisonment.

As with theft, fraud may be perpetrated, in a variety of situations and by a range of people in a position of trust. For instance, in the following case an unqualified 'accountant' obtained nearly £700,000 from an elderly woman who believed she was making investments:

A man was convicted of six offences of procuring the execution of a valuable security (under Section 20[2] of the Theft Act 1968 (English Legislation), now repealed by the Fraud Act 2006). He traded as an accountant but was not qualified, certified or chartered. He advised a lady aged 85 to invest large sums in a bank. He used the funds to clear an overdraft that he had incurred with his own bank. He subsequently asked the victim for a further cheque with a view to investment. He arranged for her to pay other sums into an account, on which he drew for his own purposes. The victim noticed that interest normally paid into her bank account had ceased and asked the appellant why this was so. She received no explanation. The total amount obtained by the appellant was approximately £688,000. He was sentenced to a total of nine years in prison.

**In a less professional position, but nonetheless one of trust, a carer provided assistance to an 80-year-old housebound woman.**

The carer did various tasks including collection of the woman's pension. The carer asked the woman to sign blank cheques, which she could then use to pay the woman's utility bills. Instead, for two years, she wrote out cheques to herself and obtained £2,875. She was convicted of obtaining a money transfer by deception.

## Robbery

Robbery is a crime at common law, a person is guilty of robbery if he or she steals and, immediately before or at the time of doing so and in order to do so, he or she uses force on any person or puts or seeks to put any person in fear of being subjected to force.

In the context of this guide, robbery is included because some robbers will target adults precisely because of their vulnerability.

# Criminal offences

## Police position

**A person with learning disabilities was known to be vulnerable by three men (he had given money to the child stepson of one of them – he tended to be pestered by children).**

They pushed him into the hallway, demanded money and stole all his savings, amounting to £100. They punched him in the face. He suffered a fractured cheek bone and eye socket. The perpetrators were sentenced to over five years in prison.

**An elderly couple lived in a block of flats.**

**The wife was bedridden. The husband had Alzheimer's disease.**

The perpetrator was a 38-year-old woman. She befriended the couple. She told the wife that her husband owed money to a local shop and that the kettle needed replacing. She offered to sort all this out. She was given £45 by the wife, from underneath her pillow. She borrowed the keys. She did not return. This was anyway theft. Ten days later, she did return disguised with an accomplice. They pushed and hit the wife. They stole £300, papers and bank cards. This was robbery. A further £1,200 was withdrawn from the wife's bank account.

## Targeting vulnerable people and gaining their trust first

There may be intensive targeting of vulnerable people through deliberately gaining their trust in order to breach it. This can blur the line between what practitioners view as abuse by a 'stranger' and abuse of a position of trust. The following resulted in a conviction for robbery:

## Theft by housebreaking

Theft by housebreaking occurs when the security of a building is overcome and property is thereafter stolen. In the context of this guide, theft by housebreaking is included because some housebreakers will target adults already at risk of harm, precisely because of their vulnerability.

## Preventative offences

Under Scottish Law there is also a preventative offence in relation to persons found in circumstances where the inference is that they were there to commit theft. This can be of use where no actual theft has yet occurred.

Section 57 of the Civic Government (Scotland) Act 1982 determines that any person who, without lawful authority to be there, is found in or on a building or other premises, whether enclosed or not, or in its curtilage or in a vehicle or vessel so that, in all the circumstances, it may reasonably be inferred that he intended to commit theft there shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale or to imprisonment for a period not exceeding 3 months or to both. In this section "theft" includes any aggravation of theft including robbery.



# Criminal offences

## Police position

**In October 2011, in Airdrie (North Lanarkshire) an elderly couple were in their home address when a male attended at their door claiming to be from the Water Board, he stated that he had observed a burst pipe in their garden.**

The male made his way into the property (without consent) and began turning on the kitchen taps. The male was asked by the householders if he had identification which he did not and was thereafter asked to leave. Police were contacted and upon arrival found the male nearby. It was also later discovered that he had approached a number of other elderly persons in the street under the same circumstances. He was arrested on 3 counts of Section 57 Civic Government (Scotland) Act 1982 and found guilty at Airdrie Sheriff Court and was sentenced to 3 months imprisonment.

## Distraction thefts

The following case involved distraction theft:

**In Motherwell, two males attended at the back door of an elderly male. One of these males guided the victim away from the back door and informed him that he had been out doing roughcasting at the property a couple of months ago and that he was there to finish the job by doing some painting.**

Witnesses thereafter observed one of the males lead the Victim towards the front of the locus via the driveway not allowing him to go back in to the house via the rear door. At this time police were called by the witnesses and upon attendance found one male still with the victim standing at the driveway with the second male within the victims living room searching through property in possession of items belonging to the victim that had been taken from his home.

Both males were both later released from court with Not Guilty pleas accepted.

## Difficulties in prosecution

There can be difficulties in charging and prosecuting criminal offences. For example, false (or no) names and addresses may be given and therefore protracted investigation may be required to identify the perpetrator. In this type of case involving a vulnerable witness, every step would be taken to ensure progression of the enquiry, including DNA/fingerprints, witness statements and check of CCTV. A small amount of token work might be carried out so that the perpetrator can claim that the matter is civil (contractual) rather than criminal in nature, however in instances such as this, the Local Authority Maintenance Inspector or Trading Standards Officer may be able to determine if a criminal offence has occurred.

Many steps have been taken to improve the challenges faced through prosecution in these cases including the Appropriate Adult Scheme. The responsibility for identifying when an appropriate adult is required rests with the police officer who is dealing with the case, whether the person with the mental disorder is a witness, suspect or accused. It should be emphasised that appropriate adults are now available for those with all types of mental disorder.



# Civil and criminal offences

## Trading Standards position

**North and South Lanarkshire Councils' Trading Standards Services promotes and contributes to the maintenance of a safe, fair and equitable trading environment and also strive to protect and improve the health, safety and the environment of the people of Lanarkshire.**

They achieve this aim by ensuring that the regulation and enforcement of statutes is fair, transparent and consistent, thereby assisting businesses and individuals to achieve compliance with Trading Standards Legislation.

In relation to adults at risk of harm, tackling Doorstep Crime which includes bogus trading is a key priority for the Service and a summary of the common offences is detailed below.

### **Consumer Protection from Unfair Trading Regulations 2008**

The purpose of these Regulations is to prohibit unfair commercial practices. The prohibitions relate to commercial practices that contravene the requirements of professional diligence, use misleading or unfair actions and omissions, aggressive commercial practices and introduce a set list of 31 banned commercial practices. Regulation 3 relates to professional diligence which is defined as the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with honest market practice within the trader's field of activity and the general principles of good faith.

**Penalties:** £5,000 fine and/or 2 years imprisonment on indictment.

#### **Unfair and aggressive commercial practices:**

- Harassment, coercion or exerting undue influence
- Refusing to leave a property when asked to do so
- Quoting one price then charging a much higher one
- Falsely stating a property needs urgent repairs
- Falsely claiming membership of a trade association
- Untruthfully claiming to be working for the local council
- Failing to give a cancellation notice when required
- Misleading / false premises address given on documents / flyers
- Returning to doorstep repeatedly after being told not to
- False claims about the goods or services supplied or to be supplied.

### **Trading names on business materials**

The Companies Act (2006) required individuals using trading names to disclose the true name of the legal entity of the trader and their geographic address on invoices, receipts, written orders and on all business letters.

### **Cancellation rights**

The Cancellation of Contracts made in a Consumer's Home or Place of Work etc regulations 2008 state that for contracts worth over £35, traders are required to provide the consumer with a written notice in a specified format informing them they have a seven day cooling off period during which they can change their mind and cancel the contract. This notice should give information on how to cancel and a detachable slip to enable this to be carried out.

# Civil and criminal offences

## Trading Standards position

The householder should be advised that failure to provide this notice in writing means that the contract is unenforceable and he/she is not liable for any sums due.

Para 13 (2) (b) of the Regulations provide that the consumer shall not be under a duty to restore goods supplied under a specified contract in circumstances where the trader has begun performance of the contract before the end of the cancellation period without a prior request in writing by the consumer.

### After being cold called, a householder in Bothwell agreed to some driveway work by a trader.

When it became apparent that the work was of poor quality, the householder called Trading Standards who attended the locus jointly with Police Officers. Enquires at the locus provided that the trader had failed to provide cancellation documentation and that information relating to where the trader was based was untruthful. Trading Standards reported the matter to the Procurator Fiscal. The trader subsequently pled guilty to the offence at Hamilton Sheriff Court.

## Bogus Caller Task Force

Both North and South Lanarkshire areas have a well established Bogus Callers Task Force. This group consists of Trading Standards, Scotland Police, Scottish Fire and Rescue, Local Authority Social Work, Local Authority Adult Protection Committee members and other partner agencies.

The principle aim of the intervention is to ensure the safety and well being of the householder. This group not only meet on a regular basis but share information on a daily basis as covered by local Information Sharing Protocols.

## Civil enforcement action

### Enterprise Act 2002 – Enforcement Orders

#### Failure to comply, contempt of court, criminal, report to Procurator Fiscal

Enforcers may take civil enforcement action in respect of any breach of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) as Community (breaches of EU derived legislation) or domestic Infringements under Part 8 of the Enterprise Act 2002. Currently, a number of bodies, including the OFT and Trading Standards Services (TSS) can take enforcement action in this way. Under this procedure, Trading Standards may apply to a court for an enforcement order to prevent Community or domestic infringements. Breach of an enforcement order may be classed as contempt of court which could lead to up to two years imprisonment and/or an unlimited fine.

#### A criminal enquiry into the activities of a bogus crime group carried out in 2010 revealed several elderly victims who were unable to give evidence due to their infirmity and mental capacity.

The total monies paid over amounted to approximately £150,000. Cases investigated by Trading Standards concerned instances of;

- taking large sums of money from customers without carrying out any work,
- gross overcharging,
- fraudulent claims as to the nature and extent of work required,
- fraudulent claims as to the nature and extent of work carried out,
- gain confidence of customers and obtain money or attempt to obtain money as personal loans with no intention of paying back,
- fail to issue cancellation rights notice,
- fail to exercise reasonable skill and care when providing services.

In October 2010 an Enforcement Order under Section 217 of the Enterprise Act 2002 was granted at Glasgow Sheriff Court against two individuals.

# Civil and criminal offences

## Trading Standards position

### Other cold calling action

In the absence of identifying and prosecuting perpetrators, other approaches can be taken. The police and local authority might agree a local strategy involving the following sort of action.

An area might be blighted by doorstep selling and 'cold calling', with the result that vulnerable elderly people are being exploited and sometimes having criminal offences (of theft or fraud) committed against them. However, the offenders are very difficult to apprehend. So, apart from identifying and prosecuting where possible, the police and local council may introduce a '**no cold calling zone**' (such zones can lawfully be designated by local authorities).

### Suspicious activity reports

Under the Proceeds of Crime Act 2002, there are particular provisions relating to money laundering. Although these are in large part aimed at large-scale operations, including organised crime and terrorism, the provisions are drawn widely, so as to be relevant to the financial safeguarding of vulnerable adults.



### Wide definition of money laundering

Sections 327 to 329 of the Act create a number of money laundering offences in relation to concealing, disguising, converting, transferring or removing from the jurisdiction criminal property; to making arrangements for acquisition, retention, use or control of criminal property by or on behalf of somebody else; and to acquiring, using and possessing criminal property. Criminal property is widely defined.

In addition, it is an offence for staff – working for particular financial bodies such as banks and building societies – to fail to report known or suspected money laundering. The grounds for reporting are that the person (a) knows or suspects, or (b) has reasonable grounds for knowing or suspecting that another person is engaged in money laundering.

### Duty on banks and building societies

This means that if banks or building societies suspect criminal activity, including such activity involving vulnerable adults, they must report it by means of a suspicious activity report (known as a SAR). The report goes to the Serious Organised Crime Agency (SOCA) who in practice might then feed the details back down to the local police force.

### Application to, for example, dishonest care workers

In terms of use of cash machines by dishonest care workers, for example (a typical type of theft from vulnerable people), computerised systems can pick up unusual transaction patterns. However, if the theft has been regular over an extended period of time, this may not be easily identified. Alternatively, if people are coming physically into branches, staff might more easily pick up suspicious activity.

# Civil and criminal offences

## Trading Standards position



### Good practice guidance

The British Bankers' Association has published a good practice guide for bank staff. It includes two examples of suspicious activity (British Bankers' Association, 2010):

#### **Case studies (British Bankers' Association).**

**In the first case, there had been attempts to obtain several bankers drafts from an elderly customer, to the value of £31,000.**

The bank staff formed the view that the customer was being exploited by an individual pretending to be a relative. The suspicious activity report was passed on by the SOCA to the police, who were then able to protect the customer.

**In a second case, an elderly person attended a building society branch with a carer, and made a several withdrawals up to a value of £2,000.** There were also cash point withdrawals, as much as £1,500 in one week. The building society thought the cheque signatures might have been fraudulent; they blocked cash point withdrawals and cheques. A SAR was made. A trusted third party was appointed signatory. No action was ultimately taken against the carer, but the report had the effect of preventing further exploitation.

# Office of the Public Guardian Powers

**Section 6(2)** allows the Public Guardian “to receive and investigate any complaints regarding the exercise of functions relating to the property or financial affairs of an adult made

- (i) in relation to continuing attorneys;
- (ii) concerning intromissions with funds under Part 3;
- (iii) in relation to guardians or persons authorised under intervention orders”

**Section 6(2) (d)** allows the Public Guardian “to investigate any circumstances made known to him in which the property or financial affairs of an adult seem to him to be at risk”

**Section 6 (2)(d)(a)** allows the Public Guardian “to take part as a party in any proceedings before a court or to initiate such proceedings where he considers it necessary to do so to safeguard the property or financial affairs of an adult who is incapable for the purposes of this Act”

The Public Guardian only has locus to investigate provided it has been confirmed by a medical person that the adult lacks capacity. If the adult is deemed to have capacity the investigation would fall to be made under the Adult Support and Protection Act.

Assuming the adult lacks capacity and following investigation the Public Guardian considers that the adult's property and/ or funds are at risk the Public Guardian can put the following safeguards in place.

## Safeguards

- (a) 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.
- (b) In certain circumstances the adult's bank accounts may be frozen or income suspended until redirected for the benefit of the adult.
- (c) 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.
- (d) 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 of the powers they were given revoked/terminated, or
  - have their appointment revoked/terminated.

If there is an indication of fraud or theft then Office of the Public Guardian may refer the matter to the police.

For further information of what support the Public Guardian can offer please go to their website at [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)



If you need this information in another language or format, please contact us to discuss how we can best meet your needs.

Phone: **01698 452844**

Email: [maxine.mcwhinnie@southlanarkshire.gov.uk](mailto:maxine.mcwhinnie@southlanarkshire.gov.uk) or

Phone: **01698 452266**

Email: [mary.murphy@northlan.gov.uk](mailto:mary.murphy@northlan.gov.uk)

Produced for Social Work Resources by Corporate Communications and Public Affairs. 2175/Sep13.

**Financial harm involves a complex set of circumstances and to tackle it effectively requires robust partnership working. The impact of financial harm on its victims relates not only to loss of income or property but to health and well-being.**

For more information:

[www.adultprotectionsouthlanarkshire.org.uk](http://www.adultprotectionsouthlanarkshire.org.uk)

[www.northlanarkshire.gov.uk/protectingadults](http://www.northlanarkshire.gov.uk/protectingadults)



North Lanarkshire  
Adult Protection  
Committee

South Lanarkshire  
**Adult Protection**  
Committee